



WEB COPY

O.S.A.No.90 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

C O R A M

THE HON'BLE Mr.JUSTICE M.DURAI SWAMY
AND
THE HON'BLE Mr.JUSTICE SUNDER MOHAN

O.S.A.No. 90 of 2022
and C.M.P.No.6657 of 2022

1. N.Prabu Raj
2. N.Swarnalatha
3. R.Sugunavathi
4. Vijayakumari

... Appellants

Versus

- 1.M/s.Poineer Software Park Pvt. Ltd.,
Rep by its Director S.Kakumanu
Having its Office at New No.132,
Old No.33, Nelson Manickam Road,
Aminjikarai, Chennai-600 029

2. S.Vidhyalakshmi

R.Nithiyanandan (deceased)

3. R.Sivanandan

R.Yogarani (deceased)

4. C.Saravanan

5. S.Moses

6. Ve.Al.Sinna Alagappan

... Respondents



O.S.A.No.90 of 2022

WEB COPY

PRAYER: Original side Appeals filed under Order XXXVI Rule 9 of Original Side Rules 8 read with Clause 15 of the Letters Patent Appeal challenging the order dated 03.01.2022 passed by the learned Judge in A.No.3861 of 2019 in C.S.No.163 of 2010 on the file of this Court.

For Appellants ... Mr.V.Radhakrishnan
Senior Counsel
for Mr.M.Vijay Anand

For Respondents ...Mr.P.S.Raman (Senior Counsel)
for Mr.Abishek Jenasenan

JUDGEMENT

Judgment was delivered by SUNDER MOHAN,J.

The Original Side Appeal has been filed to set aside the fair and decretal order dated 03.01.2022 passed by the Learned Single Judge in Application No.3861 of 2019 in C.S.No.163 of 2010. The appellants filed the said applications praying to set aside the Compromise Decree dated 08.12.2016 passed against the appellants/defendants 1, 2, 7 and 11 in C.S.No.163 of 2010 which was passed in terms of Memorandum of Compromise dated 08.12.2016. Originally the suit in C.S.No.163 of 2010



was filed by the first respondent herein, praying for the following reliefs:

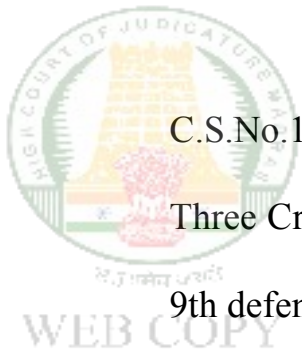
(a) To declare the consent decree passed in C.S.No.573 of 2006 has been vitiated by fraud

O.S.A.No.90 of 2022

collusion and non-est in law and not binding on the plaintiff.

(b) And consequently declare the sale deed dated 29.03.2007 by the Registrar of this Hon'ble Court in favour of the 9th Defendant pursuant to the decree in C.S.No.573/2006 as null and void.''

2.During the pendency of the suit, one Moses the 9th defendant in the suit in C.S 163 of 2010, who is the Power of Attorney of the Appellants, entered into the Memorandum of Understanding dated 20.02.2015 with the first respondent along with the 8th defendant, Saravanan and one Appasamy Real Estate Ltd., Chennai who was not a party to the suit. As per the terms of the said MOU, the first respondent was liable to pay a sum of Rs.10,00,00,000/- (Rupees Ten Crore only) to the 9th defendant/ Moses, out of which, Rs.3,50,00,000/- (Rupees Three Crore and Fifty lakhs only) was to be paid to them at the time of resolving disputes with the appellants. The appellants claimed that in view of the said compromise, they were made to believe that if consent decree is passed in



C.S.No.163 of 2010, they would be paid a sum of Rs.3,50,00,000/- (Rupees Three Crore and Fifty lakhs only) by the first respondent herein through the 9th defendant .

O.S.A.No.90 of 2022

3. Accordingly, the Appellants entered into a compromise and filed a compromise memo dated 08.12.2016, by which, they agreed to pass a compromise decree in C.S.No.163 of 2010 as against them. This Court recorded the said memo of compromise and passed a Compromise Decree on November 2016 decreeing the suit as prayed for. It is the case of the appellants that though they had given consent to the decree pursuant to the Memorandum of Understanding dated 20.02.2015 entered into between the parties, no payments were made to them as per the MOU inspite of several repeated demands and requests. They alleged that a fraud was played on them and hence the consent decree is liable to be recalled.

4.The first respondent filed a counter in the said application and contended that as per the MOU dated 20.02.2015, payments were due to be paid only to the 8th and 9th defendants; that the appellants were not parties to the MOU; and that there is no payment due to the 8th and the 9th defendant as per the MOU.



5.The learned Single Judge dismissed the application on two grounds:

(A) That there was no material on record to show that the plaintiff/first respondent herein had defrauded the appellants or the Judicial process.

O.S.A.No.90 of 2022

(B) That when substantial part of the MOU was performed, it would be difficult for the Court to recall a decree merely because certain amounts payable were not paid.

6.Aggrieved by the order of the learned Single Judge, the appellants have filed the above appeal.

7.Heard Mr. V.Radhakrishnan, Senior Counsel for Mr.Vijay Anand, learned counsel for the petitioners and Mr.P.S.Raman, learned Senior Counsel for Mr.Abishek Jenasenan, learned counsel for the first respondent.

8.Mr.V.Radhakrishnan, the learned Senior counsel for the appellants reiterated the submissions made before the learned Single Judge that no money as per the MOU dated 20.12.2015 was paid to them and that



the first respondent played fraud on the appellants and thereby made them to give consent to the decree. The learned senior counsel for the appellants also submitted that the application to set aside the consent decree was maintainable since a separate suit to set aside the compromise decree was barred in view of Order XXIII Rule 3A of CPC . In support of the said submission, the learned senior counsel relied upon the decisions of the

O.S.A.No.90 of 2022

Hon'ble Supreme Court reported in ***2022 SCC Online SC 165 [Sree Surya Developers and Promoters Vs. N.Sailesh Prasad and Others]*** and ***(2021) 9 SCC 114 [R.Janakiammal Vs. S.K.Kumarasamy]***

9. As regards the maintainability of the Application, the legal position is very clear and there cannot be any dispute over that position that an application is maintainable. Therefore, the only point involved in this Appeal is as to whether the appellants were defrauded by the first respondent and were made to submit to the decree pursuant to the fraud. A reading of the compromise memo dated 08.12.2016 would show that though there is a vague reference about a compromise entered into between 8th and 9th defendants in C.S.No.163 of 2010, the first respondent and one Appasamy Real Estate Ltd., Chennai, we find no reference to any payments that the plaintiff/first respondent were allegedly liable to make to the Appellants. Secondly, the Memorandum of Understanding was not placed



before the learned Judge, who passed the compromise decree and the compromise decree was not based on the terms of the MOU dated 20.02.2015. Thirdly, the appellants were not parties to the MOU and the first respondent had only agreed to pay the 9th defendant, viz., Moses, who was the Power of Attorney Agent for the Appellants. The MOU was not

O.S.A.No.90 of 2022

entered in the names of the Appellants. Thus, there was no agreement between the appellants and the plaintiff/first respondent herein. Fourthly, the

9th defendant, viz., Moses, who was entitled to receive the payments from the first respondent as per the MOU, had not challenged the consent decree passed against him alleging that payments were not received by him. Thus, it cannot be said that the first Respondent is liable to make payments to the Appellants. If the Power of Attorney viz., the 9th defendant has not rendered proper accounts, the Appellants, can only pursue legal action against him.

10. The learned senior counsel for the Appellants submitted that two other parties to the suit, who consented to the Compromise Decree, were paid money in terms of the MOU.



11. In our view that cannot be a ground to hold that the first respondent /plaintiff is liable to make payments to the Appellants in terms of the Compromise Decree or the MOU.

12. For the foregoing reasons, we hold that there is nothing to suggest that the first Resondent/Plaintiff played fraud on the appellants and that the consent decree was obtained by fraud. We are of the view that

O.S.A.No.90 of 2022

there is no merit in this appeal. Hence, the Original Side Appeal stands dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

[M.D.J] [S.M.J]

15.06.2022

Index : Yes/No

Internet : Yes

Speaking/Non-Speaking orders

vsn



WEB COPY



O.S.A.No.90 of 2022



WEB COPY



O.S.A.No.90 of 2022

M.DURAI SWAMY. J,
and
SUNDER MOHAN J,

vsn



WEB COPY



O.S.A.No. 90 of 2022
and C.M.P.No.6657 of 2022

15.06.2022