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A.No.2748 of 2023
in
TOS.No.24 of 2021

RESERVED ON : 05.09.2023

PRONOUNCED ON :01.12.2023

A.A.NAKKIRAN, J.

O R D E R

This application has been filed by the Applicant Company/5th Defendant, represented by its Director, to pass an interim order, appointing an Administrator for the estate of the deceased Testatrix, with directions to complete the obligations in favour of the Applicant for the joint developed project at Door No. 610, Anna Salai, Chennai 600 006, measuring an extent of 8 grounds in Block No. 10 Nungambakkam Village, Mylapore - Triplicane, Chennai, including execution of Sale Deeds for sale of flats and to realise the amounts due to the estate and make payments due to the applicant.

2.The TOS has been filed, by the 1st Respondent herein, seeking for Letters of Administration with the Will and Codicil of the deceased

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Testatrix, R.Valsala Menon @ Valsala Amma, in her favour to have effect limited to the Union of India in respect of suit properties.

3.The case of the Applicant is as follows:-

(i) The deceased Testatrix died on 27.01.2020, leaving behind a Will dated 18.01.2017 and a Codicil dated 12.02.2018 bequeathing her assets. The 1st Respondent claims to be the sole beneficiary under the said testaments. A written statement was also filed by the other Respondents. The Applicant has an interest in the estate of the deceased Testatrix in respect of the property at Door No. 610 Anna Salai, Chennai - 600 006 measuring an extent of 8 grounds, as per the Joint venture agreement, dated 12.03.2014, entered into between the deceased Testatrix, who was the owner of the said property and the Applicant herein. According to the said agreement, the Applicant and the deceased Testatrix had agreed to have shares in the ratio of 68%: 32% in the developed property and that after construction, they would enter into a supplement agreement to earmark the specific super built area for allocation of the constructed flats with proportionate undivided share in the land. Accordingly a Supplementary Joint Development Agreement was entered into on

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10.07.2018, earmarking their respective entitlements. Totally 26 dwelling units had been constructed and 8 flats were earmarked to the Applicant. It is also stated in the affidavit cum declaration executed by the deceased Testatrix that she had executed a General Power Attorney dated 12.03.2014, for conveyance of 32% of share in the land and a further General Power Attorney dated 20.03.2014 for 68%.

(ii).Till date, 4 flats have been sold out of 8 flats, which had been earmarked to the Applicant herein. Many customers were lined up for buying our balance 4 flats and the 18 flats of the owner. They had spent huge amount of money and time in marketing promotional activities of this project and our sales force deployed there had done an immense work in promoting the project across market. The death of the deceased Testatrix in the year 2020 has put us in quandary in terms of selling both of our flats. A sum of Rs 7.27 crores as on 28th March 2023 is owed by way of refundable deposit, charges, taxes, recoveries by the deceased Testatrix. The 1st Respondent by a letter dated 03.08.2022 had admitted that a sum of Rs. 7.19 Crores is due as on 30.06.2022. The balance 4 flats from the Applicant's share along with Rs 7.27 crores are due to the Applicant as on 28th March 2023. An Agreement was entered into with the Applicant by

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the deceased Testatrix also to sell her share in the developed property and the Applicant is entitled to sales commission @ 2% plus applicable GST on the sale of the Flats belonging to her. The Applicant is in possession of all the apartments and has not handed over the possession of the Apartments belonging to the deceased Testatrix as there is still a sum of Rs. 7.27 crores as on 28th March 2023 due. There are still 22 apartments, which are unsold, which includes 4 apartments of the Applicant. The maintenance of the project has become exceedingly difficult for the Applicant without occupants or their association and not able to sell and move out of the project. There are only 4 owners residing in the project and the balance flats along with the project common areas as a whole are continued to be maintained by the Applicant spending huge amounts. Therefore, it has become necessary to appoint an Administrator, pending disposal of the above suit, so that the Administrator would be able to sell all the remaining 22 apartments and to execute the sale deeds for conveyance of the flats, which have been fully completed in Feb 2019 vide CMDA Project Completion Certificate Letter EC/Central-1/50/2019 dated 15 Feb 2019.

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(iii) The Applicant may be permitted to take the sale proceeds of the 4 apartments of developer share. The applicant may be permitted to deposit the sale proceeds of the balance 18 apartments in an interest-bearing account. The Applicant may be permitted to take from this interest-bearing account, the amount due, by way of refundable deposit, charges, taxes, recoveries, maintenance charges, to the Applicant from the estate of the deceased. The amount will be accruing till the disposal of all the flats. The sale commission of 2% on the sale proceeds may also be paid to the Applicant herein from the interest-bearing account. The said obligations are in terms of the contract between the parties. The Applicant then will be able to sell all the remaining flats in the project and hand over in all aspects. Once the TOS is decided, the persons in whose favour it is decided, will be entitled to the said moneys from the estate. By granting the relief of appointing an Administrator, no prejudice will be caused to the parties to the suit. On the other hand, if the Administrator is not appointed, the applicant would be put to serious prejudice and hardships. Hence, this application has been filed, seeking the relief, as stated above.

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4. In the counter filed by the 1st Respondent/ Plaintiff, it is stated as under:-

(i) A Joint Development Agreement dated 13.04.2014 was entered between the deceased Testatrix and the Applicant. The deceased Testatrix had also executed two General Powers of Attorney on 12.03.2014 and 20.03.2014 in favour of the 1st Respondent for managing her estate. The deceased Testatrix died on 27.01.2020 leaving behind a registered Will dated 18.01.2017 and a Codicil dated 12.02.2018 bequeathing her assets in favour of The 1st Respondent. The 2nd Respondent has filed Tr.CS.No.252 of 2022 in relation to certain properties of the deceased Testatrix and it is pending. The 2nd Respondent had not done anything for the deceased Testatrix and has initiated the proceedings only to swindle her property. Since there are two proceedings, this Application ought to be considered along with the entire matter and not in isolation. As per the wishes of the deceased Testatrix , the agreement entered into by the Applicant ought to be completed. There is no need for appointment of an Administrator and the 1st Respondent as the Power of Attorney holder during the lifetime of the deceased Testatrix can be authorized to carry forward the completion of the documents. There are total of 26 apartments,

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out of which 8 are allotted to the Applicant. Out of 8 flats, 4 have been sold and for remaining 4 flats, there can be no objection. In respect of remaining flats, the Applicant has a lien over the amounts due to them from the estate of the deceased Testatrix as per the last Will of the deceased Testatrix . The 1st Respondent is ready and willing for any arrangement that would protect the interest of the Applicant in respect of its 4 flats and the amount due to the Applicant from the deceased Testatrix.

(ii) The value of the properties have to be saved by selling the flats. The 1st respondent is ready to execute necessary documents on behalf of the estate of the deceased Testatrix. The due amount to the Applicant from the estate of the deceased Testatrix as provided in the Statement on 03.08.2022 is Rs. 7,18,79,968/- and any other amounts that can be recovered by the Applicant can be mutually agreed upon. The administration of the estate of the deceased Testatrix solely lies with the 1st Respondent as set out in the said will and codicil, and the appointment of an administrator to that estate would directly go against the intention of the deceased Testatrix in granting the power of attorney dated 20.03.2014 in his favour for managing the estate. Since the pleadings in all the matters

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are completed, the entire proceedings can be heard together and not in a piecemeal manner. The relief of appointment of an Administrator for is unwarranted in facts and law. Hence, this application is liable to be dismissed.

5. In the counter filed by the 2nd Respondent, it is stated as under:-

(i) The application has been made seeking an unwarranted relief of appointing an Administrator for the estate of the deceased Valsala Amma, with a direction to complete the alleged obligation in favour of the applicant for sale of the Joint developed project. The validity and execution of Will dated 18.01.2017, Codicil dated 12.02.2018 allegedly executed by Mrs.Valsala Menon is under challenge in the present TOS and the suit for partition of properties that belonged to Mrs. Valsala Menon, in Tr.C.S. No.252 of 2002 is also pending before this Court for Joint Trial. Disposal of the subject property can be made only after the final adjudication of the subject matter involved in both the suit, or else, the same will cause substantial injustice and prejudice to the parties to the lis and would also lead to unwarranted multiplicity proceedings. While both

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are to be determined by this Court as to who is entitled is to represent the estate of deceased R.Valsala Menon, the said application is premature and is only to be dismissed at the very threshold.

(ii) The application is a devised attempt of the applicant hands in glove with other fraudulent elements to clandestinely dispose of the properties of Mrs.R.Valsala Menon even before the validity of the Wills and Codicils. The purported deeds and documents were not executed by Mrs.R. Valsala Menon in fit state of mind and she was suffering from several physical, mental and psychological disorders that limited her free Will and volition on the date of execution of purported deeds and documents in TOS and in the instant application.

(iii)Sale of flats in the subject property is subject to interpretation of the Joint Development Agreement dated 12.03.2014 entered between deceased Mrs.R.Valsala Menon and the applicant herein, the performance/non-performance of obligations and counter obligations therein and the validity of the GPA allegedly executed by R.Valsala Amma on 12.03.2014 and 20.03.2014 will become inoperative and redundant in view of the demise of the principal.

(iv) The Hon'ble High Court in exercise of Testamentary

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Jurisdiction is not empowered to devolve into contractual interpretation of deeds and documents entered into between the parties, determine performance and non-performance of obligations of parties with respect to sale deeds and documents and direct sale or disposal of the estate of the deceased while TOS and Tr.CS and various application filed by both parties are pending. If any order passed in instant application without hearing both suit and applications filed by both parties, they would be rendered as infructuous. In the Judgment of the Hon'ble Supreme Court in the Transfer Petition (Civil) as well as in SLP (Crl) No.5357 of 2020, it makes clear that an Administer cannot be appointed and empowered to sell or dispose of the subject matter of the TOS and Tr.CS on a mere asking. Further, Monetary gain coupled with collusion with the plaintiff in the TOS appear to be root cause prompting the applicant herein in preferring the above application.

(v) The person who verified and signed in the affidavit of the instant application is not a competent or authorized person. Further, the applicant has only given limited details with regard to Joint Development Agreement dated 12.03.2014 wherein he has not produced to the landowner any

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document as to payable charges and taxes from time to time. Further, without giving any details of the sale deeds executed with respect to 4 flats, ie. Amount of sale therein, the liability of the applicant as per the agreements, the applicant is claiming an amount of Rs.7.27 crores being as dues, from the deceased. Further, The sale of the flats of the landowner was only at the the discretion and option of the landowner and the applicant cannot in contravention to the very contracts it relies upon stake claim to sell the flats belonging to the landowner at 2% commission.

(vi) The appointment of Administrator pending disposal of instant two suit, to execute sale deeds for conveyance of flats is not only against the interest of the successors of Mrs.R.Valsala Menon, but also statutorily prohibited by Section 247 of the Indian Succession Act, 1925. Hence, the relief sought by the applicant in the application is liable to be dismissed.

6. The learned counsel for the applicant would submit that the applicant as the builder has completed the building and is ready to handover the portion of the flats earmarked for the landowner. On such performance of such obligation, the applicant as the builder is entitled for

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refund of security deposits and amounts towards statutory deposits and other payments under the Agreement. On account of the sudden death of the landowner and dispute between 1st respondent and 2nd respondent with regard to the suit property, the applicant is forced to maintain the entire flats with high expenses. Hence, the learned counsel seeks this Court to appoint an Administrator under Section 247 of the Indian Succession Act, for the estate of the deceased pending disposal of the suit for letters of Administration.

7. In support of his argument, the learned counsel for the applicant has relied upon the following Judgments for appointment of Administrator for the purpose of conveyance of flats earmarked both of them.

1. In the case of Mahamaya Dassi Vs. CIT, reported in 1978 SCC Online Cal 468.

2. In the case of Adapala Subba Reddy and Anr. Vs. Adapala Andemma and Ors. reported in 1950 SCC Online Mad 150.

3. In the case of Atula Bala Dasi and Ors. Vs. Nirupama Devi and Anr.

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4. In the case of Ramachandra Ganpatrao Hande Vs. Vithalrao Hande and ors. reported in 2011 4 MahLJ, 50, and

5. In the case of Vimala L Rajani, Maya Harichand Makjiha Vs. Asha reported in 2012 2 MahLJ 68.

8. The learned counsel for the 1st respondent would submit that the 2nd respondent had not done anything for Mrs.Valsala Menon and has initiated the proceeding only to swindle her property against her wishes. Further, as per the agreement with Mrs.Valsala Menon, out of 26 flats, 8 flats are allotted to the applicant in which 4 flats have been sold during her life period. There is no objection to the applicant to sell the remaining 4 flats to any of the party which have been earmarked as per the agreement. However, in respect of the rest of the flats, the applicant has a lien over the amounts due to them from the estate of Mrs. Valsala Menon. However, there cannot be a discounted sale on these flats as these proceeds have to come to the 1st respondent as per the Will of Mrs.Valsala Menon. The 1st respondent is ready and willing for any arrangement to protect the interest of the applicant for remaining 4 flats and the amount due to the applicant

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from Mrs.Valsala Menon. Hence, there is no need for the appointment of an Administrator while the 1st respondent being the Power of Attorney Holder during the lifetime of Mrs.Valsala Menon, can be authorized to carry forward the completion of the documents.

9.It has been further submitted that the due amount to the applicant from the estate of Valsala Amma as per the Statement on 03.08.2022 is a sum of Rs.7,18,79,968/- is payable to the applicant and any other amounts that can be recovered by the applicant can be mutually agreed upon with the applicant herein during the course of Court proceedings since the 1st respondent herein is the sole beneficiary of the Last Will and Codicil executed by Mrs.Valsala Amma. Hence, it is not necessary to appoint an Administrator as prayed for in the said application.

10.The learned counsel for the 2nd respondent would submit that while both suit along with various applications filed by the respondents are pending before this Court with regard to the suit property, till the disposal of the said suit, the applicant is estopped fro selling any flats whatsoever in the subject property. Further, this Court in exercise of Testamentary

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jurisdiction is no empowered to delve into contractual interpretation of deeds and documents entered into between the parties.

11. It has been further submitted that the applicability to instant case under Section 247 that the Administrator is appointed after grant of letters of administration. On the contrary, role of Administrator Pendente Lite is only of general administrator, he/she cannot alienate the property or distribute the estate. Hence, relief sought by the applicant is not maintainable and liable to be dismissed.

12. In support of his argument, the learned counsel for the second respondent has relied upon the following Judgments:

1. *Atula Bala Dasi and others Vs. Nirupama Devi and another - 1951 SCC Online Cal 40: AIR 1951 Cal 561;*

2. Vimala L. Rajani Maya Harichand Makhija Vs. Asha Kanayalal Bajaj and Deutsche Bombay School Educational Institution;

3. Chiranjilal Shrilal Goenka (Deceased) through LRs. Vs. Jasjit Singh and Others;

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13. Heard both sides and perused the materials available on record.

14. On a perusal of the records, it is admitted fact that the applicant being the builder had executed Joint Venture Agreement dated 12.03.2014 with Mrs.Valsala Menon for developing her property Anna Salai. Subsequently, a supplement Joint Development Agreement dated 10.07.2018 was also executed by Mrs.Valsala Menon earmarking the flats as per the ratio agreed by them. Further, in terms of agreements, the project was completed by the applicant in which 4 flats were also sold to the purchasers during the life time of the said Testatrix. After the demise of Mrs.Valsala Menon, both suit have been filed before this Court to determine the Will said to have been executed by Mrs.Valsala Menon in favour of the 1st respondent and the suit for partition in favour of the 2nd respondent.

15. In the submission of the learned counsel for the 1st respondent it is admitted that there is due amount payable to the applicant as per the Statement on 03.08.2022. Further, he has not denied with regard

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to the Joint Venture Agreement dated 12.03.2014 and a supplemental Joint Development Agreement dated 10.07.2018 executed by Mrs.Valsala Menon and also agreed to settle the amount during the course of the Court proceeding. Further, in the submission of the learned counsel for the 2nd respondent, it has been submitted that pending both the suit, the appoint of Administrator would lead to multiplicity of proceedings. However, as per the aforesaid agreements, the Applicant seeks his right to sell his remaining four flats and not for 18 flats belonged to the land owner since the huge expenses are being spent by him for maintaining the entire flats and if it is not maintained properly it would be deteriorating in a bad condition. Under such circumstances, in the dispute between the respondents with regard to the suit property, the applicant being the builder as per the agreement with the land owner, cannot suffer. Further, this Court is yet to be decided not only the Will said to have been executed by the Testatrix in TOS No.24 of 2021 in favour of the 1st respondent but also to decide Civil Suit in Tr.C.S. No.252 of 2022 filed by the 2nd respondent. Till the disposal of both suit, the flats are to be protected without deterioration. In the dispute between the respondents, the flats cannot be allowed to be deteriorating and it should be maintained properly.

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16. Having considered the facts and circumstances of the case and various decisions in appointing the Administrator in the citation referred by the applicant and also in the interest of justice, this Court is inclined to appoint an Administrator, Mr.P.Govindarajan, Advocate, M/S No.1007/1996, No. 359, New Additional Law Chambers, High Court Building, Chennai 600104, Cell:9444006166, having fixed his remuneration at Rs.25,000/- each to execute the Sale of 4 flats which is said to have been earmarked as per the agreement entered into with the Landowner but not belonging to the land owner. However, the entire sale proceedings of four flats are directed to be deposited in an interest bearing account till the disposal of both the suits.

17. Learned Administrator is at liberty to open an interest bearing account in TOS. No.24 of 2021 and Tr.C.S. No252 of 2022 in Indian Bank functioning in the premises of this Court.

18. The Learned Administrator is at liberty to seek appropriate directions from this Court if and when any need so arises.

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19. The abovesaid exercise shall be completed as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

20. In the result, the application is partly allowed to that extent. No costs.

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Web:Yes/No
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**Pre-Delivery Order in
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