

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.02.2020

Pronounced on: 28.02.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.S.No.374 of 2016

1. V.Ramalingam,
S/o. Viswanathan,
No.34, Sri Rangam Street,
Sorakalpet, Cuddalore – 607 001.

2. J.Krishna Kumar,
S/o. Jayaraman Reddiar,
T.R.Palayam, Madukarai Post – 605 105,
Villupuram District.

... Plaintiffs

/versus/

1. K.S.Sundaram,
S/o.R.S.A.Sankarier,
'Mahalakhmi' 53, Kasturi Rangan Road,
Chennai – 600 018.

2. Tambaraparni Printers Private Limited,
No.19, Mudaliappopuram Street,
Kallidaikurichi – 627 416.

3. Tambaraparni Containers Private Limited,
No.53, Kasturi Rangan Road,
Chennai – 600 018.

... Defendants

Prayer: Plaint is filed under Order IV Rule 1 of Original Side Rule read with Order VII Rule 1 of C.P.C., 1908.

a. For recovery of a sum of Rs.1,34,50,000/- with future interest at 18% per annum on 1,00,00,000/- from the date of plaint till date of realisation.

b. For recovery of a sum of Rs.56,53,700/- as damages arising out of the breach of the essential terms of the contract dated 28.05.2014 entered into between the plaintiffs and the defendants with future interest at 18% on Rs.43,49,000/- from the date of plaint till date of realisation.

c. Grant further or other reliefs and

d. For costs of the suit.

For Plaintiffs : Mr.R.Thiagarajan

For D1 to D3 : Mr.Savariram,
for Revathi M.Kannan

JUDGMENT

Case of the Plaintiffs:

The plaintiffs are promoters, who have entered into a development agreement dated 24.05.2014 with the 1st defendant, who is the Managing Director of the 2nd and 3rd defendant's Company. The 2nd and 3rd defendants are owners of the suit property. As per the development agreement entered between the parties, the plaintiff offered a sum of Rs.6,15,00,000/- (Rupees Six Crores and fifteen lakhs only) as total consideration for the land more fully described in the plaint schedule payable in the following manner:-

(a).	Amount remitted into the owner's bank account to show the plaintiff's willingness	Rs.10,00,000.00
	Further amount remitted on the date of signing of the development agreement	Rs.50,00,000.00
(b).	Amount to be paid on or before 07.06.2014	Rs.40,00,000.00
(c).	Amount to be paid on or before 01.08.2014	Rs.1,28,75,000.00
(d).	Amount to be paid on or before 01.11.2014	Rs.1,28,75,000.00
(e).	Amount to be paid on or before 31.01.2015	Rs.1,28,75,000.00
(f).	Amount to be paid on or before 15.03.2015	Rs.1,28,75,000.00
	Total	Rs.6,15,00,000.00

2. The plaintiffs have paid a total sum of Rs.1,00,00,000/- in three installements as on 05.06.2014. The defendants were running a chemical and paints company, in the property offered to the plaintiffs for development agreement. Besides they were standing sugar cane crops on the date of agreement. To compensate the standing sugar cane crop, the plaintiffs paid a sum of Rs.20,000/- as compensation to the defendants to cut the standing sugar cane crop prematurely, to enable the plaintiffs to clear the site and form a tentative layout. Accordingly, a layout was prepared for approval by the Puducherry Development Authority. The plaintiffs was unable to make payment as per the contract schedule under the clause (8) since the defendants who are duty-bound to disclose encumbrance/dispute in the suit schedule property failed to truly and faithfully disclose the same. The defendants were confronted with insurmountable difficulties in applying for promotion and

development for layout approval. The plaintiffs physically formed the layout in the site and laid stones for the plots. Since the defendants were confronted with insurmountable difficulties in offering the entire property, free from all encumbrance, the plaintiffs were unable to physically measure the property and proceed with the formation of the layout as originally envisaged. The workers of the 2nd and 3rd defendants residing in and around the factory premises which is part of the suit schedule property, gathered in front of the factory gates every day to disturb the peaceful business of the plaintiffs and the layout formation activities. When the plaintiffs tried to effect division of the properties, as per the intended formation of layout, the labourers who were working with the 2nd and 3rd defendants, barged into the suit property and prevented the plaintiffs from measuring or proceeding with the development. The 2nd and 3rd defendants have not settled their wages and salary dues in accordance with law therefore, the labourers threatened the plaintiffs that they would dispossess the plaintiffs from the suit schedule property and prevent them from forming and developing the property into approved layout. The plaintiffs have made all preliminary arrangement for the layout formation by removing the shrubs, trees and levelled the property with gravels and formed the road. The defendants though agreed to evict the existing tenants, who are in occupation of a shed admeasuring 3150 sq.ft, failed to do. The defendants failed to handover the title deeds, other revenue records and documents, to show the statutory dues has been

cleared. Though in the agreement, time for performance was fixed as 31.03.2015 and mentioned that the time is essence of the contract and any breach in payment will render the contract cancel automatically, in true sense time was not the essence of the contract since formation of layout depend on the plaintiffs obtaining permission from the statutory authorities in the name of the 2nd and 3rd defendants for the property offered by the defendants for development free from encumbrance and free from litigations. The suit property was confronted with litigations created by workmen, who were not paid the salaries and wages. The labour unrest, has rendered the performance of the contract impossible within the time frame. After receiving Rs.1crore, from the plaintiffs, the defendants had neglected and omitted to perform their part of the contract arising from the development agreement dated 24.05.2014.

3. The 1st defendant/K.S.Sundaram, who has availed loan from the Pondicherry Industrial Promotion Development and Investment Centre (hereinafter referred as “PIPDIC”), mortgaging the suit property did not clear the loan. Therefore, encumbrance certificate was reflecting the mortgage. Since the property for the layout must be free from encumbrance, in the absence of clearance certificate, the application for layout plan approval was not entertained by the Pondicherry Development Authority (PDA). This prevented the plaintiffs from getting layout approval from the Pondicherry Development Authority (PDA). Without plan

approval and sanction, the plot sales could not be commenced by the plaintiffs within the date fixed for completion of the contract.

4. The 1st defendant could not produce the clearance certificate as promised, which prevented the plaintiffs from submitting the drawings for the layout approval to the concern authority. The plaintiffs having advanced Rs.1 crore towards the sale consideration to the defendants, had also incurred an expenditure to a tune of Rs.30 to 40 lakhs in furtherance with the development agreement and other arrangements for obtaining layout plan and permission from the authorities. Though, the plaintiffs have drawn the drawings and prepared the entire set of papers for the submissions to the authorities concerned in furtherance with the object of promotion and development of the property, the attempt for submissions of papers to the Pondicherry Development Authority got frustrated on account of the labour unrest in the 2nd and 3rd defendants' factory premises. Besides that, they were not able to get clearance from the statutory authorities since the statutory dues payable to the statutory authorities have not cleared by the 2nd and 3rd defendants. The dispute between the workmen and the litigation with the tenants were not disclosed by the 1st defendant in the development agreement.

5. Realising the difficulty in getting the absolute possession of the property in full as per the terms of the contract, the defendants agreed to resolve the stalemate by offering property equivalent to Rs.1 crore, so that, the amount received by them by way of advance could be retained by the defendants and the plaintiffs could be relieved from the contract by getting a portion of the property caved out from the suit schedule property, which would mitigate the loss to the plaintiffs on account of the inability of the defendants to resolve the dispute. In fact, two sets of agreement was prepared in December 2014 a). Cancellation of the Development agreement dated 24.05.2014 and b). Fresh Development Agreement to be entered into by respective parties in respect of part of the property. Same was handed over to the plaintiffs for approval and for their signature. The plaintiffs signed the agreement and offered to the defendants but the defendants evaded to receive the same and complete the contract. The defendants deliberately receded out of their obligation evidently with a view to defraud the plaintiff.

6. The 1st defendant, induced the plaintiffs to believe that, the will honour the promise. This made the plaintiffs to incur substantial expenditure for promotion and development of the suit schedule mentioned property. Contrary to his promise filed a frivolous and vexatious suit for relief of permanent injunction against the plaintiffs herein before the 1st Additional District Munsif Court, Pondicherry with

incorrect and false statement, as if the defendants are in possession and enjoyment of suit mentioned properties. Having committed the breach of contract, after receiving Rs.1 crore as advance, even without termination of the contract the defendants have put the blame on the plaintiffs herein and has filed the vexatious suit in O.S.No.2231 of 2015, on the file of the District Munsif Court, Pondicherry.

7. The plaintiffs has further alleged that, the 2nd and 3rd defendants are defaulter in payment of power consumption charges to the Electricity Board. Out of 9 power supply connections, the plaintiffs have paid the consumption charges in respect of 5 power supply connections on behalf of the defendants 2 and 3. For the remaining four power supply connections provided in the factory premises, consumption charges amounting to Rs.12,41,651/- is due and not paid by the defendants. Similarly, other statutory dues such as property tax and kist payable to the Municipalities and Revenue Authorities also not paid deliberately by the defendants. The plaintiffs, after advancing Rs.1 crore had spend incurred Rs.30 to Rs.40 lakhs for the development of suit schedule property they also appointed two security men and paying their salary ever since the date of the development agreement. Though, the plaintiffs were always ready and willing to fulfil their part of duties and obligations arising out of the agreement, due to the defendants suppression of labour dispute, tenant litigation, failure to pay the loan and statutory

dues and electrical consumption charges, the plaintiffs could not proceed with the layout proposal. The co-operation on the part of the defendants have caused all the delay. The plaintiffs attempt to resolve the dispute amicably by way of damages and refund of money paid as advanced, did not materialised since the defendants have not obliged the said proposal but bent upon to litigate over the property. Hence, the defendants are liable to refund the money taken as an advance along with the 18% interest, besides damages and expenditure incurred.

Case of the Defendants :-

8. The defendants have filed a common written statement, denying the allegation made in the plaint, regarding the breach of contract. Further, have made a counter claim of Rs.1,33,90,000/- against the plaintiffs. According to the defendants, the plaint bristles with *suppresio veri* and *suggestio falsi*. The suit is liable to be dismissed *in limine* on account of suppression of facts. Due to the conduct of the plaintiffs, the defendants have suffered mental agony and financial loss, which entitles them to make a counter claim. The defendants, who were the owner of the suit property admeasuring 6.78 acres at Kariamanikkam, Pondicherry, had entered into a development agreement with the plaintiffs, in good faith that they will honour their commitment as per the agreement. The plaintiffs initially paid a sum of Rs.10,00,000/- and Rs.50,00,000/- on the date of signing the Development Agreement. Subsequently, paid Rs.40,00,000/- on 07.06.2014 thereafter, the

plaintiffs failed to make further payment liable to be paid as per Clause 8 of the Development Agreement. As per the terms of the agreement, the balance amount of Rs.5,15,00,000/- ought to have been paid by the plaintiffs in four equal installments on or before 01.08.2014, 01.11.2014, 31.01.2015 and 15.03.2015 respectively.

(i). Clause 12, of the agreement specifically states that, even if the developer not able to sell the plots due to various reasons, the developer shall certainly stick to the commitments of the payment to the owners.

(ii). Clause 13 states that, if the developer is unable to get the layout approval on or before 31.03.2015, in case, they are unable to settle the accounts of the owner, the developer shall forfeit the sum of Rs.60,00,000/- and any such other advance paid barring the sum exclusively paid for the full purchase value plots by third parties. Immediately, on payment of Rs.40,00,000/- on 07.06.2014, the plaintiffs were permitted to carry out necessary works for preparing the layout and selling the property. The plaintiffs was given only permissive possession. The plaintiffs never took any efforts to obtain layout approval from the concern authority. The defendants wrote an e-mail to the plaintiffs on 14.07.2014, reminding the plaintiffs that, all the installments ought to be paid promptly, failing which he will not sign any documents regarding transfer of ownership rights. In this mail the

defendants made clear that, for the delayed payment, 15% interest should also be paid. In spite of the above e-mail, the third installment of Rs.1,28,75,000/- payable on or before 01.08.2014, was not paid by the plaintiffs. Immediately, the defendants wrote to the plaintiffs that, if the third instalment is not paid on or before 15.08.2014, he will be forced to cancel the agreement. In spite of several communications and reminders, the plaintiffs chose to keep silent and therefore, left with no other option, the defendants wrote a letter dated 11.03.2015 to the plaintiffs, calling upon to fulfil their obligations and if they failed to do so, appropriate legal action will be taken. Following the letter dated 11.03.2015 which did not evoke any response from the plaintiffs, another letter dated 01.04.2015, reiterating the various events that had transpired between them the defendants wrote a letter intimating the plaintiffs that default in payment has led to automatic cancellation of the Development Agreement as per Clause 19.

9. Further, the plaintiffs have also forfeited the money advanced as per Clause 13. In such circumstances, the defendants filed Civil Suit to restrain the defendants, their men from entering or interfering with his peaceful possession and enjoyment of the suit property since the plaintiffs continue to enter the property and threat to alter the physical feature.

10. The plaintiffs was completely satisfied with the title of the defendants and before entering into the agreement, had made physical inspection of the property and at no point of time, there were tenants residing in the schedule property. Nor there was any labour/workmen disputes or agitation in the suit property. The allegation against the defendants that they have suppressed about the labour disputes and tenant litigation or baseless and invented reasons.

11. Regarding the alleged negotiation held between the parties, during the month of December 2014 to sort out the stalemate, the defendants submit that there was discussion on 3rd December 2014 with Ravi Reddiar, as a negotiator of the plaintiffs. During the said discussion, Ravi Reddiar proposed to step into the shoes of the plaintiffs and complete the project. Discussions with regard to the cancellation of the existing development agreement and entering into a fresh Development Agreement took place on 24th December 2014, at the residence of the 1st defendant. The same did not fructify as Ravi Reddiar never got the documents signed by the plaintiffs. So on 30th December 2014, the 1st defendant was constrained to issue another letter to Ravi Reddiar, rejecting the proposal offered by him. Therefore, there is no valid agreement entered between plaintiffs, the defendants and Ravi Reddiar, superseding the development agreement dated 24.05.2014. The further contention of the defendants is that, as per the development

agreement, the plaintiffs ought to have taken all steps for securing permission from the statutory authority for the layout, which the plaintiffs failed to get. The standing crop of sugar cane was allowed to be harvested by the plaintiffs on payment of consideration of Rs.50,000/- this was in consonance to the clause 22 of the development agreement. It is contended by the defendants that, taking advantage of the old age of the 1st defendant, the plaintiffs want to knock away the property worth Rs.6,15,00,000/- by paying only Rs.1 crore. They did not take any effort for getting layout approval. They try to pressurize the defendants to part away the property without paying the full consideration.

12. Based on the pleadings the following issues were framed.

“(i). Whether plaintiffs have committed breach of any of the covenants of the Development Agreement dated 24.05.2014?

(ii). Whether defendants have committed breach of any of the covenants of the Development Agreement dated 24.05.2014?

(iii). Whether time is the essence of the Development Agreement dated 24.05.2014, as the transaction pertains to immovable property?

(iv). Whether plaintiffs were ready and wiling to perform/discharge all their obligations under Development Agreement dated 24.05.2014?

(v). *Whether defendants were ready and willing to perform all their objections under Development Agreement dated 24.05.2014?*

(vi). *Whether plaintiffs are entitled to refund and damages as claimed?*

(vii). *Whether defendants are entitled to damages as claimed [in the counter claim]?*

(viii). *Whether defendants are entitled to appropriate the advance paid by the plaintiffs by pleading forfeiture under Development Agreement dated 24.05.2014?*

(ix). *To what other relief are the plaintiffs and the defendants entitled?"*

13. On the plaintiffs side three witnesses were examined Mr.V.Ramalingam (PW.1), J.Ravi (PW.2) and B.Jalaluthin (PW.3). On behalf of the defendants, the 1st defendant Mr.K.S.Sundaram was examined as D.W.1. 72 Exhibits were marked on behalf of plaintiffs (Ex.P.1 to Ex.P.72). 18 Exhibits were marked on behalf of the defendants (Ex.D1 to Ex.D.18).

Findings:-

14. The contention of the plaintiffs is that, joint development agreement was entered between the parties on 24.05.2014 with specific terms and conditions. After making an advance of Rs.1,00,00,000/-, as against the total consideration of Rs.6,15,00,000/-, the plaintiffs took possession of the site and started the preliminary preparatory work for getting layout approval. At that time, they came to know that, the defendants have availed loan from PIPDIC by mortgaging the suit property and the said mortgage is reflected in the encumbrance certificate. In respect of electricity consumption charges payable by the defendants, disputes between the defendants and the Electricity Board is pending. The litigation with the tenants, who were occupying the portion of the suit is pending, in addition, the erstwhile workers of the 2nd and 3rd defendants company were protesting the upcoming of any layout alleging that there is wage settlement pending with the management and unless the wages are settled, they will not allow any work in the company site. Suppressing all these facts, the defendants have made to believe the plaintiffs that the property is free from encumbrance and received Rs.1,00,00,000/- advance and made the plaintiffs to spend several lakhs for formation of layout.

15. Referring Ex.P.59 and Ex.P.60, the learned counsel for the plaintiff would submit that, the 1st defendant took the responsibility of getting planning

permission from the Pondicheery Planning Authority and had addressed the Secretary, Pondicherry Planning Authority, on 10.02.2014 admitting that, the land is partially agriculture and partially industrial at present. Since the industries has become dormant and agricultural activity could not be carried, he wants to form a layout and convert the land. Hence, sought permission for reclassification and conversion from Agricultural and Industrial use to primary residential use. Similarly, in the other letter, the 1st defendant has informed the Pondicherry Planning Authority that, he has formed the layout in the vacant site in S.No.69/1 & 2 so that, the layout plan may be pleased be approved, for which, he is ready to pay necessary charges and he has asked necessary Forms to be forwarded to him for onward submission.

16. Ex.P.65 to Ex.P.72 are the layout plan and sketch along with the photographs. The learned counsel appearing for the plaintiffs would submit that, Ex.P.29 the Development agreement was entered by the plaintiffs with the 1st defendant on the premise that, the suit property is free from encumbrance and dispute. After advancing of Rs.1,00,00,000/- and entered upon the property to clear the site and prepare the land for layout, the suppression of facts regarding the encumbrance and disputes surrounding the property came to light. They were suits pending in respect of the property which were not disclosed by the 1st defendant, the vendor. The agreement did not disclose the mortgage of the property to PIPDIC.

Further, the 1st defendant has acted unfairly by suppressing the problem with the Electricity Board regarding the consumption charges and disputes with the erstwhile workmen. These facts when the plaintiffs came to know, the defendants could not give a proper solution or remedy to get over the impediment. Contrarily, he agreed to cancel the original development agreement and enter into a fresh agreement with the mediator Mr.Ravi and settle a portion of the land for the amount received as advance. Even that settlement did not fructify due to non-corporation and refusal of the 1st defendant.

17. To prove that the 1st defendant on his own, failed and refused to consider the settlement proposed during the month of December 2014, the said Ravi Reddiar was examined as PW.2 to speak about the fact that, the defendants have committed breach of contract so the plaintiffs are entitled to claim refund of the advance money, along with the interest and also damages.

18. The learned counsel for the plaintiffs would further contend that, the 1st defendant himself, in his letter dated 14 July 2014, had demanded 15% interest per annum for the delayed payment which indicate that, the 1st defendant has forgone the time schedule prescribed in the agreement, by claiming interest for the delayed payment. Furthermore, the settled Principal of law, time and again been reiterated

ever since the judgment of **Chand Rani Vs. Kamal Rani** reported in **1993 (1) SCC 519**, that in case of immovable property, time cannot be essence of the contract. Therefore, while the defendants himself under Ex.P.30 consented for delayed payment on payment of interest, time cannot be essence of the contract Ex.P.29.

19. Referring Ex.P.40, the encumbrance certificate, the learned counsel for the plaintiffs would submit that, the subject property was under the mortgage of PIPDIC, at the time of entering the development agreement and same was discharged and encumbrance was cleared only on 10.04.2015.

20. Relying upon Ex.P.23, the warrant of delivery in E.P.No.189 of 2013 in O.S.No.14 of 2013, the learned counsel would contend that, the suit by the 2nd defendant against one Mrs.Varsha Suraj Ganesh for recovery of possession in respect of 3370 sq.ft with ACC sheet in the suit property was suppressed by the defendants.

21. The lease agreements entered in respect of the tenants occupying the suit property and surrender of lease created by them are relied by the plaintiffs to show that, the suit subject land was not free from encumbrance of litigation. In the said context, the learned counsel relying upon Section 73 of the Indian Contract Act,

argued that, the defendants knowingly have suppressed several facts and mislead the plaintiffs to enter into the agreement. To get clearance from the authorities, which will enable the plaintiffs to get layout approval, the plaintiffs cleared the electricity bill to a tune of Rs.9,180/-, which is reflected in Ex.P.42. The other encumbrance were not cleared by the defendants therefore, the termination of the contract by the defendants and forfeiture of the advance money is illegal and improper. Further, the defendants cannot be allowed to enrich them unjust contrary to Section 72 and 73 of Indian Contract Act. Therefore, instead of filing suit for specific performance, the alternate relief of refund of the money advanced has been sought in this suit. Though performance is the rule and refund and damages are exemption, the nature of this case warrants refund and damage and not performance.

22. Per contra, the learned counsel appearing for the defendants would submit that, on the date of agreement dated 24.05.2014, there was no litigation pending in respect of the suit property as alleged by the plaintiffs. The lease deeds with the tenants were cancelled, the suit against Mrs.Versha Suraj Ganesh ended in favour of the defendants and possession was recovered.

23. Regarding the letter Ex.P.59 and Ex.P.60 alleged to have send by the 1st defendant to the Pondicherry Planning Authority, the learned counsel for the defendants would submit that, these two documents are manipulated by the plaintiffs subsequent to the suit and introduced belatedly as an additional document. In these two letters, the 1st defendant has not signed. When the agreement Ex.P.29 specifically state that, it is responsibility of the developer to deal with the authority for getting layout approval and he being the person authorised to get approval under this agreement, there is no necessity for the 1st defendant to write such letters. When the signature of the 1st defendant was not found in this letter, it is improper to contend that these letters were emanated from the 1st defendant.

24. Regarding the dispute with the electricity department, the learned counsel for the 1st defendant would rely upon Ex.D.16, Ex.D.17 and Ex.D.18, wherein, he would contend that, there was unreasonable claim over the consumption charges by the Electricity department. There was claim in respect of claiming consumption charge for the lines which was disconnected during the year 2005 to 2012. In this regard, the consumer complaint was filed and the said complaint was disposed of on 08.10.2014, the order is marked as Ex.D.6, wherein, the complaint was partly allowed and the net amount actually payable by the 1st defendant, who was the complainant in that case was only Rs.25,161/- and not Rs.12 lakhs as contended

by the plaintiffs. Even if there was any arrears and disputes with the Electricity Board, that has no bearing in the performance of the contract by the plaintiffs. The pendency of the consumer case which came to end by 8th October 2014 cannot be a reason for the plaintiffs, for not honouring the commitment under the development agreement which was due on 01.08.2014, 01.11.2014, 31.01.2015 and 15.03.2015.

25. Regarding the alleged encumbrance of mortgage of the suit property with PIPDIC, the learned Counsel appearing for the defendants would rely upon Ex.D.5, the information received from PIPDIC under RTI Act, which discloses the fact that the mortgage created by the 1st defendant in favour of the PIPDIC was discharged on 11.09.2001.

26. Heard the Learned Counsel for the plaintiffs and the learned counsel for the defendants. The documents relied by them to buttress their respective submissions were scrutinized. After consideration of the fact of the case, this Court deliver the below judgment.

27. The contract between the plaintiffs and the defendants by way of development agreement dated 24.05.2014 is specific and unambiguous in terms and meaning. Under this agreement, the plaintiffs, who is the developer has been

recognised for his expertise in the real estate market and they have approached the defendants for developments of the schedule property into plots. Due to the inconvenience and difficulty in dealing with the property, the owners have entrusted the schedule property to the developer for development and they have been authorised to take necessary measures for conversion of the land and obtain layout sanction from the competent authority. The preamble of this agreement itself records these facts in the following words:

“2. The DEVELOPER has expertise in the real estate market and hence they approached the owners for developing the schedule Property into Plots.

3. In view of the personal inconvenience and dealing with the Schedule Property by negotiating for sale and also to take appropriate steps to make the lands fit for sale, after making necessary conversion of the lands and also obtaining layout sanction from competent authorities and hence the owners have agreed to entrust the schedule property to the DEVELOPER for such development.”

28. The responsibility of the Developer is enumerated in Clause 1 as under:-

- (a). Panchayat, Municipality or Local Body.
- (b). Pondicherry EB, Pondicherry Water Board.
- (c). Asst. Commissioner, Special Commissioner, Urban Land Ceiling Department.
- (d). Asst. Commissioner/Commissioner, Land Reforms.
- (e). Tahsildar.
- (f). Any Government Department/s or Undertaking/s either Union Territory/Central.
- (g). Consumer Disputes Redressal Forum and Commission.
- (f). Court, Tribunal, Quasi Judicial Authorities.
- (i). Any Board or trust constituted under any Act (Union Territory or Central) in force.
- (j). Police Department.
- (k). Other concerned Government Departments.

29. When the agreement specifies that it is the responsibility of the developer (plaintiff) to get approval, it is highly unbelievable that, the 1st defendant could have written the so called letters to the Pondicherry Planning Authority, which is marked as Ex.P.59 and Ex.P.60. Further, as pointed out by the learned counsel for the defendants, it is an unsigned letter. This is the document which has been belatedly introduced but without authenticity and contrary to the terms as found in the development agreement. The analysis of Ex.P.29 would reveal that, developer namely the 1st plaintiff has been authorised to apply for the layout plan approval, to

conduct survey, laying of roads, parks, open spaces and other incidental activities. Having so authorised by way of agreement, the defendants have not filed any document to show that, he has really made any attempt to get the layout plan approval. Though, the plaintiff contends that vide Ex.P.65 to Ex.P.72 all attempts to get layout approval were made by him, these documents does not indicate that, a proper application was submitted for layout approval.

30. The plaintiffs, by all force blame the defendants, more particularly the 1st defendant for suppression of facts. The prime allegation against the 1st defendant is that, the property was infested with encroacher's and tenants. There were litigations in connection with the property. Whereas, the defendants' counsel have clearly demolished the said contention through the plaint's own documents and the defendant documents that on the date of agreement, the suit for recovery of possession from Mrs.Varsha Suraj Ganesh, had ended in favour of the 1st defendant. The tenants who had lease hold right, have already surrender the land. The loan availed from PIPDIC was cleaned as early as 2011 and the information received under RTI is marked as Ex.D.6, to show that, there was no mortgage with PIPDIC in force on the date of executing Ex.P.29.

31. The other allegation regarding the Electricity Board arrears, again the defendants through his evidence has established that, there was dispute regarding the consumption charge which was sorted out through the consumer complaint. In any event, this dispute was not as grave as projected by the plaintiffs. In this regard, the 1st plaintiff has filed certain Electricity Board receipts which is marked as Ex.D.42. These bills are between the period February 2016 to March 2017 in respect of Thambaraparani Private Limited, M.E.G Food Wear, R.Panjavarnam, Shankar Sundaram, etc. The total sum of these bills is less than Rs.10,000/-. How this payment of this bills enhance the case of the plaintiff, not explained. These bills are paid for the period during pendency of suit.

32. The further contention of the plaintiff is that, the possession of the property was given to him and he is retaining the property by engaging two watchmen and paying their salary. The salary receipts and the cash vouchers for these two watchmen are marked as Ex.P.43 series. In the development agreement, there is no recital which indicates that, the possession was given to the developer. In fact, clause 16 of the agreement, specifically states that, the possession of the entire suit schedule property till the accounts of the owners are settled to the extent of Rs.6,15,00,000/- shall remain always with the owners. Till such time, the developer shall have only permissible possession for the purpose of making the layout.

33. The plaintiffs himself admits that, the proposal of making layout was dropped long back and they have resorted to sue for recovery of money advanced with interest. Whereas, the owner has filed the suit against them for injunction restraining him from disturbing the possession. Under such circumstances, when in the agreement itself it is specified that the possession not given to him and the permission given on condition also does not survive, there is no necessity for the plaintiffs to engage any watchmen and pay salary for them. The vouchers found in Ex.P.43 does not reveals what for the money is paid. The persons who have signed the stamp receipts was not examine. P.W.1 is not the competent person to speak about the cash vouchers, which was not given to him or by him.

34. Yet another points raised by the learned counsel for the plaintiffs is regarding the events took place subsequent to the development agreement, which has led to intervention of PW.2 Ravi Reddiar and drafting of agreement Ex.P.34 and Ex.P.35. Both the plaintiffs as well as the defendants have spoken about this documents. They both accept that, there was negotiation between the parties to sort out the stalemate and at that juncture, Ravi Reddiar (P.W.2) intervened as a mediator. The terms of negotiation took a shape of cancelling the development agreement dated 24.05.2014 and fresh development agreement with different set of terms to be entered between the defendants and Ravi Reddiar. The 1st document Ex.P.34 is the

cancellation of development agreement. The parties to this agreement as found in the recital are the defendants and the plaintiffs in this suit. In this document, only the plaintiffs have signed and not the defendants. It is the contention of the plaintiffs that, when they tried to reach the defendants, to get their signatures, they evaded. The other document is Ex.P.35, which is the agreement between the defendants and the Ravi Reddiar (P.W.2). Neither the defendants nor Ravi Reddiar (P.W.2) had signed this document. P.W.1, who is one of the signatory to Ex.P.34 had deposed as follows:-

“It is true at the time of preparation of Ex.P.34 and Ex.P.35 Mr.J.Ravi was present. It is true at the time of preparation of Ex.P.34 and Ex.P.35, I was not present. It is true that Mr.J.Ravi obtained the signature in Ex.P.34, from myself. I do not remember where I was present at the time of signing in Ex.P.34. I deny the suggestion that at the time of filing the present suit, I have signed in Ex.P.34. I deny the suggestion that I signed in Ex.P.34 only at the time of filing of the suit and not before that.”

35. P.W.2 Ravi Reddiar when confronted with Ex.P.34 and Ex.P.35, his response are as below:-

Q: I put it to you that you carried Ex.P.35 also, but you did not put your signature and hand it over to the 1st defendant?

A: Yes. The witness adds: I had told that 1st defendant that unless Ex.P.34 cancellation agreement is executed, registered and complied with, would not sign in Ex.P.35.

Q: According to you, as there were six encumbrances over the suit properties, Ex.P.29 could not performed on both sides and sought for refund of advance and, consequently, Ex.P.34 was prepared to rescind the contract. That being so, how you have propose to purchase a portion of the suit properties as showin in the plan annexed to Ex.P.35 and marked in colours blue and gray? Whether all the encumbrances over the suit properties were cleared prior to preparing of Ex.P.35?

A: Some of encumbrances over the suit properties have been cleared before preparing Ex.P.35. Only the dues payable to EB and labour disputes remained unsettled.

36. P.W.2 in the cross examination has further stated as below:-

Q: I put it to you that Ex.P35 agreement has not come into force till date since parties have not signed in it?

A: Yes.

Q: I put it to you that since you have not cooperated to execute Ex.P.35 agreement, it was not completed?

A: As the 1st defendant did not cooperate to execute Ex.P.34 agreement, I have not co-operated for Ex.P.35 agreement.

37. When D.W.1 was confronted by the plaintiff's counsel regarding Ex.P.34 his response was as below:-

Q: Kindly see Ex.P.34. What is the name of document?

A: Ex.P.34 is the cancellation of development agreement signed by the plaintiffs only.

Q: See Ex.P.35. What is the nature of this document?

A: Ex.P.35 is the Development Agreement.

Q: Is it correct to state that you wanted to cancel the development agreement in Ex.P.29 and wanted to give a certain area in the suit properties which has been marked and coloured in the plan appended to Ex.P.34 and deal with the remainder in favour of J.Ravi Reddiar under Ex.P.35 on the terms indicates therein in lieu of the amounts paid by the plaintiffs to the defendants?

A: I deny.

Q: Kindly see Ex.D.8. Is it a letter written by you or not?

A: Yes. It is written by me.

38. On a cumulative assessment of evidence let in by the plaintiffs as well as the defendants, this Court finds that Ex.P.29 Development agreement clearly empowers and vest the responsibility on the developer, (the plaintiffs herein) to proceed with the layout proposal and market the plots, but that has not occurred. The encumbrance and impediments listed by the plaintiffs, to blame the defendants as excuse for his failure to proceed with the layout proposal are prove to be false, irrelevant and could not be the reason for the plaintiffs for not proceeding with the layout proposal. The attempt of negotiating and revisiting the agreement terms in the month of December 2013 could not be fructify since there was no real consensuses with the parties. In the said circumstances, though the plaintiffs have made an

attempt to show as if, they were in possession of the suit property and has invested money for the development, they are not sufficient enough to indicate that the plaintiffs were serious in his responsibility of promoting the subject land. Except harvesting the standing sugar cane and levelling the field, no sign of attempt for getting layout permission produced or proved. The plaintiffs have not placed any document to show that, they have made any necessary attempts to get the layout approval. Except to say in the plaint that, unless clearance from authorities is obtained, they cannot apply for layout approval. When we look into the reasons for not getting the clearance, the documents of the defendants indicates those reasons are lame excuse and not really genuine.

39. After holding that the breach of the agreement was not because of the defendants, Court has to look at the agreement clause and other attending circumstances to decide whether on law and equity, the defendants can retain the advance amount of Rs.1,00,00,000/- and forfeit the same and further make a counter claim. In respect of counter claim, this Court finds no substantial material placed by the defendants to brood upon.

40. As far as the forfeiture of the money advanced, we have to look into the terms of agreement found in the deed dated 24.05.2014, marked as Ex.P.29.

Clause 12 and 13 of the development agreement deals about the contingent, if the developer is unable to sell the plots or able to sell the portion of the plots or if he is unable to get the layout approval on or before 31.03.2015.

“Clause 12. Even if the DEVELOPER is unable to sell the plot/s due to various reasons, the DEVELOPER shall certainly stick to their commitments of payment of Rs.6,15,00,000/- (Rupees six crores fifteen lakhs only) to the owners.

Clause 13. If the DEVELOPER is unable to sell the Plot/s on or before 31.03.2015, the owners shall allocate the Plot/s proportionately to the amount received to the DEVELOPER, at the discretion of the Owners.

However, if the DEVELOPER is unable to get the layout approved on or before 31.03.2015 or in case they are unable to settle the account of the Owners, the DEVELOPER shall forfeit the sum of Rs.60,00,000/- and any such other advance paid barring the sum exclusively paid for the full purchase value of plots by third parties. In such circumstance, the Developers shall leave the schedule property forthwith for the Owners to pursue on their own the sale of plots under no constraint of any compensation to the DEVELOPER.”

41. Reading of these two clauses indicates that, the developer will be forfeiting the money advanced barring the sum exclusively paid by the third parties for the plots. In this case, there was no layout and no sale of plots. So, what is advanced by the plaintiffs in the true sense to the terms of the contract should be forfeited. When the Court look into the reasons for not getting the layout approval by the developer on or before 31.03.2015, it finds that it is the plaintiff, who has delayed the process for invented reasons. A proper negotiation with the first defendant could have sorted out the differences, unfortunately that has not happened in this case.

42. Having failed to commence the process of getting layout approval as agreed its responsibility under the development agreement. The plaintiffs now cannot turn around and allege that due to the co-operation of the 1st defendant, he was not proceed with the layout approval.

43. The Learned Counsel appearing for the plaintiffs would submit that, in any event the money advanced cannot be forfeited and the defendant cannot unjustly enrich himself.

44. Relying upon Section 72 of the Indian Contracts Act, the Learned Counsel for the plaintiffs would submit that, the plaintiffs are entitled for refund of money advanced both under equity and Specific Relief Act.

45. Relying upon these two judgments of Hon'ble Supreme Court rendered in ***Shanker Singh Vs. Narinder Singh and others*** reported in (2014) 16 SCC 662 and ***Mayawanti Vs. Kaushalya Devi*** reported in (1990) 3 SCC 1, it is contended by the learned counsel for the plaintiffs that, the defendant cannot enrich himself unjustly and therefore, liable to return the advance amount. The principle of unjust enrichment is dealt under Section 72 of the Indian Contracts Act, which reads as below:

"72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.- A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.- A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

46. And Section 73 of the Indian Contracts Act, deals with, Compensation for loss or damages caused by breach of contract. The money paid by

the plaintiffs to the defendants are not by mistake or by coercion or not even by fraud or misrepresentation. Ex.P.29 was open mutual agreement between the parties entered on 24.05.2014, on specific terms and conditions. In fact, the standing sugarcane crop in the suit property was harvested by the plaintiffs and the consideration for the standing sugarcane crop was admittedly paid to the defendants. The 1st plaintiff has taken efforts to clear the field and the documents which are marked as Ex.P.65 to Ex.P.72 particularly, the photographs would show that there was some attempt by the plaintiff for getting layout approval. However, except what found in Ex.P.72, 1st defendant has not applied for the layout approval, when he was authorised to do so under the agreement. Hence, compensation for loss or damages as provided under Section 73 of Indian Contracts Act not available to the plaintiffs. Only when the breach of contract committed by the other person, the parties who suffers breach, are entitled to receive compensation for any loss or damages from the party who has broken the contract. On going through Exhibits marked from 1 to 72, which are relied by the plaintiffs, nowhere the plaintiffs have recorded that the 1st defendant has committed any breach. All documents which he is relying upon only to show that there was difficulty in getting clearance. Those documents does not disclose any real impediment or difficulty. The said allegations of the plaintiff has been disproved by the defendants through their evidence. Hence, neither Sections 72 or 73 of the Indian Contracts Act is applicable for the plaintiffs case.

47. The plaintiffs have specifically agreed that, if they are unable to get the layout approval on or before 31.03.2015, they shall forfeit the money advanced. The 1st defendant has sent a letter dated 14.07.2014 marked as Ex.P.30, requested the plaintiffs to take appropriate steps to comply and discharge all the payment responsibilities and similar letter has been sent on 31.07.2014, pointing out that there is a delay in payment which may lead to termination of the agreement and further action. On receipt of these letters, the plaintiff has not disclosed to the defendants about any of the difficulty, which is now projected in the plaint. Therefore, it is easy to infer that all these difficulties now projected as insurmountable difficulty were all invented. Even if it is presumed to be in existence, those were not impediments for getting the layout approval. Particular, if it has really caused any impediment, the plaintiffs should have brought to the notice of the 1st defendant in writing at the earliest point of time, which the plaintiffs have not done. Therefore, the plaintiffs are liable for forfeiting the advance money, as per clause 12 and 13 of the agreement.

48. The judgments relied by the learned counsel for the plaintiffs and

findings in those judgments are extracted below:-

(i). Shanker Singh Vs. Narinder Singh and others reported in (2014)

16 SCC 662, which reads as below:-

26. Damages and specific performance are both remedies available upon breach of obligations by a party to the contract. The former is considered to be a substantial remedy, whereas the latter is of course a specific remedy. It is true that explanation (i) to Section 10 of the Act provides that unless and until the contrary is proved, the court shall presume that breach of contract to transfer immovable property cannot be adequately relieved by compensation in money. However, this presumption is not an irrebuttable one. That apart, for a specific performance of a contract of sale of immovable property, there must be certainty with respect to the property to be sold.

(ii). Mayawanti Vs. Kaushalya Devi reported in (1990) 3 SCC 1, which reads as below:-

18. The specific performance of a contract is the actual execution of the contract according to its stipulations and terms, and the courts direct the party in default to do the very thing which he contracted to do. The stipulations and terms of the contract have, therefore, to be

certain and the parties must have been consensus ad idem. The burden of showing the stipulations and terms of the contract and that the minds were ad idem is, of course, on the plaintiff. If the stipulations and terms are uncertain, and the parties are not ad idem, there can be no specific performance, for there was no contract at all”

(iii). Gian Chand and others York Exports limited and another reported in **(2015) 5 SCC 609**, which reads as below:

“The Division Bench of the High Court did not accept the finding of the learned Single Judge who had conducted the trial of the suit, who has erroneously held that the contract stands frustrated under Section 56 of the Contract Act. The Division Bench of the High Court has also examined the said aspect of the matter by advertng to the provisions of Sections 73, 74 and 75 in Chapter VI of the Contract Act and also taken into consideration the decisions of the various High Courts and this Court has held that the defendants have not proved that they sustained losses on account of the non-performance of the contract by the plaintiffs. The Division Bench of the High Court with reference to the allegation made by the plaintiffs in their written statement that they suffered loss in the liquor business is not relatable to the contract and the same is not supported by material evidence on record.

16. It was further submitted by the Learned Senior Counsel for the defendants that due to the breach of contract on the part of the plaintiffs, the sum of Rs.4,00,000 in the agreement which is the earnest money and advance of Rs.4,00,000 shall be forfeited towards loss of compensation. The Division Bench after proper evaluation of the pleadings and evidence on record has rightly rejected the said contention and decreed the suit for a sum of Rs.39,20,000 with 6% interest per annum from the date of institution of the suit till the date of payment of money and it has rightly recorded the concurrent finding for grant of the decree in favour of the plaintiff directing the defendants for repayment of the consideration amount with interest as mentioned above after holding that there is no frustration of contract entered between the parties though the sale of the land could not take place for non-grant of permission to the entire extent of 165 big has 7 bis was of land, the said finding of fact is accepted by this Court at the time of issuing notice and therefore, the correctness of the same has attained finality for the reason that this Court at the time of issuing notice to the plaintiffs has clarified that this appeal is confined to the issue of payment of interest awarded on decretal amount from the date of institution of the civil suit till the date of payment to be made by the defendants to the plaintiffs.”

49. The facts of the above judgments does not coincide with the facts of the case in hand. Therefore, taking note of the facts in this case, this Court is of the opinion that, the plaintiffs have failed to prove his case regarding breach of contract by the defendants. In the absence of evidence to show that the 1st defendant has broken the contract, the plaintiffs cannot seek for refund of the money advanced. More particularly when contract specifically indicates that in the case of breach, the plaintiffs will forfeit his advance money. At the same time, the 1st defendant has also not produced any document for this Court to entertain the counter claim. Therefore, the suit claim of the plaintiff's as well as the counter claim of the defendants are to be dismissed.

50. In view of the above factual and legal position and for the reasons stated, the issues are answered as under:-

Issue No.1:-

The plaintiffs by not adhering to the payment schedule and due to non payment of the balance sale consideration in time, had breached the covenant dated 24.05.2014.

Issue No.2:-

The defendants having authorised and permitted the plaintiffs to carry on all the official work, there is no element of breach on the part of the defendant.

Issue No.3:-

The Clause 12 and 13 of the agreement specifically mandates the time schedule and consequence of non-payment. Therefore, time is essence of the contract.

Issue No.4:-

The plaintiffs have never shown sign of ready and willingness to perform the contract.

Issue No.5:-

The terms of agreement does not cast any obligation on the defendant to perform. However, the defendants have not placed any evidence of loss or mutual agony to make counter claim. Hence, other issues No.6 and 7 held in negative.

Issue No.8:-

Under clause 12 and 13 in case of default, the defendant has to forfeit the money advanced. Therefore, this issue is answered in affirmative.

51. In the result, the Suit claim and counter claim are dismissed. No order as to costs.

28.02.2020

Index :Yes

Speaking order/Non-speaking order.

bsm

Note: Issue order copy on 02.03.2020

List of Witness examined on the side of the Plaintiffs:-

1. Mr.Ramalingam (P.W.1)
2. Mr.Ravi (P.W.2)
3. Mr.B.Jalaluthin (P.W.3)

List of Witness examined on the side of the Defendants :-

1. K.S.Sundaram (D.W.1)

List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Exhibits	Description of documents
1.	Ex.P.1	Certified Copy of Power of Attorney dated 05.05.1988 executed by P.Sivaprakasam in favour of Mrs.Kalyani Sundaram registered as Doc. No.29 of 1988
2.	Ex.P.2	Certified copy of Sale Deed dated 26.12.1988 executed by P.Sivaprakasam rep. by his Power Agent in favour of M/s.Tambraparni Metal Printers P.Ltd., registered as Doc.No.1574 of 1988.
3.	Ex.P.3	Certified copy of Sale Deed dated 21.09.1988 executed by P.Sivaprakasam rep. by his Power Agent in favour of M/s.Tambraparni Metal Printers Ltd., registered as Doc.No.1136 of 1988.
4.	Ex.P.4	Certified copy of Sale Deed dated 21.09.1988 executed by P.Sivaprakasam rep. by his Power Agent in favour of M/s.Tambraparni Metal Printers Ltd., registered as Doc.No.1137 of 1988.
5.	Ex.P.5	Certified copy of Sale Deed dated 21.11.1988 executed by P.Sivaprakasam rep. by his Power Agent in favour of M/s.Tambraparni Metal Printers Ltd., registered as Doc.No.1385 of 1988.
6.	Ex.P.6	Certified copy of Sale Deed dated 26.12.1988 executed by P.Sivaprakasam rep. by his Power Agent in favour of M/s.Tambraparni Metal Printers Ltd., registered as Doc.No.1575 of 1988.

7.	Ex.P.7	Certified copy of Sale Deed dated 23.11.1992 executed by K.Ramabadran and another in favour of Mrs.Kalyani Sundaram, registered as Doc.No.1147 of 1992.
8.	Ex.P.8	Certified copy of Sale Deed dated 27.11.1992 executed by K.Ramabadran and another in favour of Mrs.Kalyani Sundaram, registered as Doc.No.1170 of 1992.
9.	Ex.P.9	Certified copy of Sale Deed dated 07.12.1992 executed by K.Ramabadran and another in favour of Mrs.Kalyani Sundaram, registered as Doc.No.1196 of 1992.
10.	Ex.P.10	Certified copy of Sale Deed dated 09.01.1995 executed by P.Sivaprakasam in favour of K.S.Sundaram, registered as Doc.No.23 of 1995.
11.	Ex.P.11	Certified copy of Sale Deed dated 02.07.1996 executed by K.S.Sundaram in favour of M/s.Tambraparni Coatings registered as Doc. No.751 of 1996.
12.	Ex.P.12	Certified copy of Sale Deed dated 19.08.1996 executed by K.S.Sundaram in favour of M/s.Tambraparni Special Can and Cosmetics registered as Doc. No.929 of 1996.
13.	Ex.P.13	Certified copy of Sale Deed dated 24.12.1996 executed by M/s.Tambraparni Coatings by its Partners rep. by their power agent in Corporation Limited registered as Doc. No.1383 of 1996.
14.	Ex.P.14	Sale deed 24.12.1996 execute by M/s.Tambraparni Special Cans and Cosmetics Coatings by its partners rep. by their power agent in favour of Pondicherry Industrial Promotion Development and Investment Corporation Limited registered as Doc. No.1384 of 1996.
15.	Ex.P.15	Certified Copy of Lease Agreement dated 11.10.2004 entered into between M/s.Tambraparni Paints and Chemicals rep. by its partners by their power agent in favour of K.Sangeetha registered as Doc. No.2734 of 2004.
16.	Ex.P.16	Certified copy of Lease Deed dated 06.02.2006 entered between M/s.Tambraparni Distempers now changed as Tambraparni Paints and Chemicals rep. by its partners through their power agent in favour of Smt.N.Sitharatnam Doc. No.313 of 2006.

17.	Ex.P.17	Certified copy of Lease Agreement dated 13.08.2007 entered into between M/s.Tambraparni Metals Printers P. Limited rep. by its Power agent in favour of MEG Footwear P. Limited by its Managing Director registered as Doc. No.4432 of 2007.
18.	Ex.P.18	Certified copy of judgment and Decree in O.S.No.23 of 2006 dated 17.08.2007, on the file of the Principal Sub Judge, Puducherry.
19.	Ex.P.19	Judgment and Decree in A.S.No.54 of 2007 on the file of the III Additional District Judge at Pondicherry along with cancellation of the lease and registered as Doc. No.3477 of 2014 dated 10.11.2014.
20.	Ex.P.20	Certified copy of Surrender of Lease dated 19.04.2011 between M/s.Tambraparni Distempers now changed as Tambraparni Paints and Chemicals rep. by its partners through their power agent and Smt.N.Sitharatnam Doc. No.4412 of 2011.
21.	Ex.P.21	Certified copy of Surrender of Lease dated 02.08.2011 between M/s.Tambraparni Metals Printers P. Limited rep. by its power agent and MEG Footwear P. Limited by its Managing Director Doc. No.3356 of 2011.
22.	Ex.P.22	Certified copy of Lease deed dated 02.04.2012 entered into between M/s.Tambraparni Paints and Chemicals and Smt.Varsha Surajganesh – Doc. No. 1793 of 2012.
23.	Ex.P.23	Photocopy of Warrant of delivery dated 19.06.2013 in E.P.No.189 of 2013 in O.S.No.14 of 2013 together with order and decree in O.S.No.14 of 2013 on the file of Prl. District Judge at Puducherry warrant of delivery given by the defendants to the plaintiff after entering into the agreement.
24.	Ex.P.24	Photocopy of the Letter dated 21.12.2013 by M/s.Tambraparni Paints and Chemicals to Junior Engineer, Electricity Department for Temporary disconnection of service connection. Letter given by the defendants to the plaintiffs along with Ex.P.23.
25.	Ex.P.25	Original Letter dated 17.02.2014 by M/s.Tambraparni Coating to Nettapakkam Commune Panchayat.
26.	Ex.P.26	Computer Generated copy of Patta dated 06.05.2014 in the name of P.Sivaprakasam.

27.	Ex.P.27	Computer Generated copy of Patta dated 06.05.2014 in the name of K.Ramabadira Reddiar.
28.	Ex.P.28	Computer Generated Copy of Patta dated 06.05.2014 in the name of Sundaram.
29.	Ex.P.29	Certified copy of Development Agreement dated 24.05.2014
30.	Ex.P.30	Certified copy of Legal notice dated 31.07.2014 to the plaintiffs
31.	Ex.P.31	Letter dated 20.10.2014 by M/s.Tambraparni Firms and Private Limited to the Commissioner, Nettapakkam Commune Panchayat given by the defendant by the plaintiff after the agreement entered into.
32.	Ex.P.32	Letter dated 31.10.2014 by M/s.Tambraparni Group of Companies and Firms to the Commissioner, Nettapakkam Commune Panachayat.
33.	Ex.P.33	Original Encumbrance Certificates dated 18.12.2014 from 08.01.1962 to 30.11.2014
34.	Ex.P.34	Dated Dec. 2014 - Cancellation of Development agreement dated 24.05.2014.
35.	Ex.P.35	Dated Dec. 2014 - Development agreement between K.S.Sundaram and another and J.RaviReddiar together with plan.
36.	Ex.P.36	Certified copy of Legal notice dated 11.03.2015 sent by the defendants to the plaintiffs.
37.	Ex.P.37	Certified copy of Legal notice dated 01.04.2015 sent by the defendants to the plaintiffs.
38.	Ex.P.38	Copy of Plaint dated 02.11.2015 in O.S.No.2231 of 2015 on the file of the I Additional District Munsif Court, Pondicheery.
39.	Ex.P.39	Copy of Affidavit and Petition dated 02.11.2015 in I.A.No.804 of 2015 in O.S.No.2231 of 2015.
40.	Ex.P.40	Encumbrance Certificates dated 07.12.2015 from 08.01.1962 to 30.11.2014.
41.	Ex.P.41	Office Copy of Counter Affidavit dated 27.01.2016 of the plaintiff's in I.A.No.804 of 2015 in O.S.No.2231 of 2015.
42.	Ex.P.42	(series 86 nos.)Original Receipts evidencing payment of Electricity Charges.

43.	Ex.P.43	(series 90 nos.) Original Cash Vouchers evidencing payment of Watch and Ward wages.
44.	Ex.P.44	Photographs and CD of the suit property.
45.	Ex.P.45	Letter was sent by 1 st defendant to J.Ravi Reddiar and V.Ramalingam.
46.	Ex.P.46	Photograph dated 15.02.2019.
47.	Ex.P.47	Original Letter from the 1 st defendant to Mr.J.Ravi, along with the cover dated 20.10.2013.
48.	Ex.P.48	Original quotation from JK Agency to the plaintiff for supply of materials dated 30.05.2014.
49.	Ex.P.49	Original quotation for levelling from Velladurai Earth Movers to plaintiff dated 09.06.2014.
50.	Ex.P.50	Original quotation for JCB Charges from Velladurai Earth Movers to plaintiff dated 09.06.2014.
51.	Ex.P.51	Original quotation for road laying from Velladurai Earth Movers to plaintiff dated 09.06.2014.
52.	Ex.P.52	Original receipt of payment of wages from Velladurai Earth Movers to plaintiff dated 22.06.2014.
53.	Ex.P.53	Original receipt from Rani Engineering Labour Works to the second plaintiff for supply of grill gate 25.06.2014.
54.	Ex.P.54	Original receipt for supply of sand from Velladurai Earth Movers to plaintiff dated 26.06.2014.
55.	Ex.P.55	Original cash voucher from Mr.Prabhakaran site supervisor dated 30.06.2014.
56.	Ex.P.56	Original cash voucher from Mr.Sathasivam site Engineer dated 30.06.2014.
57.	Ex.P.57	Original receipt for payment of supply of road roller, water tanks and labour payment from Velladurai Earth Movers to plaintiff dated 02.07.2014.
58.	Ex.P.58	Original receipt for payment of supply of gravel, blue metal and laterite from J.K.Agency dated 06.07.2014.
59.	Ex.P.59	Original Letter issued by the defendants to the Pondicherry Planning Authority seeking approval for your dated 10.07.2014.

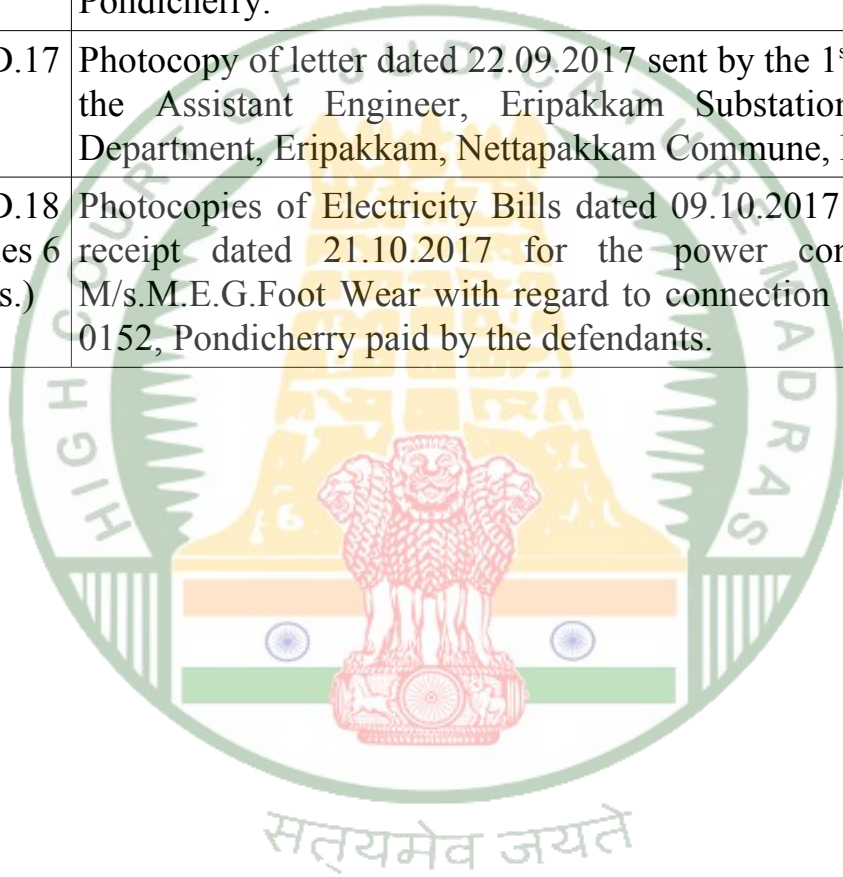
60.	Ex.P.60	Original Letter issued by the defendants to the Pondicheery Planning Authority seeking approval for layout dated 10.07.2014.
61.	Ex.P.61	Original cash voucher for Mr.Sathasivam site Engineer dated 31.07.2014.
62.	Ex.P.62	Original cash voucher for Mr.Prabhakaran site supervisor dated 31.07.2014.
63.	Ex.P.63	Copy of report given by Nettapakkam Police for the compliant of 1 st plaintiff in G.D.Vol.No.34 Pages Nos.24 and 25, dated 20.09.2018.
64.	Ex.P.64	Original of visiting card of Mr.Rama Narayanan.
65.	Ex.P.65	Copy of layout plan as prepared by the plaintiff.
66.	Ex.P.66	Office Copy layout plan.
67.	Ex.P.67	Copy of FMB secured from Taluk Office, Bahur, Pondicherry.
68.	Ex.P.68	Copy of FMB for Field No.36 in Eripakkam Village.
69.	Ex.P.69	Copy of FMB for Field No.69 in Kariamanikkam Village.
70.	Ex.P.70	Photo copy of plan prepared by plaintiffs.
71.	Ex.P.71	(Series 15 in Nos.) Original photographs dated 15.02.2019. (For Ex.P.71 Certificate under Section 65 (B) Indian Evidence Act Produced).
72.	Ex.P.72	One Digital CD dated 15.02.2019.

List of the Exhibits marked on the side of the Defendants:-

Sl. Nos.	Exhibits	Description of documents
1.	Ex.D.1	Photocopy of the No due certificate dated 13.09.2001 issued by Pondicherry Industrial Promotion Development and Investment Corporation Ltd.
2.	Ex.D.2	Photocopy of Letter dated 01.06.2009 issued by Central Bank of India, confirming settlement of loan and satisfaction of charges created by the 3 rd defendant with the bank.
3.	Ex.D.3	Photocopy of the letter dated 15.03.2011 by MEG Footwear to

Sl. Nos.	Exhibits	Description of documents
		M/s.Tambraparni Metal Printers Pvt. Ltd., viz., the 2 nd Defendant.
4.	Ex.D.4	Photocopy of order dated 11.03.2014 passed by the Principal District Judge, Pondicherry in E.P.No.189 of 2013 in O.S.No.14 of 2013.
5.	Ex.D.5	Photocopy of discharge of Mortgage certificate dated April 2014 obtained from Pondicerry Industrial Promotion Development and Investment Corporation Ltd., through application made under Right to Information Act – 2005.
6.	Ex.D.6	Photocopy of order passed by the Consumer Grievances Redressal Forum, Puducherry in Consumer Case No.81/2014
7.	Ex.D.7	Photocopy of letter dated 14.11.2014 by the Executive Engineer-IX, Electricity Department Pondicherry and 2 others along with a copy of the Hon'ble Judge of the Consumer Grievances Redressal Forum along with xerox copies of postal receipts and acknowledgement card.
8.	Ex.D.8	Photocopy of letter dated 26.12.2014 from the 1 st defendant to Sri Ravi Reddiar.
9.	Ex.D.9	Office copy of the letter dated 30.12.2014 sent by the 1 st defendant to Sri Ravi Reddiar (PW.2) along with acknowledgement card of delivery.
10.	Ex.D.10	Office copy of the letter dated 30.01.2015 sent by the 1 st defendant to Sri Kannan.
11.	Ex.D.11	Photocopy of letter dated 28.02.2015 by the 1 st defendant to the plaintiffs, with regard to non-compliance of conditions of development agreement.
12.	Ex.D.12	Photocopy of no due certificate dated 02.06.2016 issued by Karur Vysya Bank.
13.	Ex.D.13	Certified copy of the order dated 03.02.2017 in I.A.No.804 of 2015 in O.S.No.2231 of 2015 on the file of I Additional District Munsif Court, Puducherry.
14.	Ex.D.14	Photocopy of the letter dated 15.02.2017 by M/s.Paterson Securities Pvt. Ltd., to the 1 st defendant herein, clarifying the

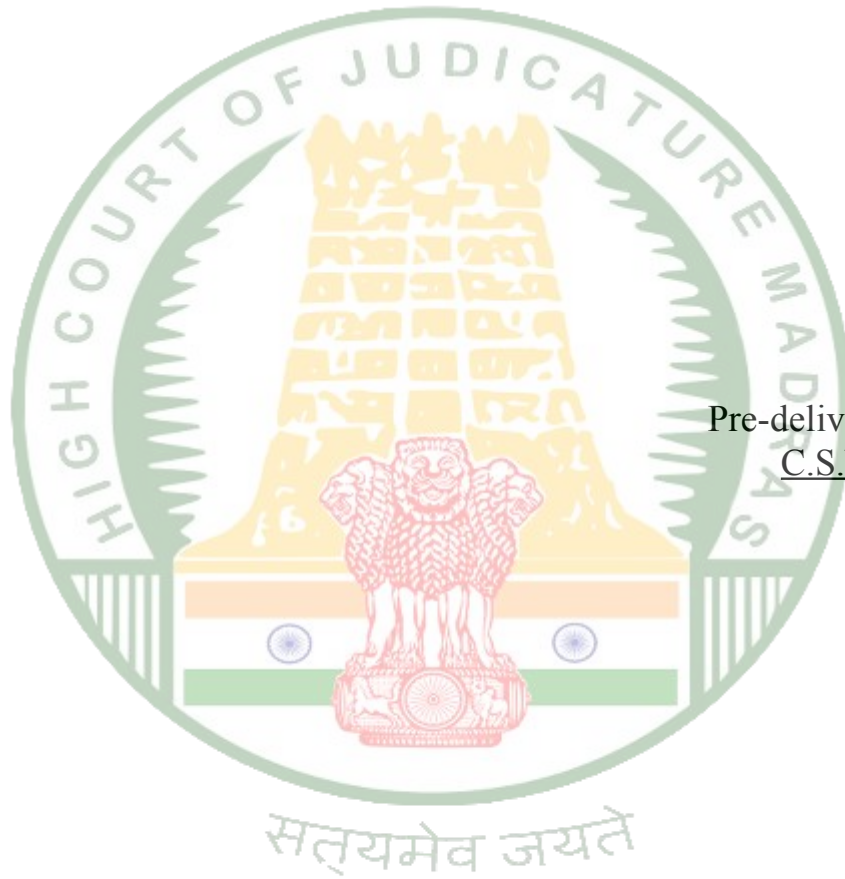
Sl. Nos.	Exhibits	Description of documents
		interest rates offered by banker to senior citizens.
15.	Ex.D.15	Photocopy of statement dated 28.02.2017 of portfolio holdings-Mutual Fund in Sundaram Finance Limited by the 1 st defendant.
16.	Ex.D.16	Photocopy of letter dated 21.09.2017 by the 1 st defendant to the Pondichery Electricity Board, Nettapakkam Commune, Pondicherry.
17.	Ex.D.17	Photocopy of letter dated 22.09.2017 sent by the 1 st defendant to the Assistant Engineer, Eripakkam Substation, Electricity Department, Eripakkam, Nettapakkam Commune, Pondicherry.
18.	Ex.D.18 (series 6 nos.)	Photocopies of Electricity Bills dated 09.10.2017 and payment receipt dated 21.10.2017 for the power consumption at M/s.M.E.G.Foot Wear with regard to connection No.49-77-03-0152, Pondicherry paid by the defendants.



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Dr.G.Jayachandran,J.

bsm



Pre-delivery judgment in
C.S.No.374 of 2016

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28.02.2020