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Application No.
in C.S.No.485 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2023

PRONOUNCED ON : 07.09.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application No.590 of 2022
in C.S.No.485 of 2001

Sanjay Kumar Gupta ... Applicant / 3rd Defendant

versus

1.Virendra Prakesh Gupta ... 1st Respondent / Plaintiff

N.D.Gupta (Deceased)

2.Devendra Gupta

3.Rajendra Gupta

4.Ashok Gupta

5.M/s.Hotel Picnic Plaza,
Rep. by its Partner N.D.Gupta,
No.2, R.K.Mutt Road,
Mylapore, Chennai-600 004.

6.M/s.Picnic Park Hotels Pvt. Ltd.,
Rep. by its Director Devendra Kumar Gupta,
1132, Poonamallee High Road,
Chennai - 600 003.



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7.M/s.P.A.Hotels Pvt. Ltd.,
Rep. by its Director Devendra Gupta,
No.32, Halls Road,
Egmore, Chennai - 600 008.

8.Chief Manager,
M/s.Indian Bank,
Mylapore Branch,
Chennai - 600 004.

9.Tarun Gupta
10.Arun Gupta
11.Anupama Bansal
12.Latha Gupta
13.Ashok Gupta
14.Vineet Gupta
15.Rajini Gupta
16.Hema Gupta
17.Beena Gupta

... Respondents / Defendants

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with Order VII Rule 11 of CPC, praying to reject the plaint C.S.No.485 of 2001 and dismiss the suit with cost.

For Applicant

: M/s.ARL.Sundaresan
Senior Counsel
for M/s.Sanjay Ramaswami

For Respondent No.1
For Respondent No.2
For Respondent No.3

: Mr.Avinash Wadhwani
: Mr.R.Shanmuham
: Mr.Rahul Balaji



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For Respondent No.4 : Mr.M.Sathyanarayan
For Respondent No.5 : Mr.K.Ramu
For Respondent No.6 : Mr.Karthick Lakshmanan
For Respondent No.7 : Mr.S.D.Venkateswaran
For Respondent No.8 : M/s.Aiyar & Dolia
For Respondent No.11 : M/s.M.Vidya
For Respondent Nos.9, 10, 12 to 17 Service not completed

ORDER

This Application has been filed by the applicant to grant an order to reject the plaint in C.S.No.485 of 2001.

2. Heard the learned Senior Counsel for the applicant and the learned counsels for the respondents 1 to 8 and 11 and perused the materials available on record.

Application in brief:-

3. The applicant is the third defendant. The suit has been filed by the first respondent / plaintiff for the following reliefs:-

“(a) to direct the defendants 1 to 3 to convey / transfer 25% of the share in the assets of M/s.Hotel Picnic Plaza as per Clause 8 of Memorandum of Understanding [MOU] dated 24.05.1998;



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(b) to direct the defendants 1 to 3 partition by means and bounds of the schedule mentioned A to E properties and allot 25% share to the plaintiff;

(c) to direct the defendants 1 to 5 jointly and severally pay to the plaintiff the market value of his 25% share in the assets of the sixth defendant firm as per MOU dated 24.05.1998 along with interest;

(d) to direct the defendants 1 to 5 to render true and proper accounts in respect of the defendants 6, 7 and 8 for the period from 24.05.1998;

(e) to direct the defendants to pay cost of this suit to the plaintiff.”

3.1. The Partnership Deed dated 27.08.1987 was entered into between the applicant and the respondents 2 to 5 under the name and style of M/s.Hotel Picnic Plaza; the applicant and the respondents 2 to 5 had purchased the suit schedule properties measuring an extent of 12,853 sq.ft. at R.K.Mutt Road, Mylapore, Chennai vide Sale Deeds dated 13.04.1987, 15.05.1987, 23.06.1987, 21.08.1987, 31.05.1989 and 22.06.1989; a Hotel was constructed along with commercial complex and the said properties were brought as an asset of the



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partnership firm; the said Hotel consists of 20 rooms, restaurant, bar and a shopping complex.

3.2. Besides Hotel Picnic Plaza, the applicant and respondents 2 to 5 were also carrying on other business activities; since disputes arose, a Memorandum of Understanding [MOU] was entered into between them on 24.05.1998 in order to resolve the disputes among the parties amicably; as per the terms of MOU, the respondents 4 and 5 were entitled to manage, administer and in-charge of running the lodging house in old Block at M/s.Picnic Hotels (P) Ltd. which is comprised of 70 rooms, Marriage Hall, Conference Hall at No.1138, Poonamallee High Road, Chennai; the respondents 4 and 5 were also entitled to take over the licensed bar and to give effect to the same, the shares of the applicant and respondents 2 and 3 were transferred to the respondents 4 and 5.

3.3. The applicant and the respondents 2 and 3 were entitled to manage, administer and in-charge of running the lodging house comprising of 45 rooms, restaurant in the basement and mezzanine floors in old Block at No.1138, Poonamallee High Road, Chennai; the shares of the respondents 4 and 5 were



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transferred to the applicant and the respondents 2 and 3 herein; the applicant and respondents 2 and 3 were exclusively entitled to own, manage, administer and in-charge of the lodging house with 20 rooms, restaurant, bar and shopping complex, which was constructed in the suit 'A' schedule property, without interference or claims from the respondents 4 and 5.

3.4. In view of the reconstituted Partnership Deed dated 24.05.1998, the respondents 4 and 5 had relinquished their rights over the suit 'A' schedule property in favour of the applicant and the respondents 2 and 3; the second respondent passed away on 24.07.2004 and the applicant continues to retain his 1/3rd or 33% share; the third respondent took over 1/3rd share of the second respondent and now owns 2/3rd share of the suit schedule property; there were series of litigations which ensued between the applicant and his brothers on the subject matter of the MOU dated 24.05.1998 and the first respondent / plaintiff did not implead himself as a party to the proceedings.



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3.5. The plaintiff had filed the instant suit alleging that as per Clause 8 of the MOU dated 24.05.1998, he is entitled to 25% of shares in the assets of the sixth respondent and claimed the reliefs as already stated. It is apparent that the entire claim is based on Clause 8 of the MOU but the said MOU was entered into between the defendants 1 to 5 and for which, the first respondent / plaintiff is not a party and he himself admitted in the plaint that he is not a partner / director of the respondents 6 and 7.

3.6. During the pendency of the suit, disputes had arisen between the applicant and the third respondent in respect of the suit properties and also the partnership firm and hence, another MOU dated 10.10.2005 was entered into between the applicant and the third respondent and for which the first respondent / plaintiff signed and stood as a witness; under such MOU, the suit properties, the partnership business as well as the company were distributed between the applicant and the third respondent.



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3.7. The first respondent / plaintiff having signed as a witness and being fully aware of the contents of the said MOU dated 10.10.2005 has given up his alleged right, especially Clause 8 of the previous MOU dated 24.05.1998; the MOU dated 10.10.2005 has apparently superseded the earlier MOU dated 24.05.1998 and thus the alleged claim of the first respondent / plaintiff for 25% of shares of the sixth respondent is unsustainable, because the sixth respondent firm had subsequently been partitioned in terms of the MOU dated 10.10.2005.

3.8. After the death of the second respondent in the year 2004 and in terms of the MOU dated 10.10.2005, the third respondent is now running the Hotel and Lodging of M/s.Hotel Picnic Plaza; the instant suit has become infructuous and the applicant has apparently given up his right under the MOU dated 24.05.1998 being a witness and acquiescing to the terms of the subsequent MOU dated 10.10.2005 which in fact extinguishes the right of the plaintiff in the instant suit.

3.9. The respondents 4 and 5 had foisted several cases against the applicant directly and through other persons; the suit is undervalued as the



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plaintiff has deliberately lowered the value of the suit in order to evade payment of proper Court Fee; the suit has been filed by the plaintiff through his alleged Power Agent one Pradeep Kumar Jain; it is not known whether there is a valid, subsisting Power of Attorney in his favour as on date; the applicant had sufficient reasons to believe that the Power of Attorney has been revoked or the institution of the suit is not validly constituted attorney; the first respondent / plaintiff who had drafted the MOU was also a signatory and he is well aware of the facts that the entire extent of the property at R.K.Mutt Road, Mylapore, was partitioned between the applicant and the third respondent.

3.10. The suit is barred by the principle of estoppel and waiver under Section 115 of the Evidence Act; the question of rejection of plaint or dismissal of the suit has to be ascertained in accordance with the provisions of Order VII Rule 11 C.P.C. read with Section 151 of C.P.C. The suit has been filed on 04.07.2001 which is beyond the period of limitation. The suit is not maintainable as there is no cause of action.



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Counter of the first respondent / plaintiff:-

4. The inception of the business was carried out by the respondents 1 to 5 and the first respondent / plaintiff; on many occasions, the first respondent has stood as a guarantor for the loans availed to expand the business; this assistance was confirmed by way of 25% of shares in the partnership firm; since disputes arose among the family members, a MOU was executed among them on 24.05.1998; as per the MOU, 25% of shares in M/s.Hotel Picnic Plaza was to be transferred to the first respondent.

4.1. Even after three years of execution, the terms of MOU regarding transfer of shares were not given effect to and that necessitated the plaintiff to file this suit; in order to cause further detriment to the plaintiff, the companies of the defendants 1 to 3 floated the 7 and 8 defendants and started siphoning the profits and assets of the sixth respondent partnership firm; after 20 years from the institution of the suit, the defendants filed their written statement and that statements were taken on record and the matter was posted for trial; at this juncture, the applicant / third defendant had filed this application to reject the



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plaint; the intention of the applicant is to delay the adjudication of the suit; the application is frivolous and vexatious and deserves to be dismissed at the threshold.

4.2. As per the Partnership Deed, the first respondent was allotted 25% share in the assets of the partnership firm and the other partners were allotted 15% share each; the profits of the fifth respondent have been diverted for starting different entities, business and buying different properties from the year 1998; even though the first respondent was requesting the statement of accounts of the fifth respondent, it has not been furnished by the parties; after the demise of N.D.Gupta [first defendant], the parties had developed disputes among themselves and had entered different MOUs without dissolving the existing Partnership Deed.

4.3. The first respondent came to understand that as per the orders passed in C.S.No.498 of 2005, the applicant had given up 1/3rd share in the suit schedule property towards the second respondent and exchanged 1/3rd share of the second



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respondent in the fifth respondent and hence the applicant does not have any share in the fifth respondent; after the demise of N.D.Gupta, the applicant had fraudulently transferred the shares of N.D.Gupta [first defendant] in the name of his wife.

4.4. The first respondent did not receive any money towards contributions made by him in helping to develop the partnership firm of the respondents 5 and 6; the first respondent had extended the substantial financial assistance for the purpose of purchasing and developing the fifth defendant partnership firm and the same was agreed by the parties as per MOU dated 24.05.1998; the applicant and the other respondents had agreed to provide the first respondent 25% share in the partnership firm by retaining 15% share each; the properties purchased and developed in the name of M/s.Hotel Picnic and M/s.Picnic Hotels (P) Ltd. were constituted from and out of the profits earned in M/s.Hotel Picnic Plaza / 5th respondent; it is a matter of fact that the applicant had obtained Demand Drafts in favour of the first respondent but he did not handover to them; 25% share is claimed on the basis of the MOU and that has been admitted by the applicant.



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4.5. An application has been filed by impleading a dead person as a party respondent; whether the MOU dated 10.10.2005 would in any manner affect the MOU dated 24.05.1998 is a subject matter of trial; it is for the applicant to prove that the MOU dated 10.10.2005 was acted upon by the parties and the facts which are alien to the plaint, cannot be decided in an application to reject the plaint. Further the suit is barred by limitation is also a misconception because even during 2000, the applicant had undertaken to give the 25% share, the cause of action arose from the last act of default, the point on limitation is a mixed question of fact and law; the first respondent had rendered financial assistance for purchasing and developing the hotel business and the said money invested by him was not repaid to him; the right of the plaintiff has already been accepted; the suit has been validly instituted; the application has been filed just to avoid adjudication of the suit and it is only a desperate attempt to avoid the liability of the defendants; without making any averments, the ground that the suit is barred by *res judicata* is not maintainable.



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Discussion:-

5. The suit has been filed by the first respondent / plaintiff to direct the defendants 1 to 3 to convey or transfer 25% share in the assets of the sixth defendant / M/s.Hotel Picnic Plaza and consequently to direct the defendants 1 to 3 to partition by metes and bounds of the schedule mentioned A to E properties and allot 25% share to the plaintiff in the assets of the sixth defendant firm as per MOU dated 24.05.1998 along with interest.

6. The plaintiff is the son-in-law of the first defendant and he married the youngest daughter of the first defendant in the year 1977. The said fact was not denied by the defendants. The suit has been filed in the year 2001. The defendants 2 to 5 are the sons of the deceased first defendant. Since the legal representatives of the deceased are already on record, it can not be said that the proceedings have been initiated against a dead person. The sixth defendant M/s.Hotel Picnic Plaza, is a partnership firm and the defendants 1 to 5 are its partners. According to the plaintiff, the defendants 1 to 5 have split between themselves into two groups. One group comprising the defendants 1 to 3 and



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other group comprising the defendants 4 and 5. The disputes between the family members were resolved and the defendants 1 to 5 have entered into a MOU dated 24.05.1998 wherein they had discussed about the various obligations including the settlement to be made to the plaintiff.

7. Even though the partnership firm was managed by the defendants 1 to 5, the plaintiff who is the son-in-law was supporting them from outside and he also invested money into the business. It is alleged by the plaintiff that in order to recognise the services rendered by him and also towards compensating the money invested by him, it was agreed by the defendants 1 to 5 in the MOU dated 24.05.1998 that 25% share of Hotel Picnic Plaza should be settled and transferred to the plaintiff. Since the said settlement did not take place, the plaintiff has filed the present suit.

8. The applicant/third defendant has filed this application by stating that the MOU was entered into between the father and sons and for which the first respondent / plaintiff is not a party and hence, he cannot file a suit as though it is



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a suit in the nature of specific performance. It is contended that the MOU was entered on 24.05.1998 and the suit has been filed after 3 years which is barred by limitation. It is further contended that the MOU dated 24.05.1998 has lost its value in view of the latter MOU dated 10.10.2005 through which the applicant / third defendant had taken over 1/3rd share and the second respondent owns 2/3rd share of the schedule mentioned property. It is further stated that the son-in-law cannot claim any share in the father-in-law's family properties and the plaintiff is neither a partner nor a director of the respondents 6 and 7 and the plaintiff has filed the suit without any cause of action or without any right to sue and that the suit is barred by the principles of *res judicata*.

9. From the above contentions made by the respective parties, one fact remains unopposed. None of the parties had denied Clause 8 of the MOU dated 24.05.1998, through which it was agreed between the defendants 1 to 5 that the plaintiff should be given with 25% share in the sixth respondent business.



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10. Even though the applicant has raised the ground of *res judicata* to reject the plaint, the same was not substantiated and there is no reference made about any previous suit in which the matter in issue had already been dealt and decided on merits.

11. So far as the point of limitation is concerned, it is claimed by the first respondent / plaintiff that the cause of action for the suit had arisen only from the date when there is a denial to comply the terms of MOU dated 24.05.1998. On 25.04.2001 the plaintiff had sent a letter to the second defendant regarding 25% share in the sixth defendant and about the compliance of Clause 8 of the MOU. He had sent several communications and finally a letter dated 11.05.2001 was sent by the second defendant to the plaintiff by denying the entitlement of the benefit of Clause 8 of the MOU.

12. According to the plaintiff, the limitation to file the suit has started to run from the date from which the defendants denied the plaintiff's right to get the share of 25% as agreed between the defendants under the MOU dated



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24.05.1998. Since the terms of MOU is more or like a family arrangement and it was not revoked at the time when the suit was filed, it has to be presumed that the cause of action continues so long as the MOU continues. Even though it is claimed by the applicant / third defendant that a subsequent MOU was entered in the year 2005, it was during the pendency of the suit. Even if the defendants had made any other arrangement between themselves subsequent to the suit, some arrangement ought to have been done in respect of 25% share agreed to be transferred to the first respondent / plaintiff in the earlier Memorandum of Understanding, since it has been considered as a family obligation.

13. It is the contention of the applicant / third defendant that the impugned Clause 8 is just a proposal to give a gift out of love and affection. But the MOU itself speaks about the contributions made by the first respondent / plaintiff and the arrangement of allotment of 25% was in recognition and in consideration of the involvement and investment made by the first respondent / plaintiff. So it can not be *ipso facto* considered as a gift out of mere love and affection. The factual matrix of this suit has a large scope for trial.



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14. One of the contentions of the defendants is that the first respondent / plaintiff is not a party to the MOU and hence he has got no *locus standi* to maintain the suit. The understanding of the difference between a family arrangement and conveyance would help to get rid of the condition. So far as an agreement is concerned, it is an understanding between the 2 or more persons to undertake to do something in lieu of a fixed considerations and other stipulations. It can be made either orally or by writing. There should be meeting of minds between the parties in order to execute the terms of such an agreement. So far as the family arrangement is concerned, it is an understanding between the family members to allocate certain rights or duties among themselves in respect of certain assets.

15. In the case in hand, the plaintiff, as the son in law of the first defendant had involved himself in the business of the sixth respondent and he had also invested his wealth into the said business. The first respondent is aware of the fact that he is not a member of the joint family comprised of the defendants 1 to 5. The contribution given by the first respondent/plaintiff appears to have been considered as dues of the family and thus it was understood between the

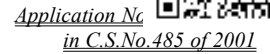


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defendants 1 to 5 to do some fitting arrangement to repay or compensate the same. It is a kind of an acknowledgement. Hence it is immaterial for the first respondent / plaintiff to stand as a party to the family arrangement made between 1 to 5, which is inclusive of certain terms of allotting some provision to safeguard his interest.

16. Whenever the first respondent / plaintiff was contacting the defendants 1 to 5 to settle his money spent, he was pacified by them and one fine day the defendants 1 to 5 agreed between themselves to transfer 25% share of the sixth respondent in the name of the first respondent. The plaintiff was sending frequent communications to the defendants 1 to 5 by reminding them of their own undertaking. Only in the year 2001, he got a clear signal of 'No' and hence he has chosen to file the suit for the reliefs as above mentioned. If some of the family members agreed themselves to do certain arrangements in respect of any close relative or of any other commitments, then it will bind them very much even in the absence of the beneficiary being a party to the MOU. However, those matters are the foundational facts which can make out a *prima facie* case to subject the parties to undergo the process of trial. Such an opportunity opened to



In the result, the application in A.No.590 of 2022 is dismissed.

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R.N.MANJULA, J.

sri

Speaking order
Index : Yes
Neutral Citation : Yes

Pre-Delivery Order made in
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