



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 28TH DAY OF APRIL 2022

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

A.No.968 of 2022

in

C.S.No.3 of 2014

1. Smt. Rema Gopinathan Nair,
W/o. Mr.R.Gopinathan
No.12/3, Saraswathi Street,
Mahalingapuram, Chennai-34.

2. Smt.Malavika
W/o. Mr.Vinay Unni
No.12/3, Saraswathi Street,
Mahalingapuram, Chennai-34.

Both represented by their Power Agent
Mr.R.Gopinathan Nair
S/o. Mr.U.K.Narayanan nair
No.12/3, Saraswathi Street,
Mahalingapuram, Chennai - 34.

... Applicants / Plaintiffs

-VS-

1. M/s.Jeayam Shelters Private Limited,
represented by its Chairman/ Managing Director
Mr.B.Sampathkumar, having office at C-32, 1st Floor,
2nd Avenue, Anna Nagar, Chennai – 600 040 and
at No.244, M.T.H.Road, Villivakkam,
Chennai – 600 049.

2.M/s.Third Wave Holdings Private Limited
represented by its Authorized Director
Mr.Ashok Kumar Jain, having office at No.30,
West Cott Road, Royapettah,
Chennai – 600 014.



3.M/s.Metal Impex,
represented by its Managing Partnership
Mr.Kamlesh Jain, having office at Prince Apartment,
No.59, Ormes Road, 7th Floor,
Kilpauk, Chennai – 600 010.

4. Mr.Akash Kumar
No.127, N.S.C.Bose Road,
Chennai-600 079.

5. Mr.Mukesh Kumar
No.29, Waltax Road,
Chennai-600 079.

6. Mr.K.R.Jagadeeswaran
No.8/19, New Colony Main Road,
Adambakkam, Chennai - 600 088.

... Respondents / Defendants

This Application coming on this day before this court for hearing, the court made the following order:-

Application No.968 of 2022 has been filed to allow this application for receiving additional documents.

2.This affidavit has filed by the husband of the first plaintiff as well the father of the second plaintiff in the above suit. It was stated that the plaintiffs have filed the above suit for recovery of a sum of Rs.5,44,93,000/- and for other reliefs. The defendants have purchased the property of the plaintiffs for an agreed sale consideration and compensation of Rs.10,50,00,000/- and the defendants at the time of execution and registration of Sale Deed showed only a sum of Rs.4,96,71,250/- in the six



Sale Deeds brought by them for registration.

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3.It was also stated that when the plaintiffs resisted and refused to register the Sale Deeds for such a lesser amount, the defendants agreed to pay a sum of Rs.10,50,00,000/- for registration of six Sale Deeds. The sale consideration and the difference in the amount payable are indicated below:

<i>a</i>	<i>The sale consideration referred to in 6 Sale Deeds</i>	<i>Rs.4,96,71,250/-</i>
<i>b</i>	<i>Cash paid on 04.11.2010 after negotiation</i>	<i>Rs.1,03,28,750/-</i>
<i>c</i>	<i>5 cheques bearing Nos.153050 to 153054 dated nil drawn on Indian Overseas Bank, Adambakkam Branch, for Rs.50,00,000/- each issued by 6th defendant</i>	<i>Rs.2,50,00,000/-</i>
<i>d</i>	<i>Cheque No.153055 dated nil drawn on Indian Overseas Bank, Adambakkam Branch, issued by 6th defendant</i>	<i>Rs.65,00,000/-</i>
<i>e</i>	<i>Cheque No.301216 dated nil drawn on ING Vysya Bank Limited, Villivakkam Branch issued by the 1st defendant</i>	<i>Rs.75,00,000/-</i>
<i>f</i>	<i>Mortgage bearing document No.3466/2010 by the 6th defendant in favour of the 1st plaintiff dated 04.11.2010</i>	<i>Rs.60,00,000/-</i>
	Total	Rs.10,50,00,000/-

4.According to the applicants/plaintiffs, the unpaid balance amount was protected by the undated cheques and Mortgage Deed referred to above. However, the defendants failed to pay the amount resulting in the present suit being filed. The defendants have not only failed to pay the amount, but have caused the cheques to be returned for want of funds.



5.It was further stated that the plaintiffs have accounted the entire sale consideration received from the defendants in the respective income tax returns. The entire sale consideration of Rs.4,96,71,250/- paid by the defendants are shown in the income tax returns filed by the first plaintiff for the assessment year 2011-2012 are shown in the income tax returns of the plaintiffs in the subsequent assessment years.

6.According to the applicants/plaintiffs, they had failed to file the copies of documents relating to the Balance Sheet for the assessment years 2011-2012, 2012-2013 and 2013-2014 and Bank Statements as it could not be obtained immediately which was lying in the Auditor's Office at the time of filing the suit. The original documents of the Balance Sheets and the Bank Statements were now obtained and are being filed through this application in the suit.

7.A counter has been filed by the respondents/defendants 2 to 5 stating that they deny all the allegations made in the present application except those that are specifically admitted herein and put the applicants/plaintiffs to strict proof of the same.

8.The respondents/defendants 2 to 5 stated that the entire sale



consideration as agreed was paid and only thereafter the applicants/plaintiffs had sold the property and same is also reflected in registered Sale Deed which is admitted by the applicants/plaintiffs and hence all the allegations contrary to the same are false, baseless and made for the purpose of this case.

9. The respondents/defendants 2 to 5 further stated that they object to the admission of additional documents submitted by the plaintiff's as there has been a delay of more than 10 years in the submission of documents and they made to understand that Rule 1 of Order XII of the Code of Civil Procedure provides for production of documentary evidence at the first hearing of the suit. The effect of non-production of documents, at the first hearing, is deal with in Rule 2 of Order XIII which reads as follows:

“No documentary evidence in the possession or power of any party which should have been put has not been produced in accordance with the requirements of Rule 1 shall be received at subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for non-production thereof: and the Court receiving any such evidence 'shall record the reasons for so doing'.

10. According to the respondents/defendants 2 to 5, they deny the allegations made in para 8 of the affidavit filed in support of the present



application and submitted that the applicants/plaintiffs have come after a lapse of 10 years after filing the present suit, to mark additional documents viz., Balance Sheet for the assessment years 2011-2012, 2012-2013 and 2013-2014 and bank statements.

11.The respondents/defendants 2 to 5 stated that the applicants/plaintiffs conduct to make disclosures of documents by dribblets and upto the last moment, wholly in disregard of the rules of procedure governing this Court does not deserve any indulgence from this Court. Also, the documents purported to be filed in the present application are wholly irrelevant as they have paid the sale consideration through Demand Drafts and they are not aware of other transactions that had taken place between the applicants/plaintiffs and the other defendants.

12.According to respondents/defendants 2 to 5, they are bonafide purchasers who had purchased the suit property for good and valuable sale consideration.

13.A counter has been filed by the sixth respondent/defendant stating that the Written statement in the above suit and the case is in the stage of the plaintiff's side evidence and he deny the averments and allegations as found



in the supporting affidavit and put the applicants to strict proof to prove the same.

14.The sixth respondent/defendant stated that he deny the averments as found in Paragraph Nos.3 to 6 and put the applicants to strict proof to prove the same and also he vehemently deny the averments as found in Paragraph Nos.7 to 9 and state that the said additional Document No.1 was created with an intention to support the case of the applicants. The additional documents ought not to be taken on the file and this petition lacks bonafide. The reasons attributed by the deponent have no basis and the documents were allegedly dated 8 to 10 years old and no valid reasons have been stated for the said delay. The said Balance Sheets may be made ready as per the convenience of the applicants at the later date to support their case. Hence, he prayed to dismiss this application.

15.Heard Mr.T.Thiyagarajan, learned counsel for the applicants, Mr.D.Vikram V.Jain, learned counsel for the respondents 2 to 5 and Mr.R.Vivekananthan, learned counsel for the sixth respondent.

16.The learned counsel for the respondents have serious objection in allowing this application but the documents should be marked subject to proof, relevancy, genuine and admissibility.



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17. Having satisfied with the reasons stated in the affidavit filed in support of this application and considering the submissions made by the learned counsel on either side, this Court is of the view that the application may be allowed. Accordingly, this application is allowed.

18. Registry is directed to list the matter before the learned Master.

Sd./-VBSJ.

28/04/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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EVK 13/06/2022