



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2022

PRONOUNCED ON : 23.02.2022

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.92 of 2014

1. Sakthi Durga Builders & Developers,
Rep. by its Managing Partner,
No.26, Hunters Road,
Vepery, Chennai - 600 007.
2. R.S.Krishnan,
Managing Partner,
Sakthi Durga Builders and Developers,
B-29, Anna Nagar East,
Chennai - 600 102.
3. M.N.Krishnan,
Partner,
Sakthi Durga Builders and Developers,
No.2, Easwardass Lala Street,
Triplicane, Chennai - 600 005. ...Appellants/Defendants

/versus/

P.S.Raman,
No.1, Thiruvengada Nagar,
Ambattur,
Chennai - 600 053 ...Respondent/Plaintiff

Prayer:- This Appeal Suit is filed under Section 96 of the Code of Civil Procedure, against the Judgment and decree of the Second Additional District Judge, Thiruvallur at Poonamallee dated 25.07.2013 passed in O.S.No.141 of 2009.

For Appellants : Mr.R.Parthasarathy

For Respondent : Mr.V.Balasubramanian

J U D G M E N T

Plaint averment in short:-

The plaintiff as owner of the land measuring an extend of 10,450 sq.ft at No.72, Thiruvengada Nagar, Ambattur, Chennai, and the first defendant a construction firm represented by the second and third defendants as its Managing Partners, entered



into an memorandum of understanding (MoU) on 20.02.1994 to promote part of the land measuring 5625 sq.ft.

2.As per the terms of the MoU, the plaintiff handed over possession of 5625 sq.ft of his land to the defendants and handed over the title documents in original. The asbestos sheet shed and the 5 feet compound wall was demolished to put up the apartment consisting of 7 flats.As consideration, the defendants agreed to pay Rs.1,50,000/- and hand over 2 flats constructed in 1,650 sq.ft at the estimated costs of Rs.8.25 lakhs. A general power of attorney dated 08.06.1994 was executed by the plaintiff in favour of the first defendant. Further, the defendants orally agreed to pay Rs.2,50,000/- as security deposit and Rs.1,00,000/- to T.I.I.C towards discharge of the loan availed by the plaintiff which was to be adjusted towards the consideration of Rs.1,50,000/- referred in the Memorandum of Understanding.

3.A cheque for a sum of Rs.1,00,000/- given by the defendants in favour of TIIC returned for want of funds. Later, as against the agreed sum of Rs.1,50,000/-, the defendants paid only Rs.75,000/- to TIIC on behalf of the plaintiff and the balance Rs.75,000/- not paid. The defendants had no wherewithal to complete the project within 24 months as agreed and they extended the work for three years causing hardship to the plaintiff. The defendants pledged the entire extend of land measuring 10,450 sq.ft by misusing the original document handed over to them and the power of attorney given to them. Learning about this, criminal prosecution was initiated against the defendants and the power of attorney deed was cancelled on 26.03.1996. Despite due notice of the cancellation of power of attorney, the defendant continue to construct and sell the flats without any authority. Contrary to the agreement, the defendant instead of ground plus 2 floors had constructed an additional floor without plaintiff's consent and permission. Also had put up an additional flat measuring 725 sq.ft in the ground floor in violation of the planning development rules.

4.After an inordinate delay of 3 years, the defendant completed the construction and without any valid authorisation had sold 10 flats out of 13 flats. Claiming that the act of the defendants had caused huge monetary loss, the suit is filed for the following reliefs.

(a).Mandatory injunction directing the defendants to hand over 2 flats measuring the 1,650 sq.ft on the ground and first floor along with another 825 sq.ft built up area in the additional floor/space constructed without the plaintiff's permission or authority.

(b).Consequently directing the defendants to hand over the original sale deed dated 14.07.1978 registered as document No.1409/78 pertaining to the plaintiff's property at Door No.A1,



Thiruvengada Nagar, Ambathur, Chennai-53.

(c).Directing the defendants to pay a sum of Rs.1,33,500/- with interest at 24% on Rs.75,000/- from date of plaintiff till date of realization.

(d).Directing the defendants to pay damages of Rs.1,56,000/- to the plaintiff, with interest at the 24% from date of plaint till date of realization.

e).Directing the defendant to pay Rs.1,45,000/- to the plaintiff in lieu the 290 sq.ft the plaintiff is entitled in the additional flat measuring 825 sq.ft constructed by the defendants.

5. The defendants contention in the written statement:

The defendants admit the averment that they entered into the memorandum of understanding on 20/02/1994 with the plaintiff to promote part of his land on specific terms as found in the Memorandum of understanding. As desired by the plaintiff, a sum of Rs.1,50,000/- was paid to T.I.I.C to discharge their loan in the following manner:-

1.Pay Order dated 24.02.1994 for Rs.40,000/- drawn on IOB.

2.Pay Order dated 24.02.1994 for Rs.35,000/- drawn on IOB.

3.Cheque bearing No.164315 dated 24.02.1994 for Rs.75,000/- drawn on IOB.

6.After the payment of the above amount, when the defendants sought for the original title document, they came to know that the plaintiff had mortgaged the entire property with Canara Bank for the purpose of working capital required for his proprietary concern M/s J.S.Enterprises. The plaintiff requested to pay a further sum of Rs.4 lakhs to clear the loans availed by him in T.I.I.C and Canara Bank. Therefore, the defendants arranged finance through their known source viz., a private financier by name Arjundos Pokkardos on a specific understanding that the plaintiff will clear the loan within four months. Accordingly, the loan was availed in the name of first defendant firm and the plaintiff in turn executed pronote in favour of the first defendant firm. On clearing the dues with TIIC and Canara Bank from the finance availed privately, the original title document was released and handed over to the defendant as collateral security for the loan amount of Rs.3.92 lakhs. The plaintiff failed to clear the said loan as promised leading to heavy loss to the defendants by way of paying interest to Arjundos Pokkardos at the rate of 33%.

7.The plaintiff without discharging the said loan and ignoring his liability, sought delivery of 1650 sq.ft of the build up area and also unilaterally cancelled the power of attorney without notice. Unknowing about the cancellation, the



defendants filed a suit in O.S.No.5163/1997 on the file of City Civil Court, Chennai, seeking injunction restraining the plaintiff from cancelling the Power of Attorney and few more suits for recovery of money from the plaintiff. The plaintiff meanwhile filed injunction suit against the defendants and TNEB, SRO, Ambattur and sought for various interim reliefs in order to curb and restrain the defendants from realising their investment made in the project.

8. The Memorandum of understanding does not indicate that the defendants should put up only 7 flats as alleged in the plaint. At no point of time the defendant agreed to make security deposit of Rs.2,50,000/-. As per memorandum of understanding, the agreed amount of Rs.1,50,000/- was paid to TIIC on behalf of the plaintiff. The title deed was handed over to the defendants as collateral security for the loan of Rs.3.92 lakhs. The delay in completing the project was due to the non cooperation of the plaintiff, who refused to sign the applications in time for submission before the authorities for building sanction and other formalities. The cancellation of power of attorney was not informed to the defendants. The defendants having paid valuable consideration had complete right and authority to deal with the property. The defendants have decided not to hand over the 1650 sq.ft of build up area to the plaintiff because of the pending litigation before the III Additional Judge, City Civil Court, Chennai and because of the mortgage created by the plaintiff in favour of the defendants.

9. The Trial Court, on considering the pleadings had framed the following issues :-

1).Whether this Hon'ble Court has jurisdiction to entertain the suit for the reliefs sought for in the plaint?

2).Whether the suit as framed before this Hon'ble Court is maintainable?

3).Whether the plaintiff is entitled to the relief of mandatory injunction directing the defendants to handover 2 flats measuring of built-up area in the additional floor/ space constructed without the plaintiff's permission or authority?

4).Whether the defendants are liable to handover the original sale deed dated 14.07.1978 pertaining to plaintiff's property?

5).Whether the defendants are liable to pay a sum of Rs.1,33,500/- together with 24% p.a on Rs.75,000/-.



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6).Whether the defendants are liable to pay damages of Rs.1,56,000/- to the plaintiff, with interest at the rate of 24% p.a?

7).Whether the defendants are liable to pay a sum of Rs.1,45,000/- to the plaintiff in lieu of 290 sq.ft and whether the plaintiff is entitled in the additional construction of 825 sq.ft?

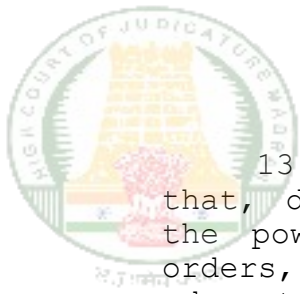
8).To what other reliefs, the plaintiff is entitled to?

10.The Trial Court, after considering the evidence placed by the parties, held that there is no infirmity in the suit as framed. The plaintiff is entitled for the mandatory injunction in so far as 1650 sq.ft of build up area as agreed under the MoU Ex.A-2. The plaintiff is entitled for recovery of Rs.75,000/- with 12% interest from 20.02.1994 till the date of decree (25.07.2013) and from that date till realisation 6% interest with costs. In respect of other reliefs, the suit was dismissed.

11. Grounds of appeal:-

The appeal is filed by the defendants against the judgement and decree of the trial court which partly allowed the suit as indicated above.

12.The learned counsel for the appellants submitted that, with reference to the memorandum of grounds of appeal the Trial Court had erroneously entertained the suit which has sought specific performance under the garb of mandatory injunction. The Trial Court failed to appreciate the vital fact that the Memorandum of understanding dated 20.02.1994 (Ex.A-2) and the General Power of attorney dated 08.06.1994 was cancelled on 26.03.1996 unilaterally without intimation. Therefore, the cause of action for the relief of mandatory injunction arose on 23.06.1994 itself. Hence, the suit filed on 11.10.1999 is barred by limitation.Even though no plea regarding limitation was raised in the written statement, the defence of limitation will not get extinguished. The Trial Court completely failed to appreciate the fact that the defendants were forced to get committed financially to a tune of Rs.3.92 lakhs with a private financier on the promise of the plaintiff who undertook to clear the loan within 4 months and executed promissory note. Regarding the payment of Rs.75,000/- to the plaintiff, the Trial Court has ignored the plea of the defendants that the said money was paid to TIIC to discharge the plaintiff loan as directed by the plaintiff. In this regard, the Trial Court failed to give due consideration for the Ex.B-1, Ex.B-2, Ex.B-3, Ex.B-5 and Ex.B-6.



13.The learned counsel for the appellants would also submit that, due to the respondent act of unilateral cancellation of the power of attorney deed and subsequent suits and interim orders, the appellants were unable to sell the apartments for adequate price and still three units are left unsold, which includes the two units for which the trial court has passed the mandatory decree in favour of the plaintiff/respondent. As per the terms of the memorandum of understanding, the plaintiff is due to get two flats in build up area of 1650 sq.ft alone and in fact the plaintiff owe money to the defendant and not otherwise.

14.Per contra, the learned counsel for the respondent submitted that, the plaintiff entered into memorandum of understanding with the defendants on trust since the second defendant was related to the plaintiff's wife. The memorandum of understanding was not an usual joint venture agreement containing all micro details. Taking advantage of that, the defendants started deviating the terms orally agreed, which lead to cancellation of the power of attorney with due intimation. The Trial Court did not consider the terms agreed by parties orally, but considering the terms of written contract Ex.A-2 and had restricted the relief to the extend that the defendants have to deliver 1650 sq.ft of build up area to the plaintiff as per the terms of Memorandum of understanding and having failed to prove the payment of Rs.75,000/- out of agreed cash consideration of Rs.1,50,000/- decreed the suit to that extend and disallowed the other portion of the prayers. Ex.B-1, Ex.B-2, Ex.B-3, Ex.B-5 and Ex.B-6 which are receipts regarding payment to TIIC and other documents are only to prove discharge of TIIC loan of the plaintiff to an extend of Rs.75,000/-.The defendants attempt to take advantage of certain cheques issued but failed to be honoured for want of funds rightly negated by the Trial Court and therefore, no error in the Trial Court finding.

Point for consideration:-

Whether the appellants herein have caused any breach of the terms of the agreement as found in the Memorandum of Understanding dated 20.02.1994 which is marked as Ex.A.4 if so, whether the respondent/plaintiff is entitled for the relief of mandatory injunction granted by the Trial Court and money decree?

15.Heard the Learned Counsels for the appellants and the respondent. Record perused.

16.To prove his case, the plaintiff has mounted the witness box and had been examined as P.W.1, 22 documents has been filed on his behalf. The memorandum of understanding dated 20.02.1994, which is marked Ex.A.2 contains the following terms:-



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"All documents in original to the party of the first part for the purpose of acquiring the required permissions, sanctions, permits and sanction from bodies like (i).MMDA, (ii).Corporation of Madras (iii).CMWSSB (iv).T.N.E.B (v).Town planning and other body those sanction or permission may be required for construction of the said apartments.

Provide necessary facilities for smooth functioning of the project.

3.Deliver vacant possession of the proposed land (herein mentioned in the annexure "A").

4.Register in favour of respective buyers, undivided share of the property as and when required by the party of first part. The agreement has been made with the following considerations:

(i).Rs.1,50,000/- (Rupees one lakh Fifty thousand only) will be paid by cheque Nos.164315 dated 24.02.2014, for Rs.40,000/- and Rs.1,35,000/- respectively Cheque No.164315, drawn on Indian Overseas Bank for Rs.75,000/-

(ii).1,650 square feet (One thousand six hundred and fifty) square feet of constructed are distributed in the ground floor and first floor of the proposed apartments valued at Rs.500/-per square feet totally Rs.8.25 lakhs (Rupees Eight lakhs twenty five thousands only).

17.The Trial Court has granted the relief of mandatory injunction directing the defendants to deliver two apartments with build up area of 1650 sq.ft and also money decree for a sum of Rs.75,000/- with interest.

18.The memorandum of understanding has been following by the General Power of attorney executed in favour of the defendants on 08.06.1994 and same has been marked as Ex.A.1. The General Power of Attorney given by the plaintiff in favour of R.S.Krishnan (2nd defendant) Managing Director of Shakti Durga Engineering is to represent and to attend on behalf of the plaintiff before M.M.D.A, Collector Office, Madras Corporation, Electricity Board and other local bodies for obtaining planning permissions for the construction and also for other incidental purposes like presentation of documents for registration, negotiate and finalise the sale agreement on his behalf and



execute sale deed in respect of the schedule property and to receive sale consideration from the prospective purchasers. This General Power of Attorney deed had been cancelled subsequently by the plaintiff on 26.03.1996.

19. The case of the plaintiff is that, after the cancellation of General Power of Attorney, the defendants have sold the flats to third parties under Ex.A.3 to Ex.A.11. The plaintiff admits that the title deed was handed over to the defendants and he had received Rs.75,000/- out of Rs.1,50,000/- which was agreed to be paid as cash consideration. While so, when the general power of attorney is coupled with passing of consideration, unilateral cancellation of General Power of attorney without the consent and knowledge of the defendant has to be viewed as non est. The plaintiff contends that he has cancelled the General Power of Attorney dated 26.03.1996 and consequently the memorandum of understanding (Ex.A.2) also had come to an end, but at the same time, he has filed a suit for mandatory injunction in terms of memorandum of understanding.

20. The Trial Court, on considering these had concluded that the defendants had taken possession of the land and put up construction as per memorandum of understanding. The claim of the plaintiff that, the memorandum of understanding has been cancelled and the General Power of Attorney got cancelled expose the weakness in the pleadings of the plaintiff. However, observing that it is not desirable to place undue emphasis on forms, instead substance of pleading should be considered, had taken note of the fact that as per the memorandum of understanding the plaintiff has consciously parted away the title deed of the document and 5625 sq.ft of vacant land. The defendants, after taking possession had constructed apartments and sold it to third parties.

21. According to the defendants they were not aware of the cancellation of general power of attorney till the receipt of the notice marked as Ex.A.12 dated 12.06.1997 so meanwhile had sold all the flats bearing three. In any event, as per the memorandum of understanding, the plaintiff is entitled for 1650 sq.ft of build up area and Rs.1,50,000/- cash as consideration for parting way 5625 sq.ft of land.

22. As rightly pointed out by the Trial Court, the plaintiff cannot ask more than what agreed. The oral pleadings and testimony which is beyond the terms of memorandum of understanding (Ex.A.2) and certain plea which are contrary to Ex.A.2 raised by both the plaintiffs and defendants had been rightly rejected by the Trial Court. The plea of the appellants herein that loan to a tune of Rs.3.92 lakhs was availed for the plaintiff also does not form part of any agreement between the parties and connected suit initiated before different forum has almost come to an logical end.



Before the Trial Court, there is no document adduced by the defendants in respect of transaction pertaining to a loan of Rs.3.92 lakhs. Therefore has been rightly ignored by the Trial Court since it is beyond the scope of the plaint and no counter claim was made by the defendants in the written statement in respect of the alleged loan of Rs.3.92 lakhs.

23.It is also to be noted that the defendants have relied upon Ex.B.1, Ex.B.2, Ex.B.3 which are bank receipt and vouchers for payment of Rs.35,000/-, Rs.40,000/- and Rs.75,000/- in favour of TIIC on 25.02.1994. There is no correlation of these receipts and vouchers to that of the memorandum of understanding (Ex.A.2) entered between the parties. Therefore, the trial Court has not considered these receipts and bank vouchers and the other payments made under Ex.B.5 and Ex.B.6 dated 30.03.1994 which indicates that the payments was made towards M/s.J&S.Industries, Shakti Durga Engineering and they were not payments made on behalf of the plaintiff. Further, Ex.B.5 & Ex.B.6 transaction are new introduction during trial and not supported by pleadings.

24. The contention of the learned counsel appearing for the appellants is that the entire sum of Rs.1,50,000/- was paid to the plaintiff. It is further contended by the learned counsel for the appellants that due to the unilateral cancellation of the General Power of Attorney, the defendants were put to lot of suffering.

25. However, from the sale deeds (Ex.A.3 to Ex.A.11), this Court finds that the defendants have sold all the flats constructed, except 3 flats out of which two flats reserved for the plaintiff as per memorandum of understanding (Ex.A.2). Therefore, the revocation of General Power of Attorney had not caused any serious damage to the defendants.

26. Further, Section 202 of Contract Act, 1856, deals with Termination of agency,says that where an agent has an interest in the property, the power given to the agent cannot be revoked unilaterally. This preposition of law has been reiterated by the Hon'ble Supreme Court judgment in Seth Loon Karan Sethiya -vs- Ivan E.John and others reported in AIR 1969 SC 73, as below:-

"5.There is hardly any doubt that the power given by the appellant in favour of the Bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be



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terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the Bank is irrevocable."

27. On a cumulative assessment of the evidence, the trial Court has rightly rejected the claim of the plaintiff for additional 825 sq.ft of land since it does not form part of memorandum of understanding (Ex.A.2). However, granted the relief of mandatory injunction to deliver 1650 sq.ft build up area. Similarly, the money decree was also based on the documents. The converse plea taken by the defendants that the plaintiff is liable to pay Rs.3.92 lakhs is not supported by any documentary evidence.

28. Therefore, looking from all angle, the trial Court judgment and decree does not warrant any interference. The learned counsel appearing for the appellants would submit that due to interim order and other litigations the appellants were not able to sell the third flat. It is made clear that the respondent/plaintiff shall have no claim over the third flat and his right shall be confined only to the two flats totally measuring 1650 sq.ft only. On payment of the decree amount of Rs.75,000/- inclusive of interest. The appellants are at liberty to sell the third flat without getting any consent from the plaintiff. Accordingly, the Appeal is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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To
The II Additional District Judge,
Poonamallee, Thiruvallur,
Copy To
The Section Officer,
V.R. Section, High Court, Madras.

+2cc to M/s.V.Balasubramanian, Advocate, S.R.No.12080
+2cc to Mr.R.Parthasarathy, Advocate, S.R.No.11750

Appeal Suit No.92 of 2014

RSV(CO)
RGA(09/06/2022)