



C.S.No.394 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 394 of 2019

- 1.Mr.P.R.Rajaseharan
- 2.Mr.P.R.Balaji
- 3.Mr.P.R.Vijaykumar

...Plaintiffs

Vs.

- 1.Indian Bank,
ARMB-II,
Represented by its General Manager,
No.55, Ethiraj Salai,
Chennai - 600 008.
- 2.Manohar Prasad
Proprietor,
M/s.Asian Capital Consolidated Fund,
No.2, Sarangapani Street,
T.Nagar,
Chennai - 600 017.
- 3.M/s.J.D.A.Consultancy Services Pvt. Ltd.,
represented by its Managing Director,
1st Floor, Casa Blanca Complex,
Casa Major Road, Egmore,
Chennai - 600 008.
- 4.Kannammal
- 5.Dilli (Alias) Ayyakkanu Naicker
- 6.Munusamy Naicker
- 7.Chinnadurai



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8.Munniamal

9.Padmavathy Ammal

10.M/s.Ravishankar Industries Pvt.Ltd.

(Formerly known as Ravishankar Films (P) Ltd.,
No.2, Sarangapani Street,
T.Nagar,
Chennai - 600 017.

11.Manohar Prasad

12.M/s.Asian Capital Consolidates
& Holdings Pvt. Ltd.,
No.2, Sarangapani Street,
T.Nagar,
Chennai - 600 017.

13.Central Bank of India

Rep.by its Authorised Officer
No.28, II Main Road,
Kasthuribai Nagar, Adyar
Chennai - 600 020.

14.Palaniappa Estates

Rep.by its Proprietor, S.Annamalai
22/77, Venkatarathinam Nagar,
Adyar,
Chennai - 600 020

15.M.Goopalakrishnan

Former Chairman & Managing Director,
Indian Bank,
Old No.11 - New No.5,
III Main Road, Nehru Nagar,
Adyar, Chennai - 600 020.

16.S.Maheswari

17.S.Palaniappan

...Defendants

Prayer : Petition filed under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree against the defendants as under:

a) For a Declaration that the plaintiffs are not bound by the proceedings created by M/s.Ravishankar Industries Pvt.Ltd, the 10th Defendant and the 1st



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Defendant Bank in respect of the plaint schedule property in O.A.No.375 of 1997 on the file of the Debts Recovery Tribunal-I, Chennai, as they are the bonafide purchasers of the suit property or for any reasons, if this Hon'ble Court holds that the plaintiffs are not the bonafide purchasers, direct the defendants 4 to 9, 14 & 15 to pay such sum that may be due and payable in respect of the plot purchased by the plaintiffs covered by the Debts Recovery proceedings initiated as against the borrowers and the guarantors by the 1st Defendant and the properties covered therein and direct the first defendant to clear the encumbrance by executing a deed of disclaimer over the plaint schedule property;

b) For a Declaration that the purported compromise order dated 21.11.2000 passed in O.A.No.375 of 1997 as merged with DRC No.187 of 2001 on the file of the Debts Recovery Tribunal-I, Chennai, is illegal, invalid and non-est in the eyes of law, and consequently not binding upon the plaintiffs and their property, more fully described in the plaint schedule hereunder;

c) For a Declaration that the sale certificate issued in favour of the 3rd Defendant by the Recovery Officer, Debts Recovery Tribunal-I, Chennai pursuant to DRC No.187 of 2001 dated 03.01.2007 is illegal, invalid and non-est in the eyes of law, and not binding upon the plaintiffs and their property,

d) For a permanent injunction restraining the 1st and 3rd defendants or anyone claiming through them from enforcing the rights derived pursuant to Sale Certificate dated 03.01.2007 issued subsequent to the purported compromise dated 21.11.2000 as merged with DRC No.187 of 2001 on the



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file of the Debts Recovery Tribunal-I, Chennai, as against the plaintiffs or the suit property, more fully described in the plaint schedule hereunder;

e) for the costs of the suit.

For plaintiffs :Mr.R.Thiagarajan

For D1 :M/s.Aiyar & Dolia

For D3 :Mr.G.Mohanakrishnan

For D2, D4 to D17 : No Appearance

ORDER

The suit has been filed for a declaration that the plaintiff was not bound by the encumbrances created by M/s.Ravishankar Industries Pvt.Ltd. the 10th defendant and the 1st defendant/Indian Bank with respect to the property mentioned in the schedule to the plaint which was the subject matter of O.A.No.375 of 1997 on the file of the Debts Recovery Tribunal-I, Chennai and that the plaintiff is *bonafide* purchaser of the suit property and for a declaration that a compromise order dated 21.11.2000 passed in O.A.No.375 of 1997 has merged with DRC No.187 of 2001 on the file of the Debt Recovery Tribunal-I, Chennai and is invalid and for a declaration that the sale certificate issued in favour of the 3rd defendant by the Debt Recovery Officer,



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Chennai pursuant to DRC No.187 of 2001 dated 03.01.2007 is invalid and for a permanent injunction, restraining the first and third defendants from enforcing the rights derived pursuant to the sale certificate dated 03.01.2007 and for the costs of the suit.

2. Suit summons had been directed to the defendants and since they had not filed their written statements, they had been set ex-parte by an order dated 01.03.2021.

3. The plaintiff was thereafter directed to tender evidence. The first plaintiff Mr.P.R.Rajaseharan examined himself as P.W.1 and filed his proof affidavit and marked Exs.P1 to P27.

4. Heard Mr.R.Thiagarajan, learned counsel for the plaintiff.

5. The short facts are that, the 4th-9th defendants had availed loan from the first defendant/Indian Bank, ARMB-II at Chennai. They did not repay the loan. Therefore, the first defendant had initiated proceedings under the Debt Recovery Act, 1993 in O.A.No.375 of 1997 before the Debt Recovery Tribunal - I at Chennai. The 10th defendant had entered into an one time settlement proposal with the first defendant and as security thereof, the property belonging to the plaintiff was offered as security. As a matter of fact the property actually belonged to the 4th-9th defendants who had executed a



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power of attorney in favour of M/s. Palaniappa Estates who was shown as the 11th defendant herein represented by its proprietor Mr.P.L.Sundaram but such power of attorney did not authorize him to borrow money. However, it is complained by the plaintiff that the first defendant and the 10th-14th defendants had colluded with each other and brought out a compromise in O.A.No.375 of 1997 by which they had created an encumbrance over the property. Subsequently the property which originally belonged to 4-9 defendants was brought to sale, consequent to sale certificate issued by the Debt Recovery Tribunal in D.R.C.No.187 of 2001.

6. In this connection, evidence had been adduced by the plaintiff/P.W.1. The General Power of Attorney dated 27.03.1992. executed by Mrs. Kanammal and others to M/s. Palaniappa Estates, the 14th defendant was marked as Ex.P1. The Patta and Chitta in the name of the plaintiff was marked as Ex.P2 and the Adaangal Extract pertaining to the suit property was marked as Ex.P3. The planning permission given by the Commissioner of Chithlapakkam Panchayat was marked as Ex.P4. The Plaintiff therefore stated that he is the owner of the property. The office copy of the complaint dated 29.06.2018 by the plaintiff to the Inspector of Police, Central Crime Branch (Anti Land Grabbing Cell), Vepery, Chennai was marked as Ex.P5. The copy



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of electricity-temporary power supply card was marked as Ex.P6. The copy of the encumbrance certificate was marked as Ex.P7. The certified copy of the memorandum of understanding was marked as Ex.P9. The certified copy of the Original Application in O.A.No.375 of 1997 was marked as Ex.P10. The Memo of Compromise in C.S.No.376 of 2001 was marked as Ex.P11. The certified copy of the Recovery Certificate in D.R.C.No.187/2001 was marked as Ex.P12. The order of attachment by the Recovery Officer, DRT-I was marked as Ex.P13. The certified copy of the Auction proceedings in D.R.C No.187/2001 was marked as Ex.P14. The certificate of sale of immovable property executed by the Recovery Officer in favour of J.D.A Consultancy Services Pvt.Ltd. was marked as Ex.P15. The certified copy of Full Satisfaction Memo filed by Indian Bank in O.A.No.375 of 1997 was marked as Ex.P16. The certified copy of the order of the learned Presiding Officer, DRT-1, Chennai in O.A.No.375 of 1997 was marked as Ex.P17. The certified copy of Memo filed by the Bank for return of documents was marked as Ex.P18. The certified copy of Clarificatory of the learned Presiding Officer, DRT-1, Chennai was marked as Ex.P19. The certified copy of the Report filed by the Recovery Officer in D.R.C.No.187 of 2001 was marked as Ex.P20. The certified copy of the sale proclamation for Auction Sale of the property



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scheduled was marked as Ex.P21.

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7. It is the specific case of the plaintiff that this compromise had been brought out in a collusive manner among M/s.Palaniappa Estates and M/s.Ravishankar Industries and the first defendant/Indian Bank.

8. It is stated though there was no specific power authorizing the 14th defendants/Palaniappa Estates to offer the property of the plaintiff as collateral security, however, violating the terms of the power of attorney, they had so offered the property as collateral security for the loans advanced by the first defendant to the other defendants.

9. Owing to non repayment of the said loan, the property of the plaintiff was brought to sale. It had been stated that the entire proceedings, before the DRT was collusive in nature and fraudulent. It is for that reason, seeking and to set aside such fraudulent proceedings that the suit has been filed for the reliefs that the said compromise or the sale certificate issued by the Debt Recovery Tribunal would have no bearing on the title of the plaintiff and that they are not binding on the plaintiff. The plaintiff, also, filed the suit claiming a declaration that they are not bound by the proceedings before the Debt Recovery Tribunal. In fact it would mean that the title of the plaintiff is retained by the plaintiff and no title had flowed owing to the fraudulent



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compromise effected among the first defendant/Indian Bank, the 10th defendant/M/s.Ravishankar Industries Pvt.Ltd. and the 14th defendant/Palaniappa Estates.

10. It has been urged that fraud is evident on the face of Ex.P1 to offer the property as collateral security, when such power had not been so granted. Offering the property as collateral security was to the adverse interest of the principal and an act of fraud. It was urged that the entire transaction stands vitiated owing to collusion among the named defendants.

11. P.W.1 in his evidence, had, quite apart from the documents mentioned above stated that he had also filed the certified copy of the layout PPD/LO No.73/91 issued by MMDA which was marked as Ex.P22. The certified copy of the planning permission was marked as Ex.P23. The Memo of Compromise in O.A.No.375 of 1997 was marked as Ex.P24. The online certified copy of the deed of sale executed by Kannamal and others, rep.by their general power of Attorney agent M/s.Palaniappa Estates in favour of the Planitiffs, represented as Doc.No.5605/2005 in the file of SRO, Neelankari was marked as Ex.P25. The certified copy of the order passed by the Hon'ble Supreme Court in Crl.Appeal Nos.1080-1085/2009 was marked as Ex.P26.

12. It had been claimed that as *bonafide* purchaser the, plaintiff had no



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notice of the earlier transactions or knowledge that the property had been offered as collateral security for the loans availed by the 10th defendant.

13. The plaintiff's claim is that he is in possession of the property, and while instituting the suit, the plaintiff had also filed O.A.No.630 of 2019 and a learned Single Judge of this Court by an order of this Court dated 24.10.2019 had observed that a prima facie case had been made out by the plaintiff for grant of interim order and had also granted interim order protecting possession of the plaintiff. The plaintiff continues to be in possession.

14. Though counsels had appeared on behalf of the defendants, the defendants had taken a conscious decision not to participate any further in the suit proceedings and had not filed written statements. Frustrated at the number of opportunities granted for filing such written statements, a learned single judge had set them ex-parte on 01.03.2021.

15. Learned counsel for the plaintiff, Mr.Thiagarajan pointed out that an earlier suit had been filed seeking similar relief in C.S.No.768 of 2010. Even in that particular Civil Suit the defendants had not participated in the judicial proceedings.

16. In that particular case, a learned Single Judge of this Court after examining the averments in the plaint and the documents filed, had thought it



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would only be appropriate that the suit is decreed as prayed for with costs. It is therefore also contended by learned counsel for the plaintiff, Mr.R.Thiagarajan that the plaintiff being on the same footing, and since consistency in the nature of the order passed is one of the essentials of the judicial system, therefore urged that the plaintiff herein should also benefit from similar order and the suit be decreed.

17. The plaintiff had purchased the property. The sale deed has been produced. The Court was of the prima facie opinion that the plaintiff was in possession. That particular property had been unlawfully offered as security for loan obtained when there was no right or authority to offer the property as collateral security.

18. The Plaintiff has come to this Court on the basis of purchase of the plot bearing No.27 in an approved layout called "Rajeev Garden" at Okkiyam Thoraipakkam Village admeasuring plot 2400 Sq.ft. from the owners Mrs.Kannamal and others, acting through their Power of Attorney Agent, M/s.Palaniappa Estates. The sale deed dated 27.09.2005 was registered in office of the Sub Registrar, Neelankarai, Chennai. That particular document had been produced and marked as an Exhibit.

19. In view of the facts and evidence presented, I have no hesitation in



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holding that the plaintiff has made a case for decreeing the suit. The suit is decreed as prayed for with costs.

03.11.2022

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking Order

Witness Examined on the side of the plaintiffs:-

Mr.P.R.Rajaseharan (P.W.1)

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

1. The General Power of Attorney dated 27.03.1992. executed by Mrs. Kanammal and others to M/s. Palaniappa Estates, the 14th defendant was marked as Ex.P1

2. The Patta and Chitta in the name of the plaintiff was marked as Ex.P2

3.The Adaangal Extract pertaining to the suit property was marked as Ex.P3..

4.The planning permission given by the Commissioner of Chithlapakkam Panchayat was marked as Ex.P4.



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5. The office copy of the complaint dated 29.06.2018 by the plaintiff to the Inspector of Police, Central Crime Branch (Anti Land Grabbing Cell), Vepery, Chennai was marked as Ex.P5

6. The copy of electricity-temporary power supply card was marked as Ex.P6.

7.The copy of the encumbrance certificate for the period 01.01.1996 to 24.01.2008 was marked as Ex.P7.

8. The original statement of accounts for the period 01.04.2018 to 18.01.2019 issued by the Central Bank of India stands in the name of the plaintiffs was marked as Ex.P8.

9. The certified copy of the Memorandum of Understanding between M/s.Palaniappa Estates and M/s.Asian Capital Consolidated Fund dated 17.02.1992 was marked as Ex.P9.

10.The certified copy of the Original Application in O.A.No.375 of 1997, on the file of the Debts Recovery Tribunal-I, Chennai was marked as Ex.P10.

11.The Memo of Compromise in C.S.No.376 of 2001, between P.L.Sundaram, Proprietor, M/s.Palaniappa Estates and A.Manohar Prasad, Proprietor, M/s.Asian Capital Consolidated Fund dated 15.05.2001. was



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marked as Ex.P11.

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12. The certified copy of Recovery Certificate in D.R.C.No.187/2001 dated 09.12.2001 was marked as Ex.P12.

13. The certified copy of Order of Attachment by the Recovery Officer, DRT-I, Chennai dated 22.11.2002.

14. The certified copy of Auction proceedings in D.R.C No.187/2001 - Extract dated was marked as Ex.P14.

15. The certified copy of certificate of sale of immovable property executed by the Recovery Officer in favour of J.D.A.Consultancy Services Pvt.Ltd dated 03.01.2007 was marked as Ex.P15.

16. The certified copy of Full Satisfaction Memo filed by Indian Bank in O.A.No.375 of 1997 dated 28.03.2007 was marked as Ex.P16.

17. The certified copy of the order of the learned Presiding Officer, DRT-1, Chennai in O.A.No.375 of 1997 and other cases dated 10.04.2007 was marked as Ex.P17.

18. The certified copy of Memo filed by Bank for return of the documents dated 10.04.2007 was marked as Ex.P18.

19. The certified copy of clarificatory of the learned Presiding Officer, DRT-1, Chennai regarding return of documents dated 10.04.2007 was marked



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as Ex.P19.

20. The certified copy of Report filed by the Recovery Officer in D.R.C.No.187 of 2001 dated 06.06.2007 was marked as Ex.P20.

21. The certified copy of Sale Proclamation for Auction Sale of the property scheduled for 27.01.2006 dated 22.12.2005 was marked as Ex.P21

22. The certified copy of the Layout PPD/LO No.73/91 issued by MMDA dated 13.02.1991.

23. The certified copy of the planning permission from MMDA dated 03.05.1991.

24. The certified copy of the memo of compromise in O.A.No.375 of 1997 dated 21.11.2000.

25. The online certified copy of the Deed of Sale executed by Kannammal & others, Rep.by their General Power of Attorney agent M/s.Palaniappa Estates in favour of the Plaintiffs-Doc.No.5605/2005-SRO, Neelankarai dated 27.09.2005.

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26.The certified copy of the order passed by the Hon'ble Supreme Court



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in Crl.Appeal Nos.1080-1085/2009 dated 15.05.2009.

27.The certified copy of the order passed in W.P.No.28100/2008 dated 29.04.2010.

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