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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 6TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

O.A.Nos.847 and 848 of 2019

in

C.S.No.535 of 2019

Regal Palm Garden Apartment Owners Association (RPGAOA)

Rep. by its secretary

No.383, Velachery - Tambaram Road,

Velachery, Chennai 600 042.

...Applicant/Plaintiff

(in O.A.No.848 of 2019)

Versus

1.M/s.Cee Dee Yes Housing and Infrastructure Private Limited,
(Formerly Cee Dee Yes Housing and Finance Ltd)

Rep. by its Managing Director,

No.42, 2nd Main Road,

Gandhi Nagar, Adayar, Chennai 600 020.

2. M/s.Cee Dee Yes Health Care Services Private Limited,
(Formerly Cee Dee Yes Standard Towers Pvt Ltd)

Rep. by its Managing Director,

No.383, Velachery - Tambaram Road,

Velachery, Chennai 600 042.

3. C.Devadasasundaram,

S/o.Chidambara Nadar,

No.25, 2nd Avenue,

Indira Nagar, Adyar,

Chennai 20.

4. M/s.Standard Fire Works Private Limited,

Rep. by its Managing Director,

No.1/3, Thirthangal Road,

Sivakasi 626 123.



5. The Special Tahsildar (Land Acquisition- Highways)
Mambalam - Guindy Taluk,
Singaravelar Maaligai,
Chennai 600 001.

6. The Tahsildar,
Velachery Taluk,
Velachery, Chennai 600 042.

7. The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary
Thalamuthu Natarajan House,
Gandhi Irwin Road,
Egmore, Chennai - 8.

8. M/s.Cee Dee Yes Property Service Private Limited,
Rep.by its Director Brunth D.Sundar
No.42, 2nd Main Road,
Gandhi Nagar-Adayar,
Chennai 600 040

(8th defendant impleaded as per
order dated 16/12/2019 in
A.No.8573 of 2019)

...Respondent/Defendant
(in O.A.No.848 of 2019)

O.A.No.848 of 2019:-

Original Application praying that this Hon'ble Court be pleased to
grant ad interim injunction restraining the respondents men, servants, agents
or any person claiming through them from in any manner alienating or
encumbering the suit schedule property pending disposal of the suit.

O.A.No.847of 2019:-

Regal Palm Garden Apartment Owners Association (RPGAOA)
Rep. by its secretary
No.383, Velachery - Tambaram Road,



Velachery, Chennai 600 042.

...Applicant
Versus

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1.M/s.Cee Dee Yes Housing and Infrastructure Private Limited,
(Formerly Cee Dee Yes Housing and Finance Ltd)
Rep. by its Managing Director,
No.42, 2nd Main Road,
Gandhi Nagar, Adayar, Chennai 600 020.

2. M/s.Cee Dee Yes Health Care Services Private Limited,
(Formerly Cee Dee Yes Standard Towers Pvt Ltd)
Rep. by its Managing Director,
No.383, Velachery - Tambaram Road,
Velachery, Chennai 600 042.

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Velachery, Chennai 600 042.

7. The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary
Thalamuthu Natarajan House,
Gandhi Irwin Road,
Egmore, Chennai - 8.

...Respondents



Original Application praying that this Hon'ble Court be pleased to grant an interim injunction restraining the Respondents 1 to 4 their heirs, successors in interest, assigns of any person claiming through them from in any manner subdividing the schedule mentioned property by metes and bounds and maintain the same as per the composite plan granted by the 7th respondent dated 02/05/2002 in planning permit No.332 pending disposal of the suit.

These original applications having been heard on 08.07.2021 in the presence of Mr.S.Namasivayam, Advocate for the Applicant in O.A.Nos.847 and 848 of 2019 and Mr.M.K.Kabir, Senior Counsel for Mr.R.Amardeep, Advocates for the Respondents 1 to 3 in O.A.Nos.847 and 848 of 2019 and upon reading the judge's summons and the affidavit of G.Subramanian filed in O.A.Nos.847 and 848 of 2019 and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this court having observed that, at the risk of repetition, when the right to maintain the suit itself is being seriously questioned by the contesting respondents/defendants, the balance of convenience being intertwined with that right, this Court's intervention in favour of the applicant/plaintiff, at this stage, may not be proper and equitable, this Court cannot consider that as a



in this case, very precisely, the ruling of the Division Bench is to be applied squarely against the applicant/plaintiff herein, this Court clarifies that the present conclusion is on the basis of the prima-facie and peripheral consideration with reference to the materials made available and the arguments advanced by the respective parties in the applications and this Court is not inclined to grant interim injunction as prayed for, it is ordered as follows:-

That these O.A.Nos.847 and 848 of 2019 be and are hereby dismissed.

2. That there shall be no costs.

3. That the suit in C.S.No. 535 of 2019 be posted on 28.09.2021 for filing written statement by the defendants 1, 2 and 4 to 8.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 6TH DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//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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02.11.2021

O.A.Nos.847 and 848 of 2019
in
C.S.No.535 of 2019

ORDER

DATED: 06.09.2021

THE HON'BLE MR.JUSTICE
V.PARTHIBAN

FOR APPROVAL: 02/11/2021

APPROVED ON: 08/11/2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 08.07.2021

Orders Pronounced on : 06.09.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

O.A.Nos.847 and 848 of 2019
in C.S.No.535 of 2019

Regal Palm Garden Apartment Owners
Association (RPGAOA),
Represented by its Secretary,
No.383, Velachery-Tambaram Road,
Velachery, Chennai-600 042.

.. Applicant in both O.As./plaintiff

Vs.

1. M/s.Cee Dee Yes Housing and
Infrastructure Private Limited,
(formerly Cee Dee Yes Housing and
Finance Ltd),
Rep. by its Managing Director,
No.42, 2nd Main Road, Gandhi Nagar,
Adayar, Chennai-600 040.
2. M/s.Cee Dee Yes Health Care Services
Private Limited,
(formerly Cee Dee yes Standard Towers Pvt. Ltd),
Represented by its Managing Director,
No.383, Velacherry-Tambaram Road,
Velachery, Chennai-600 042.
3. C.Devadasasundaram,
S/o Chidambara Nadar
4. M/s.Standard Fire Works Private Limited,
Represented by its Managing Director,
No.1/3, Thiruthangal Road,
Sivakasi-626 123.



5. The Special Tahsildar (Land Acquisition-Highways),
Mambalam-Guindy Taluk,
Singaravelar Maaligai, Chennai-600 001.

6. The Tahsildar, Velacherry Taluk,
Velachery, Chennai-600 042.

7. The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
Thalamuthu Natarajan House,
Gandhi Irwin Road, Egmore, Chennai-8.

.. Respondents 1 to 7 in both O.As./defendants 1 to 7

8. M/s.Cee Dee Yes Property Service Private Limited,
Rep. by its Director Brunth D.Sundar
No.42, 2nd Main Road,
Gandhi Nagar, Adayar, Chennai-600 040.

(Eighth respondent impleaded as per
order dated 16.12.2019 in Appln.No.8572 of 2019
in C.S.No.535 of 2019)

.. Eighth respondent in O.A.No.848 of 2019

and

8. M/s.Cee Dee Yes Property Service Private Limited,
Rep. by its Director Brunth D.Sundar
No.42, 2nd Main Road,
Gandhi Nagar, Adayar, Chennai-600 040.

(Eighth defendant impleaded in the suit as per
order dated 16.12.2019 in Appln.No.8573 of 2019
in C.S.No.535 of 2019)

.. Eighth defendant in C.S.No.535 of 2019

Judge's Summons under Order XIV Rule 8 of the Original Side Rules
of this Court, read with Order 39 Rules 1 and 2 of the Code of Civil
Procedure (CPC), and Original Application (O.A) No.847 of 2019 in
C.S.No.535 of 2019 is filed praying to grant ad-interim injunction



restraining the respondents 1 to 4, their heirs, successors-in-interest, assigns or any person claiming through them from in any manner sub-dividing the schedule mentioned property by metes and bounds and maintain the same as per the composite plan granted by the seventh respondent, dated 02.05.2002 in Planning Permit No.332, pending disposal of the suit.

Judge's Summons under Order XIV Rule 8 of the Original Side Rules of this Court, read with Order 39 Rules 1 and 2 of the Code of Civil Procedure (CPC), and Original Application (O.A) No.848 of 2019 in C.S.No.535 of 2019 is filed praying to grant ad-interim injunction restraining the respondents, men, servants, agents or any person claiming through them from in any manner alienating or encumbering the suit schedule property, pending disposal of the suit.

Schedule

All that piece and parcel of land situated in No.383, Velachery-Tambaram Road, Velachery, Chennai-42 on the Southern part in S.No.329 (Part) of 137, Velachery Village, Mambalam Guindy Talluk, Chennai, measuring an extent of 10,156 Sq.Ft. or thereabouts, bounded on the:

North by:

S.No.329 part property owned by Cee Dee Yes Standard Towers Pvt. Ltd.

South by: S.Nos.331 and 330

East by : S.Nos.328/1 and 328/2

West by : Velachery Tambaram Main Road.



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For respondents: Mr.M.K.Kabir, Senior Counsel for
Mr.R.Amardeep for RR-1 to 3 in both the O.As.

COMMON ORDER

The applicant herein is the plaintiff in the suit.

2. The suit has been filed for the following prayers:

(a) to grant mandatory injunction directing the defendants 1 to 4 and 8 to specifically perform the terms of the Memorandum of Understanding, dated 16.03.2015 by conveying the suit schedule property to the members of the plaintiff-Association and on failure, convey the same to the plaintiff by process of Court;

(b) for permanent injunction restraining the defendants 1 to 4 and 8, their heirs, successors-in-interest, assigns or any person claiming through them from in any manner sub-dividing the schedule mentioned property by metes and bounds and maintain the same as per the composite plan granted by the seventh defendant dated 02.05.2002 in Planning Permit No.332, (prayers amended as per order dated 21.12.2020 in A.No.2810 of 2020 in C.S.No.535 of 2019), and

(c) for costs of the suit.

3. The applicant is the apartment owners' association. The fourth



respondent/fourth defendant is the owner of a larger extent of property comprised in S.Nos.328/2, 256/2, 327/1, 325/1, 325/2, 325/3 and 329 of Velachery Village, ad-measuring 6.86 acres. The first respondent/first defendant proposed to develop the property and approached the fourth respondent for the said purpose. The third respondent/third defendant was the Managing Director of the first respondent/Company. According to the applicant herein, the third respondent was personally involved in all the stages of transactions, and therefore, he was arrayed as a party in the suit.

4. The first respondent/developer, after having negotiated with the fourth respondent, and thereafter, after obtaining necessary permission and approval from the State authorities, had put up housing complex. Building permission was granted for construction of 7,42,265 Sq.Ft. with residential area of 6,22,673 Sq.Ft. and commercial area of 1,95,592 Sq.Ft. According to the applicant, it was a composite single planning permission granted by the CMDA/seventh respondent herein with reference to S.No.329 of Velacherry Village.

5. In the course of development of the housing complex, the first and third respondents entered into a sale-cum-construction agreement for the undivided share in the land and built up area with all the prospective



purchasers and the suit schedule property was an integral part in all the agreements. On the basis of the agreement, the purchaser, who was the present member of the applicant/Association, had obtained loan from the Banks and the loan amounts were directly credited to the account of the first respondent. The flats/apartments were completed and possession was handed over to all the allottees between 03.12.2002 and March 2003.

6. According to the applicant, in terms of the sale-cum-construction agreement, dated 23.12.2002, S.No.329 described in the schedule to the plaint, is also the subject matter of conveyance. It transpired that another Company was floated in the name of Cee Dee Yes Property Service Private Limited, which is arrayed as the eighth defendant in the suit and the Company was put in-charge of the maintenance of the flats till October 2010. Thereafter, the Company appeared to have been closed down and the maintenance was handed over to another firm, by name Cee Dee Yes Associates and they maintained the apartment complex till 31.10.2014 and thereafter, the maintenance was handed over to five owners of the complex, with an understanding that the appropriate owners' Association will be formed and maintenance handed over to them. The plaintiff-Association was formed in 2014 and the Association took charge of the maintenance of the entire complex.



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7. It also transpired that portion of the lands in S.No.329 of Velacherry Village, which was part of the project, was subjected to acquisition by the Highways Department to an extent of 17.5 cents for the purpose of expansion of the Velacherry-Tambaram Road and a notice was issued on 20.10.2003 under Section 15(2) of the Tamil Nadu Highways Act. Several Writ Petitions and Writ Appeals have been filed challenging the acquisition proceedings and the compensation offered. Some of the Writ Petitions are also stated to be pending before this Court. The filing and pendency of the Writ Petitions and Writ Appeals mentioned in the plaint, may not have a direct bearing on this case, considering the controversy between the applicant/plaintiff and the defendants. The acquisition related litigations, presumably, had been referred to, with a view to cover the period of limitation. Therefore, orders passed in some Writ Petitions and Writ Appeals at different stages may not be necessary for adjudication of the present application.

8. It is the further case of the applicant/plaintiff that the third respondent was a custodian, duly authorised by the Board of the closed Company in 2010 (Cee Dee Yes Property Service Private Limited) and before the Company's closure, a Resolution was passed authorising him as



the custodian of the property and its maintenance and there was also an agreement that a property measuring about 10,156 Sq.Ft. comprised in S.No.329 in Velacherry Village and 700 Sq.Ft. of Undivided Share (UDS) along with the office building, shall be transferred to the plaintiff-Association as and when the same is formed. The agreement was dated 25.06.2010.

9. Thereafter, it appeared that a Memorandum of Understanding (MoU) was entered into between the applicant/plaintiff and the third respondent on 16.03.2015, whereby the land in S.No.329 measuring for extent of 10,156 Sq.Ft. was agreed to be transferred in the name of the applicant-Association. This document is stated to be the most crucial, as the main suit claim has been premised on this document. The main prayer in the suit is for enforcement of this document, namely specific performance. After execution of the MoU, several communications have been referred to like, dated 09.07.2015 and 13.07.2015, which are filed as plaint documents confirming the clauses of the MoU. According to the applicant, a joint meeting was also held on 19.10.2016, wherein the defendants appeared to have suggested for re-registering the entire property in favour of the applicant-Association.



10. While matters stood thus, subsequently, a dispute arose between the parties stating that the MoU would not be implemented and the same had been cancelled. According to the applicant, this decision adopted by the first and third respondents, has been revealed only when the counter affidavit had been filed on their behalf on 18.06.2018 in the impleading petition filed by the applicant in W.A.No.154 of 2016, which was pending before the Division Bench of this Court relating to the acquisition proceedings and their stand was disclosed that the members of the Association had not purchased the land in S.No.329 of the schedule properties. Thereafter, communications were exchanged and legal notice was issued on 09.01.2017 and the suit has been laid subsequently.

11. Mr.S.Namasivayam, learned counsel for the applicant/plaintiff made the following submissions:

(a) The above facts have been reiterated by him. He also referred to the details of the transactions and referred to the development of the project in 2001 and the subsequent events and the sale of flats in 2002 and 2003. According to the learned counsel, three different parcels of land have been clubbed together and the common composite approval permission had been obtained from the State authorities. According to him, at the time when the sale was effected to the individual owners of the apartment, the conveyance



included S.No.329 as part of the undivided share to be enjoyed by the apartment owners. Unfortunately, for some reason, the conveyance could not be completed legally, despite demands made by the applicant/Association for several years.

(b) The learned counsel also referred to Resolution passed by the defendant-Company (eighth respondent herein), making the third respondent as a custodian of the property, namely the passage land of 10,156 Sq.Ft. including 1077 Sq.Ft. to be acquired for road widening by Highways Department in S.No.329. By making him the custodian, he was authorised to transfer the same to the applicant/plaintiff. In order to effect transfer, the agreement of sale was also entered into on 25.06.2010 by the eighth defendant-Company and the third respondent, which has also been referred to by the learned counsel. The agreement of sale covered 10,156 Sq.Ft. falling within S.No.329, Velacherry-Tambaram Road, Velacherry. Immediately thereafter, the Company was wound up and struck-off from the Register of the Companies.

(c) The learned counsel placed reliance on the MoU, dated 16.03.2015 and the relevant clauses are referred to, as under:



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"1. That Cee Dee Yes Group shall transfer the title of the undivided share of land in Survey Number 329 in the name of the Association. The complete description of the property and its boundaries, survey no. etc. are enumerated in Schedule I attached to this MoU.

2. That Cee Dee Yes Group shall transfer the title of all the buildings, rooms, toilets and all such assets inside the complex to the Association and shall also hand over such properties along with the undivided share of the land. The details of all the properties to be transferred to the Association are listed in Schedule II to this MoU.

3. That Cee Dee Yes have already transferred the entire list of common assets like Gensets, Motors, Pumping Station etc., with their identification Nos., location etc. to a team of RPG Owners in October 2014 itself. The detailed list of such assets are listed in the file enclosed.

4. That Cee Dee Yes shall also provide free of cost as requested for by the President of the Association minimum scaffolding materials required for carrying out the regular maintenance within the RPG Complex.

5. That Cee Dee Yes Group shall facilitate entering into a long term agreement between the Association and the owners of both the properties connecting the gates of Southern and Northern sides of the RPG Complex for the regular usage of the residents, which shall cover their successors and assignees also.

.. .. "

(d) As soon as the MoU was entered into, the third respondent, vide

his letter addressed to the applicant-Association, on 09.07.2015, informed

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

the Association that the document could be executed at an early date,



without any consideration in the Sub-Registrar Office for the legal conveyance of the land in S.No.329. The further communication was written by the third respondent to the applicant/Association dated 13.07.2015 informing the Association that being the custodian of the property, the same can be transferred to the Association and there is no bar on that account.

(e) According to the learned counsel, the seventh respondent/CMDA has also issued demolition notice on 17.05.2018 in view of certain violations noticed in the development of the property including S.No.329. In the absence of conveyance of the property in S.No.329, the entrance and exit of all the apartment residents have been restricted only on one side of the property. In this regard, the learned counsel has taken this Court to the rough sketch drawn in order to show how the right of the apartment owners to have free ingress and egress of the residents have been restricted and their movement has been curtailed drastically because of the failure of the respondents to comply with the terms of their sale agreement and with the terms of the MoU, dated 16.03.2015.

(f) The learned counsel also referred to paragraph 8 of the counter affidavit filed by the third respondent, wherein the third respondent has taken diametrically opposite stand contending that he cannot enforce the



MoU, dated 16.03.2015, which was a consequence of the Resolution dated 25.06.2010 of the Company, and the Company has been subsequently dissolved. Since it is more than a decade of the dissolution of the Company, to be the only option available is that the area measuring 10,156 Sq.Ft. in S.No.329 to be enjoyed commonly by both the second respondent, as well as the applicant-Association provided they pay 50% of the current market value for the enjoyment of the undivided share therein. This stand is legally unacceptable, as it is not open to the third respondent to resile from his position, as disclosed in the MoU, dated 16.03.2015.

(g) The learned counsel submitted that in the earlier letter written by the third respondent himself, he had clearly communicated that there was no separate consideration for the conveyance of the property in S.No.329 and the stand taken in the counter affidavit is exactly the opposite of that position and such unjust stand has been maliciously taken to defeat the legitimate rights of the apartment owners.

(h) According to the learned counsel, once composite permission was granted for construction of 412 flats by the CMDA based on the entire extent of land comprised in 6.86 acres, amalgamated by re-constitution deed, showing the Velacherry-Tambaram Main Road to meet and satisfy the



development control rules, it is not open to the third respondent to deny the right of the residents to enjoy the property in full. In the said circumstances, in order to prevent the respondents 1 to 4 from sub-dividing the schedule mentioned property and also from alienating and encumbering the suit schedule property, pending disposal of the suit, these original applications have been filed. He would therefore implore this Court that if any action by the respondents 1 to 4 adverse to the interest to the applicant/plaintiff is taken, the same would cause irreparable injury to them, and therefore, the balance of convenience is in favour of the applicant/plaintiff for grant of interim injunction.

12. Per contra, Mr.M.K.Kabir, learned Senior Counsel appearing for the respondents 1 to 3, at the outset, has drawn the attention of this Court to the prayer made in the suit, which is for specific performance. According to the learned Senior Counsel, the prayer itself is not maintainable and that the MoU dated 16.03.2015 is not an agreement at all. It cannot be enforced in law. Before elaborating on this issue, the learned Senior Counsel referred to the averments contained in sub-paragraph (q) and (r) of paragraph 5 of the plaint. The averments in sub-paragraph (q) relate to handing over of all the allottees of the respective apartments between 31.12.2002 and March 2003.

The averments in sub-paragraph (r) of paragraph 5 relate to the sale deeds



being purchased from the fourth defendant under sale deeds, dated 28.07.2003 and 04.08.2003. These documents which are stated to be crucial to the plaintiff's claim, relate to the year 2003. In view of the transaction said to have happened more than 15 years ago before the suit was laid, the claim of the suit itself cannot be entertained as being hit by the law of limitation.

13. The learned Senior Counsel would refer to the most crucial document, namely MoU, dated 16.03.2015 and in particular, he would refer to the preamble portion of the MoU, which begins with, "Where as it is now decided to reduce in writing the salient points and issues which are to be sorted out and cleared." The MoU was at the stage of discussion only and no right could be claimed under the document. There cannot be any suit for specific performance on the basis of inconclusive understanding between the parties. When the plaintiff's suit itself is not maintainable, in the first place, the question of granting any interim injunction in favour of the applicant/plaintiff, pending disposal of the suit, would not arise at all.

14. The learned Senior Counsel referred to sale deed executed by the fourth defendant in favour of the individual buyers, dated 28.07.2003 and pointed out that the total extent of the developed area, insofar as the



residential complex is concerned, it was only 5.5 acres and + some cents.

The plan obtained supports the measurement. The undivided share of the property conveyed was only 425 Sq.Ft. Therefore, the claim of the applicant/Association for inclusion of S.No.329 is not supported by any document at all.

15. The learned Senior Counsel further submitted that the date of re-constitution deed, which is shown to support the case of the applicant, which included S.No.329, is a forged document. The learned Senior Counsel took pains to explain this Court to show that the address shown in the document is Gandhi Nagar, Chennai, but in all documents, executed by the fourth respondent, like MoU, dated 28.03.2001, gift deed, dated 05.03.2002, sale deed dated 06.06.2005 and sale deed dated 27.01.2003, bear the address of the fourth respondent as Thiruthangal Road, Sivakasi. The documents relied on by the applicant are therefore questionable materials, which cannot be the basis on which a decision could be taken by this Court. It is for the applicant to establish the case that the documents were genuine and supportive.

16. As far as the contention raised on behalf of the applicant

regarding free ingress and egress of the residents, being affected, as one exit



gate has been denied access to the residents, is concerned, the learned Senior Counsel would draw the attention of this Court to the lay-out sketch of the subject property showing that the said contention is contrary to the record and fact. There are other gates available as per the plan which are being used by the respondents, which cannot be denied by the applicant.

17. The learned Senior Counsel also referred to the applicant/Association's communication dated 29.09.2016 drawing support from the statement therein that the builder has included S.No.329 in the construction agreement, which had been omitted in the sale deed. He also referred to the refusal of the builder transferring 10,156 Sq.Ft. of land in S.No.329 as undivided share. The refusal had very much been in the knowledge of the applicant/plaintiff. In any case, the claim stated to be taken up for discussion is the MoU, dated 16.03.2015, and whether it could be enforced in law, is a matter for trial. The crucial document, i.e. MoU, dated 16.03.2015 itself cannot be attached with any legal sanctity, the maintainability of the suit for specific performance on the basis of the said document, is highly doubtful. In the face of the serious doubts being raised as to the maintainability of the suit itself, the question of granting of any interim injunction in favour of the applicant/plaintiff is not called for at all.



18. The learned Senior Counsel finally referred to a decision of this Court reported in MANU/TN/0269/1998 = 1998 (2) CTC 689 (Multichannel (India) Limited Vs. Kavitalaya Productions Pvt. Limited), wherein the Division Bench of this Court held that while considering the scope of grant of temporary injunction, when a document prima-facie appears to be proposal and not concluded contract, and the rights of parties to the contract being not clear, no ground is held to be made out for grant of injunction. The relevant paragraph 27 containing the above observations in the said decision, are extracted hereunder:

"27. In the instant case, there is a condition that operational, procedural and functional methods have to be worked out by executing another agreement. If that is so, there is some aspect of the contract which remained unfulfilled. Whether it is a concluded contract or whether the negative covenant is enforceable, in the absence of adding a subsequent thing agreed to under the joint venture arrangement or rights to be decided, it is not appropriate at an intermediary stage to express any opinion or to form an opinion as to such rights. Where a right is disputed until the trial takes place, presumption of prima facie case may not be proper. Where the validity of the contract is under dispute, it is appropriate to refuse a motion for an injunction restraining the respondents. Where at an interlocutory stage, the right is not clear and the nature of the contract whether concluded or not is in dispute, injunction has to be refused on the ground of comparative convenience, otherwise, grant of injunction would, if the appellants ultimately failed, do more injury to



the respondents than its refusal would occasion to the appellant. This is not a case where there is a clear valid contract. But where the contract is disputed, if, however, on an interlocutory application for an injunction, it would virtually be granting decree for specific performance without trial."

The above ruling of the Division Bench would be squarely applicable to the facts of this case. On the basis of the inconclusive document, namely MoU, dated 16.03.2015, the suit itself is liable to be rejected as not maintainable, apart from the fact that the suit is barred by limitation.

19. By way of reply, the learned counsel for the applicant/plaintiff submitted that the exit gate shown by the defendant(s) did not belong to the property of the Association. As regards the accusation of forgery is concerned, the learned counsel referred to several other documents to show that the fourth respondent's address was given only as Gandhi Nagar address. The learned counsel referred to the said documents addressed to the CMDA seeking approval by the fourth respondent. Therefore, the allegation of forgery has no factual basis at all.

20. In any event, this Court is not inclined to go into such disputed

questions as to whether the documents are forged or not, as in the opinion of



this Court, it may not have any bearing on the present adjudication, nor the same need to be decided at this point of time. These are all matters to be kept open for final determination at the time of trial, while evidence is being let in by the parties.

21. The learned counsel further submitted as reply that after the MoU, dated 16.03.2015, there were communications exchanged between the parties on 09.07.2015, 13.07.2015, 29.09.2016 and 19.10.2016 and finally, the legal notice was issued on 09.01.2017. The third respondent in fact has unilaterally cancelled the MoU on 11.01.2017. The plaint having been filed in June 2019, the suit is still within time, and therefore, the contention that the suit is barred by limitation, is without any substance. The above facts have been part of the averments as contained in the rejoinder filed by the applicant to the counter affidavit filed by the respondents 1 to 3. The learned counsel for the applicant finally submitted that the members of the Association have been illegally and unjustly denied the right to have the property in S.No.329 as promised by the developers in the construction agreement, dated 06.05.2002 and also in various communications including MoU, dated 16.03.2015. If the properties are allowed to be meddled with by the respondent(s)/defendant(s), pending disposal of the applicant's right to

be infringed permanently, the same cannot be compensated in future, and



therefore, the balance of convenience is in favour of the applicant.

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22. This Court considered the elaborate submissions of the learned counsel for the applicant and also the learned Senior Counsel appearing for the respondents 1 to 3, perused the pleadings and materials placed on record.

23. The suit has been laid for specific performance on the basis of the document, namely MoU, dated 16.03.2015. The relevant contents of the said document are crucial for consideration of this Court in deciding the applications, besides appreciation of the subsequent events for a comprehensive understanding of the "lis" between the parties. The relevant contents of the MoU with preamble, are once again extracted hereunder:

"Where as it is now decided to reduce in writing the salient points and issues which **are to be sorted out and cleared.**

This Memorandum of Understanding (MOU) thus witnesseth as under:

"1. That Cee Dee Yes Group shall transfer the title of the undivided share of land in Survey Number 329 in the name of the Association. The complete description of the property and its boundaries, survey no. etc. are enumerated in Schedule I attached to this MoU.

2. That Cee Dee Yes Group shall transfer the title of all the buildings, rooms, toilets and all such assets inside the complex to the Association and shall also hand over such properties along with the



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undivided share of the land. The details of all the properties to be transferred to the Association are listed in Schedule II to this MoU.

3. That Cee Dee Yes have already transferred the entire list of common assets like Gensets, Motors, Pumping Station etc. with their identification Nos., location etc. to a team of RPG Owners in October 2014 itself. The detailed list of such assets are listed in the file enclosed.

4. That Cee Dee Yes shall also provide free of cost as requested for by the President of the Association minimum scaffolding materials required for carrying out the regular maintenance within the RPG Complex.

5. That Cee Dee Yes Group shall facilitate entering into a long term agreement between the Association and the owners of both the properties connecting the gates of Southern and Northern sides of the RPG Complex for the regular usage of the residents, which shall cover their successors and assignees also.

.. .. "

24. Although the fact of transfer of the subject property in favour of the applicant/plaintiff is mentioned in the MoU, yet it was stated to be only at the discussion stage. The fact of the third respondent being appointed as the sole custodian of the property in question, as conveyed by communication, dated 09.07.2015 speak about the implementation of the MoU, dated 16.03.2015, yet, certain other later documents, namely the Minutes of the meeting, dated 19.10.2016 and 26.11.2016, wherein representatives of the Association and the third respondent and the



connected stake holders participated, did not appear to be supporting the case of the applicant conclusively. In the minutes, it was recorded that for conveying 10,156 Sq.Ft. in S.No.329, it would involve re-registration of the property by inclusion of the commercial property and that will entail cancellation of the original sale deeds registered in favour of the original apartment owners and would also entail additional cost of Lakhs of Rupees depending upon the apartment size. Further discussion was also held on 26.11.2016 and no consensus among the stake-holders emerged. From the contents of the documents, it is clear that the implementation of the MoU, dated 16.03.2015 itself is in serious cloud, as no acceptable agreement between the parties appear to have happened. In such circumstances, how far the MoU, dated 16.03.2015 became enforceable, is a matter to be left to the final determination of the suit proceedings.

25. As rightly contended by the learned Senior Counsel appearing for the respondents 1 to 3, prima-facie, the MoU dated 16.03.2015, may not be construed as a concluded contract. In the said circumstances, any right claimed under the said document, becomes questionable and such unclear right how far it is enforceable in law, is a matter for final adjudication in the suit.



26. As far as the interim prayers are concerned, unless it is shown that the applicant/plaintiff has prima-facie case and has reasonable chance of success in the suit, and also the balance of convenience is in its favour, the Court may not consider grant of interim orders. As far as the present case on hand is concerned, the fact of the matter is that all the sale transactions appeared to have taken place between 31.12.2002 and March 2003. The connected sale transactions in favour of the developer, are also appeared to have been concluded during the said time. From the pleadings and materials as made available, there is a serious doubt as to the promise of conveying the property in S.No.329 as part of the undivided share to be enjoyed by the individual apartment owners. In fact, circumstances leading to the development of the property and inclusion of S.No.329 and what exactly transpired between the parties at the time of original sales in 2002-2003 and the subsequent period up to 2015, have not been properly explained at all by the applicant/plaintiff.

27. Moreover, the eighth respondent-Company, which had appointed the third respondent as the custodian of the property for transfer of the property in S.No.329, has become defunct in October 2010 itself. Although before the dissolution of the Company, the third respondent was made the



third respondent and the defunct company, nevertheless the transfer of the subject property to the Association, did not take place even thereafter.

Ultimately, the MoU was entered into on 16.03.2015 and even thereafter, immediately nothing fructified towards the conveyance of 10,156 Sq.Ft. in S.No.329. As rightly contended by the learned Senior Counsel for the respondents 1 to 3, in this regard, the MoU merely records the points for discussion and solution to be arrived at by the parties and the document by itself does not create any right or liability upon the parties.

28. Although on behalf of the applicant, the learned counsel referred to several communications between the parties and the unilateral cancellation of the MoU on 11.01.2017, yet this Court is unable to persuade itself as to how the claim of the applicant could be said to have been established, in the absence of any clinching material in support of their right.

29. This Court further notices that on behalf of the respondents 1 to 3, the learned Senior Counsel has drawn the attention of this Court to the specimen sale deed, dated 27.01.2003 to the individual apartment, and Schedule-A appended to the sale deed mentions the measurement only as



only 4.25 Sq.ft. of undivided share in the B-schedule property.

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30. In the light of these facts, the only piece of document that could probably give rise to any kind of right, is the MoU, dated 16.03.2015. All averments relating to the earlier period, may be relevant only for the purpose of completeness of the factual narrative, but those events if they are taken together, the suit could be very well dismissed as hit by the law of limitation.

31. Be that as it may. The suit entirely being premised on the MoU, dated 16.03.2015, even if that date is taken into consideration, the suit is barred by limitation. However, it is explained on behalf of the applicant/plaintiff that the decision not to implement the MoU, dated 16.03.2015, was taken only on 11.01.2017, and therefore, the cause of action for the applicant cannot be taken to arise from the date of the MoU. In any event, these are all matters to be tried in the suit, and not at this stage.

32. As far as the grant of interim injunction is concerned, when this Court entertains a serious doubt as to the very basis of the claim of the applicant/plaintiff, the grant of interim order protecting the right of the applicant pending disposal of the suit, may not arise at all.



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33. The balance of convenience pleaded on behalf of the applicant/plaintiff, is rather a hackneyed and cliched plea without any strong and clinching material in support for grant of interim injunction. Mere pleading the balance of convenience, perfunctorily unsupported by materials, cannot perforce be a valid pleading for this Court to entertain such injunction applications.

34. This Court finds that the learned counsel for the applicant has though taken pains to explain every detail of the sale transactions and also the plethora of averments as contained in the plaint, starting from 2001 when the project was conceived and developed, yet, ultimately, the right of the applicant is said to emanate only from the date when the MoU, was entered into on 16.03.2015. All other events preceded to the said starting point of the cause of action, may have a limited relevance for the understanding of the background, which led to the parties and agreeing to formulate the MoU, dated 16.03.2015 for consideration of the main controversy. Nevertheless, this Court is only to see if any indefeasible right could be read into MoU at all. The answer is in the negative.

35. At the risk of repetition, when the right to maintain the suit itself is being seriously questioned by the contesting respondents/defendants, the balance of convenience being intertwined with that right, this Court's



intervention in favour of the applicant/plaintiff, at this stage, may not be proper and equitable. In fact, the learned Senior Counsel for the respondents 1 to 3 has rightly relied on the decision of the Division Bench of this Court (cited supra). The Division Bench has succinctly observed that when a document prima-facie appears to be a proposal and not a concluded contract and the right of parties to contract, therefore, not clear, this Court cannot consider that as a conclusive contract to be a ground that is made out for grant of injunction. In this case, very precisely, the ruling of the Division Bench is to be applied squarely against the applicant/plaintiff herein. This Court clarifies that the present conclusion is on the basis of the prima-facie and peripheral consideration with reference to the materials made available and the arguments advanced by the respective parties in the applications.

36. For the above said reasons, this Court is not inclined to grant interim injunction as prayed for. Therefore, both these applications are dismissed. No costs.

37. Post the suit for filing written statement by the defendants 1, 2 and 4 to 8, on 28.09.2021.

Sd/-V.P.N.J.
06/09/2021

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)