



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 26TH DAY OF MAY 2021

THE HON'BLE MS. JUSTICE P.T.ASHA

C.S. No.931 of 2007

Mr.T.SriHari Kumar Bhagavat,
Residing at Old No.27, New No.30,
Thanikachalam Road, T.Nagar,
Chennai-17.

..Plaintiff

-VS-

1.Mr.P.Sheik Mohideen,
having Office at
New No.14,(old No.31),
Vaidhya Raman Street,
T.Nagar,
Chennai-17.

2.Mr.R.Lakshmi Narayanan,
having Office at
New No.14, (old No.31),
Vaidhya Raman Street,
T.Nagar,
Chennai-17.

..Defendants

Civil Suit praying that this Hon'ble Court may be pleased to:-

a) Pass a judgement and Decree against the defendants directing them to pay jointly and severally to the plaintiff a sum of Rs.1,00,00,000/- (One crore Rupees) together with interest thereon at the rate of 18% from the date of filing the suit till payment of realization.

b) Pass a Judgement and Decree of permanent injunction restraining



the Defendants herein, their men, servants or agents or anyone claiming under them from in any manner selling/dealing with the remaining lands described in schedule-A.

c) Pass a Judgement and Decree of permanent Injunction restraining the Defendants herein, their men, servants or agents or anyone claiming under them from in any manner selling/dealing with the remaining lands described in schedule-B.

d) Direct the defendants to pay the cost of the suit.

This suit having been heard on 30/03/2021 in the presence of Mrs.K.Aparna Devi, Advocate for the plaintiff herein and A.Palaniappan, Advocate for the 1st defendant herein and Mr.M.Devendran, Advocate for the 2nd defendant herein and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this date before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the 2nd defendant is an unnecessary party to the proceedings and the MOU dated 06.05.2003 is not binding on the 2nd defendant and the Memorandum of Understanding dated 06.05.2003 is a fabricated document created using the signatures of the defendants on blank papers, and it is ordered as

follows:-



That the suit in C.S. No. 931 of 2007 be and is hereby dismissed.

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2. That the plaintiff herein, do pay to the defendants herein, the costs of this suit as and when taxed by the taxing officer of this court and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
26TH DAY OF MAY 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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06/07/2021

C.S. No.931 of 2007

ORDER

DATED:26.05.2021

THE HON'BLE MS.JUSTICE
P.T.ASHA

FOR APPROVAL: 09/07/2021

APPROVED ON: 13/07/2021



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2021

Delivered on : 26.05.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No.931 of 2007

T.Srihari Kumar Bhagavat

...Plaintiff

Vs

1.P.Sheik Mohideen

2.R.Lakshmi Narayanan

...Defendants

Prayer: Suit filed under Order 4 Rule 1 O.S. Rules read with order VII Rule 1 of the CPC to pass a Judgement and Decree against the defendants directing them to pay jointly and severally to the plaintiff a sum of Rs.1,00,00,000/- (One Crore Rupees) together with interest thereon at the rate of 18% from the date of filing the suit till payment of realization.

For Plaintiff : Mrs.K.Aparna Devi

For Defendant 1 : Mr.A.Palaniappan



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For Defendant 2 : Mr.M.Devendiran

JUDGMENT

The plaintiff has instituted the above suit for recovery of a sum of Rs.1 Crore together with interest @ 18% p.a from the date of filing till date of payment. Infact the specific case of the plaintiff is that although he is entitled to claim a sum of Rs.6,54,00,000/- he is restricting his claim to a sum of Rs.1 Crore as he cannot afford the Court fee for the said amount.

2.Plaintiff's case:

A. The suit scheduled properties which belonged to various persons was being developed by the defendants who are doing real estate business through their partnership firm SL Agencies. The defendants had obtained Power of Attorney from the original owners for forming a layout of house plots and selling the same to third parties.

B. In the process, the defendants ran out of money for developing the plots and they approached the plaintiff with a request to purchase the lands. The sale consideration was totally fixed at Rs.50 Lakhs and



two registered agreements of sale both dated 27.03.2003 was entered into between the plaintiff and the 1st defendant in Doc No.1547 / 2003 and 1874 / 2003 on the file of the District Registrar, Madras South. An advance of Rs.50,000/- and Rs.1,00,000/- respectively was paid. The 2nd defendant had signed as a witness. The plaintiff had paid the balance sum of Rs.48,50,000/- on various dates and acknowledged by the 1st defendant. The plaintiff had therefore become the owner of the land. The 1st defendant had agreed to register the property as and when required by the plaintiff.

C. Thereafter, the defendants informed the plaintiff that they would sell the plots on behalf of the plaintiff on commission basis. On 06.05.2003, a MOU was entered into between the plaintiff and the defendants to sell the plots.

D. After the agreement of sale a large number of plots mentioned in the A and B schedule to the plaint was sold to 3rd parties after the roads were formed @ Rs.3,60,000/- per ground. This amount increased from time to time. The plaintiff would submit that he was present for every sale and signed as a confirming party.



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E. It is the plaintiff's case that on different dates the defendants had paid a sum of Rs.29,50,000/- and after 3rd May 2004 no payments were made. On 08.02.2004, the defendants had promised to pay a sum of Rs.47,50,000/- on or before 15.04.2004. Instead of paying the plaintiff as undertaken, the defendants had diverted the funds for the purchase of new lands and buildings. On 05.03.2004 the 1st defendant had purchased a shopping complex on Mount Poonamallee Road and the 2nd defendant a residential building at Moosa Street, T.Nagar on 16.04.2004. They had also entered into an agreement to purchase lands at Kundrathur.

F. The plaintiff would submit that while he was demanding the payment of money collected by the sale, the 1st defendant had issued a legal notice dated 25.04.2005 stating that he had borrowed a sum of Rs.50 Lakhs as hand loan on the security of the agreements of sale and as the entire loan had been repaid by the 1st defendant and therefore would call upon the plaintiff to cancel the sale agreement. The plaintiff sent a reply dated 19.09.2005 contending that a balance of Rs.25 Lakhs was still payable by the defendants and calling upon to pay the same.



A reminder notice dated 21.02.2006 was issued reiterating the same.

However, there was no response.

G. The silence on the side of the defendants prompted the plaintiff to issue a legal notice dated 12.10.2006 calling for accounts and asking the defendants not to deal with the unsold plots. The defendants had issued an undated reply refuting the claim and putting forth false allegations.

H. The plaintiff would submit that vide the MOU dated 06.05.2003, the defendants were bound to pay the plaintiff his share in each of the sale deeds and as on the date of the filing of the suit over 190 plots had been sold at Rs.3,60,000/- per ground and a sum of Rs.6,84,00,000/- had been collected as sale consideration. Therefore, by notice dated 10.04.2007 the plaintiff had called upon the defendants to pay a sum of Rs.6,54,00,000/- after deducting the sum of Rs.29,50,000/- paid by the defendants. Since there was no response the plaintiff was constrained to file this suit.

**2. The 1st defendant's written statement:**

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A. The entire allegations contained in the suit was denied and the 1st defendant had also contended that the suit was barred by limitation.

B. The 1st defendant would submit that the 2nd defendant had nothing to do with the arrangement that the 1st defendant had with the plaintiff. It was the 1st defendant who had entered into agreements with the land owners to form a layout of housing plots and sell them to 3rd parties. For this purpose the land owners had executed various power deeds the first of which was on 05.02.2000.

C. The 1st defendant would submit that he was already dealing with the plaintiff and had borrowed money from him. Considering this acquaintance the 1st defendant had requested the plaintiff to extend a loan of Rs.50 Lakhs. The plaintiff agreed to the same on condition that the 1st defendant executed agreements of sale in his favour as security for the loan. The 1st defendant would contend that the entire loan amount with interest had been repaid and no amounts were due. In fact, the plaintiff had been signing as a confirming party till his amounts were received and thereafter he had not been included in the



sale deeds as a confirming party.

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D. Further, it is the categorical case of the 1st defendant that the MOU dated 06.05.2003 was a fabricated document created from out of the blank stamp paper and papers signed by the 1st defendant and handed over to the plaintiff.

E. The 1st defendant would also submit that the plaintiff has not come to the Court with a definite case. In the first reply and the reminder notice the plaintiff had only claimed payment of the balance sum of Rs.25 Lakhs together with interest. Later this demand multiplied to a sum of Rs.6,53,00,000/- with no basis. He therefore sought for a dismissal of the suit.

3.The 2nd defendant's written statement:

A. The 2nd defendant would submit that he is neither a necessary nor a proper party to the suit and that he has been unnecessarily impleaded in the suit. The 2nd defendant would submit that the project in respect of the suit schedule property was entered into only by the 1st defendant with the land owners. Though the 1st and the 2nd



defendants were partners and had done some projects together, however, the project in question was that of the 1st defendant. The loan was received only by the 1st defendant and this defendant had not received any amount from the plaintiff. The transaction was entirely handled by the 1st defendant and the 2nd defendant had nothing to do with it. The 2nd defendant would submit that he is neither a necessary nor a proper party to the proceedings.

4.Issues framed:

The following issues have been framed:

"i. Whether the plaintiff is entitled to a decree for a sum of Rs.1,00,00,000/- (Rupees One Crore only) as claimed in the plaint?

ii. Whether the 2nd defendant is a necessary party to the suit?

iii. Whether the MOU dated 06.05.2003 referred to in the plaint and stated to have been executed between the plaintiff and the defendants is valid and binding on the 2nd defendant in view of his contention that he was not a party to the said document?

iv. Whether the plaintiff is entitled to interest @ 18% p.a?

v. Relief and cost.

**5.Trial:**

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The plaintiff has examined himself as P.W.1 and in support of his case has marked Ex.P.1 to Ex.P.17. The 1st defendant has adduced oral evidence as D.W.1 and has marked Ex.D.1 to Ex.D.19. The 2nd defendant has also adduced evidence as D.W.2 and no documents have been marked on his side.

6.Submissions:

A. Mrs.Aparna Devi, appearing for the plaintiff would briefly narrate the pleadings of both the plaintiff and the defendants. She would contend that the defendants are carrying on business as a partnership firm in the name and style of SL Agencies and they have together agreed to sell the suit schedule properties to the plaintiff. She would submit that although the agreements were only entered into by the 1st defendant and the plaintiff but however the 2nd defendant has signed as a witness and he is also therefore bound by the same.

B. She would further argue that even the Memorandum of

Understanding dated 06.05.2003 has been entered by the 1st defendant

<https://hcservices.ecourts.gov.in/hcservices/>

as well as the 2nd defendant and that apart both of them had jointly



signed the letter dated 08.02.2004 acknowledging their liability to the sum of Rs.47,50,000/- and promising to pay the same by 15.02.2004.

She would argue that the plaintiff in response to the notice Ex.P.6 dated 25.04.2005 had replied vide Ex.P.7 dated 19.09.2005 that he is ready to receive a sum of Rs.25 Lakhs with interest @ 18% p.a. This according to her was only to bring a quietus to the dispute between the plaintiff and the defendants.

C. She would further submit that the defendants had entered into the MOU Ex.P.4 and it was for this reason that the plaintiff was asked to sign every sale deed as a confirming party. In addition under Ex.P.5 letter dated 08.02.2004 the defendants have both undertaken to clear the sum of Rs.47,50,000/- on or before 15.04.2004 and this undertaking has been breached by them. The 1st defendant as D.W.1 has admitted the execution of Ex.P.5 in his cross examination and had deposed that the amount was paid on 15.04.2004 as agreed. However, the learned counsel would submit that the defendants have not filed any proof to substantiate the same.



D. She would further submit that the unilateral cancellation of the agreement of sale on 31.10.2006 is illegal especially when under Ex.P.9 notice the plaintiff had directed the defendants to give accounts and not to make further sale of the plots. The cancellation was only done with a view to deprive the plaintiff of his dues. In short the counsel for the plaintiff would submit that the suit should be decreed since:-

- (a) The defendants have not proved repayment.
- (b) Receipt of money has been accepted by the defendants.
- (c) The defendants have taken contradictory stances in their pleadings and their evidence.

She would therefore pray that the suit be decreed as prayed for.

E. Per contra, Mr.A.Palaniappan appearing and arguing on behalf of the 1st defendant would at the outset submit that the suit does not spell out the basis on which the suit is filed, i.e., there is no cause of action for filing the suit. Paragraph no.21 of the plaint which sets out the cause of action for the suit indicates that the suit is filed on the basis of the legal notices dated 25.04.2005 (Ex.P.6), 19.09.2005 (Ex.P.7) and 21.02.2006 (Ex.P.8). He would submit that in the last two



notices the plaintiff had demanded payment of a sum of Rs.25 Lakhs and that being the pleading in the case the oral evidence adduced by P.W.1 is totally contrary to this stand. He would submit that the plaintiff is developing his case at each stage.

F. He would submit that the 1st defendant had borrowed a sum of Rs.50 Lakhs from the plaintiff and Ex.P.3 agreement of sale was executed only as a security for this loan. The agreements were never intended to be acted upon. That apart, the agreement is sham and nominal one which is evident from a mere perusal of the value fixed for the suit properties - Rs.5 Lakhs for an extent of 17950 Sq.ft. in Manapakkam and Rs.45 Lakhs for an extent of 4,77,690 Sq.ft which would work out to a paltry sum of Rs.9.42 per Sq.ft.

G. The learned counsel would submit that the MOU Ex.P.4 is a fabricated document which the plaintiff has created by using the signatures of the 1st defendant in blank stamp papers as well as green sheets. The MOU dated 6.5.2003 does not contain a schedule and further the stamp paper used is of the year 2000. He would argue that

in none of the reply notices / legal notices the plaintiff has ever referred



to this MOU and it is in the plaint that for the first time the MOU has found reference. Ultimately, the suit is based on this MOU which is a fabricated document for the following reasons:

(a) The stamp paper is dated 20.12.2000 and the date of the MOU is 06.05.2003.

(b) The MOU is created on a Rs.20/- stamp paper when under Act - IX of 2001 the agreement should have been entered into on Rs.200/- stamp paper.

(c) The MOU does not contain a schedule.

(d) MOU is not mentioned in the notices Ex.P.7, Ex.P.8, Ex.P.9 or Ex.P.12 but is mentioned only in the plaint.

(e) The positioning of the contents in the MOU would clearly show that this document has been fabricated just before the filing of the suit so as to create evidence to support the case of the plaintiff.

(f) The plaintiff as P.W.1 has admitted that there is no reference to this MOU in the reply notice / legal notices and that apart under the first reply under Ex.P.7 and Ex.P.8 the plaintiff had only demanded a sum of Rs.25 Lakhs with interest.

H. The counsel would further submit that as soon as the amounts



due towards the loan amount of Rs.50 Lakhs had been paid the plaintiff has not been asked to sign as a confirming party in the sale deeds from June 2005 as is evidenced from Ex.P.17 and further the 1st defendant has issued Ex.P.16 notice asking the plaintiff to cancel the agreements of sale. It was the 1st defendant who had issued the first notice. If really the transaction as pleaded by the plaintiff was a valid transaction the plaintiff would have first issued a notice.

I. That apart, the plaintiff by reply notice Ex.P.7 was willing to receive a sum of Rs.25 Lakhs with interest towards full and final settlement of the claim. The counsel would submit that the plaintiff is trying to develop his case at each stage and having come to Court with a time barred and false case the plaintiff would not be entitled to any relief. He would rely on the following Judgements in support of his argument that the agreement of sale dated 27.03.2003 was a sham and nominal:

(i) 2000 (1) SCC 434 - Ishwar Dass Jain (Dead) Vs. Sohan Lal (Dead).

(ii) 2011 (5) CTC 543 - Lakshamma Vs. Rathinamma.



J. The learned counsel for the 2nd defendant adopted the arguments of the counsel for the 1st defendant and denied the execution of MOU dated 06.05.2005, Ex.P.4 and Ex.P.5 letter. He would also submit that the 2nd defendant was not a party to any of the agreements entered into between the plaintiff and the 1st defendant.

7.Discussion:

A. The plaintiff in a suit for recovery of money has come forward with the following pleas:-

(i) That the 1st and the 2nd defendants had approached the plaintiff with an offer to buy the suit schedule properties as the defendants had run into a cash crunch in promoting the housing project in the suit schedule properties.

(ii) That two agreements of sale had been entered into between the plaintiff and the 1st defendant in respect of the A and B schedule properties on 27.03.2003 (Ex.P.3 series) in and by which the plaintiff had agreed to purchase both the properties for a total sale consideration of Rs.50 Lakhs. Since the entire sum of Rs.50 Lakhs has been paid the plaintiff is the owner of the suit properties.



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(iii) That the defendants had requested the plaintiff that they would find buyers and sell the plots on behalf of the plaintiff on commission basis.

(iv) That the plaintiff and defendants had entered into an MOU dated 06.05.2003 for selling the plots.

B. The plaintiff's case is that the defendants had sold large extents of land in the A and B schedule properties to 3rd parties at Rs.3,60,000/- per ground which was increased from time to time as per market value. For each sale the plaintiff was present and the defendants had paid the plaintiff a total sum of Rs.29,50,000/- on various dates. In fact by a letter dated 08.02.2004 (Ex.P.5) the defendants had acknowledged to pay a sum of Rs.47,50,000/- on or before 15.04.2004 but this amount has not been paid. On the contrary the amounts have been diverted by the defendants for the purchase of properties in their names.

C. The plaintiff has also contended that when he had demanded



repayment the 1st defendant had issued Ex.P.6 legal notice calling upon the plaintiff to cancel the agreements as the 1st defendant who had borrowed a sum of Rs.50 Lakhs had repaid it in full. The plaintiff has responded vide Ex.P.9 notice that the defendants pay a sum of Rs.25 Lakhs together with interest @ 18% p.a. from 27.03.2003 till the date of notice as full and final settlement. This offer is reiterated in Ex.P.8 reminder dated 21.03.2006. In paragraph nos. 4 and 5 of Ex.P.7 the plaintiff has stated as follows:

"4, My client states that actually your client and his business partner R.Lakshmi Narayanan approached my client for their financial help to continue and develop their real estate business. My client hesitated their request. But both of them continuously urged my client to help in their real estate business. Because of their repeated request, my client lastly yielded for their request and paid a sum of Rupees Fifty Lakhs as an hand loan to your client and his business partner R.Lakshmi Narayanan. Your client and his business partner R.Lakshmi Narayanan agreed and promised to repay the due amount of Fifty Lakhs by way of cheques only. Your client and his business partner have



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given in writing to my Client regarding above said dealings. My client is having evidences for the amount borrowed by your client and his business partner R.Lakshmi Narayanan.

5. My client states that your client has been repaying the due amount up to Twenty Five Lakhs by way of cheques as agreed. But your client failed to repay the balance amount of Rupees Twenty Five Lakhs till this date."

Therefore by this reply the plaintiff has not only admitted that the plaintiff had only extended a loan but that the defendants had paid Rs.25 Lakhs out of this amount and what remained is only the balance amount of Rs.25 Lakhs.

D. After taking such a stand all of a sudden on 12.10.2006, the plaintiff under Ex.P.9 notice called upon the defendants to produce the statement of accounts and to hand over the accumulated amounts from the sale of the suit properties. The notice further instructed the defendants not to deal with the unsold plots. Since there was no response, the plaintiff had issued Ex.P.10 notice dated 10.04.2007



calling upon the defendants to pay the sum of Rs.6,54,50,000/- after deducting a sum of Rs.29,50,000/- which the defendants had already paid. The plaintiff's claim was calculated at Rs.3,60,000/- for 190 plots. The plaintiff would further submit that he is restricting the claim to a sum of Rs.1 Crore. A combined reading of this would show that the suit is based on this MOU.

E. Before returning a finding on the issues framed it is necessary to examine Ex.P.4 MOU and letter dated 08.02.2004, Ex.P.5.

F. There are two Memoranda of Understanding entered into on the very same day viz; 06.05.2003. The stamp paper for both these deeds are dated 20.12.2000. If the document has been truly entered into by the defendants it is not known as to why a single document has not been obtained. The only explanation would be that the plaintiff had the signature of the defendants in different stamp papers and the same has been used to create the deed. The agreement of sale entered into between the parties is dated 27.03.2003 but in both these deeds the sale deed is said to be dated 26.03.2003. The name of the Sub Registrar



Office is also not given but the place of registration is given. The spacing of the contents gives rise to a suspicion that it is so adjusted to fit in with the signature. Another astute drafting of the deed is that it does not contain a schedule of the properties and it does not have a testimonium. If the deed was prepared in the normal course it will contain the schedule so as to enable the parties to calculate the amounts due to the plaintiff and the defendants in the ratio provided in the MOU. The amount was payable on the sale consideration received for each plot.

G. Further, the document is referred to for the first time only in the plaint. There is no reference to it in the legal notices Ex.P.6, Ex.P.7, Ex.P.9 or even Ex.P.12. That apart, in Ex.P.6 and Ex.P.7 the plaintiff has admitted the borrowal of Rs.50 Lakhs and the repayment of Rs.25 Lakhs and has only asked for payment of a sum of Rs.25 Lakhs with interest @ 18% p.a. from 27.03.2003 till date of notice. If really the MOU was in existence the plaintiff will definitely not seek to settle for such a paltry sum especially when according to the plaintiff he is entitled to a sum of Rs.6,84,00,000/-.



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H. The next document which is projected by the plaintiff is Ex.P.5 letter dated 08.02.2004. In this letter the defendants would state that only a balance of Rs.47,50,000/- was due and payable by them and this amount would be paid by 15.02.2004. This letter is not addressed to anyone. This document has been marked subject to objection. Further, in none of the earlier notices there is a mention about this document. However, the 1st defendant as D.W.1 has admitted the execution of this document but would state that the entire amount has been paid by him. In the reply notice dated 19.09.2005 (Ex.P.7) issued a year later the plaintiff has demanded only a sum of Rs.25 Lakhs with interest, which according to the plaintiff is the balance payable towards the loan of Rs.50 Lakhs.

I. The documents filed by the defendants would show that after 05.04.2004 the plaintiff has not signed any sale deed as confirming party. It is the case of the 1st defendant that the plaintiff has been signing the sale deed in favour of third parties as confirming party till such time as entire amount due towards the loan with interest was repaid. Once the amounts were paid the plaintiff stopped signing as



confirming party. In his oral evidence D.W.1 would submit that thereafter 10 sale deeds were executed. Though no proof was filed this evidence is corroborated by the plaintiff's statement in the plaint that the defendants have sold nearly 190 grounds without giving any share to the plaintiff (paragraph no.14 of the plaint).

J. With the above discussion let us consider Issue Nos.1, 2, 3 and 4. Issue Nos.1 and 3 is based on the MOU dated 06.05.2003. I have in extenso discussed supra why Ex.P.3 MOU cannot be relied upon as the evidence on record as a perusal of the document would reveal that the same has been created for the purpose of the suit. A document which does not find any mention in the legal notice Ex.P.7, Ex.P.8, Ex.P.9 and Ex.P.12 is suddenly introduced in the suit. Further, the plaintiff has filed Ex.P.5 dated 08.02.2004 (which has been marked subject to objection) in which the defendants state that they are due and owing only a sum of Rs.47,50,000/- which they undertook to pay by 15.02.2004. The document is not addressed to anyone and the same has been produced from the custody of the plaintiff. The 2nd defendant has emphatically denied this document.



K. Whiles, in Ex.P.7 reply dated 19.09.2005 the plaintiff would clearly admit the loan of Rs.50 Lakhs given to the 1st defendant and state that Rs.25 Lakhs out of this has been paid by the 1st defendant to the plaintiff. The plaintiff would further state that a balance of a sum of Rs.25 Lakhs was due with interest from 27.03.2003, which is the date of the agreement of sale and which date can be safely taken as the date of receipt of the money by the 1st defendant. This reply is to the notice of the 1st defendant, Ex.P.6 asking the plaintiff to cancel the agreement of sale as all the amounts under the loan was fully paid. Considering the fact that the plaintiff has been varying his claim at each juncture it can only be concluded that the entire loan amount has been cleared and from the year 2005 the plaintiff had also stopped executing the sale deeds in favour of 3rd parties as a confirming party.

L. Considering the fact that the MOU is held to be a fabricated document and taking note of the fact that the plaintiff has come forward with different amounts as outstanding at different periods Issue No.1 is answered against the plaintiff. Further the plaintiff has impleaded the 2nd defendant on the ground that the 1st and 2nd defendants are carrying on a partnership business and the 2nd



defendant signed the document (Ex.P.3 agreement) as a witness.

Admittedly, the agreement of sale Ex.P.3 has been executed only between the plaintiff and the 1st defendant and further the plaintiff has not refuted the contentions raised by the defendants in their respective written statement that the 2nd defendant is an unnecessary party to the proceedings. In view of the above issue no.2 and 3 are answered in favour of the 2nd defendant. The 2nd defendant is an unnecessary party to the proceedings and the MOU dated 06.05.2003 is not binding on the 2nd defendant.

M. Further, I have held supra that the Memorandum of Understanding dated 06.05.2003 is a fabricated document created using the signatures of the defendants on blank papers. Considering the answer to Issue No.1, Issue No.4 is also answered against the plaintiff.

8. In fine the suit is dismissed with costs.

Sd./-P.T.A.J.

26/05/2021

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



List of witness on the side of the Plaintiff:

P.W.1 - T.Sri Hari Kumar Bhagavat

List of Exhibits marked on the plaintiff's side:

Ex.P.1 - Partnership Deed

Ex.P.2 - Power of Attorneys

Ex.P.3 - Sale Agreement entered between the plaintiff and the 1st defendant dated 27.03.2003.

Ex.P.4- Memorandum of Understanding between parties dated 06.05.2003.

Ex.P.5 - Undertaking Letter from defendants dated 08.02.2004.

Ex.P.6 - Legal notice issued by the defendant dated 25.04.2005.

Ex.P.7 - Reply notice issued by the plaintiff to the defendant dated 19.09.2005.

Ex.P.8 - Reminder to the reply notice issued by the plaintiff to the defendant dated 21.02.2006.

Ex.P.9 - Legal notice issued by the plaintiff dated 12.10.2006.

Ex.P.10 - Reply notice issued by the defendant.

Ex.P.11 - Sale Deeds

Ex.P.12 - Legal notice issued by the plaintiff dated 10.04.2007.

Ex.P.13 - Affidavit filed by D1 in O.S.A.No.231 of 2010

Ex.P.14 - EC for property of D1 dated 17.04.2007.

Ex.P.15 - Sale deed of D1 property dated 05.03.2004.



Ex.P.16 - Caveat filed by D1 dated 19.10.2006.

Ex.P.17 - Sale deed of D2 dated 16.04.2004.

List of witness on the side of the Defendants:

D.W.1 - P.Sheik Mohideen

D.W.2 - R.Lakshmi Narayanan

List of Exhibits marked on the defendants' side:

Ex.D.1 - General Power of Attorney for sale of the property dated 10.05.2000.

Ex.D.2 - General Power of Attorney for sale of the property dated 24.10.2002

Ex.D.3 - General Power of Attorney for sale of the property dated 17.03.2003.

Ex.D.4 - General Power of Attorney for sale of the property dated 16.06.2003

Ex.D.5 - General Power of Attorney for sale of the property dated 07.07.2003.

Ex.D.6 - Agreement of sale dated 27.03.2003.

Ex.D.7 - Agreement of sale dated 27.03.2003.

Ex.D.8 - Absolute Sale Deed dated 05.05.2003

Ex.D.9 - Absolute Sale Deed dated 11.06.2003

Ex.D.10 - Absolute Sale Deed dated 04.07.2003

Ex.D.11 - Absolute Sale Deed dated 25.08.2003

Ex.D.12 - Absolute Sale Deed dated 09.09.2003



- Ex.D.13 - Absolute Sale Deed dated 19.11.2003
- Ex.D.14 - Absolute Sale Deed dated 04.12.2003
- Ex.D.15 - Absolute Sale Deed dated 23.01.2004
- Ex.D.16 - Absolute Sale Deed dated 03.03.2001
- Ex.D.17 - Absolute Sale Deed dated 13.06.2005
- Ex.D.18 - Registered cancellation agreement of sale dated 30.10.2006.
- Ex.D.19 - Registered cancellation agreement of sale dated 30.10.2006.

Sd./-P.T.A.J.

26/05/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.