



AS.No.362 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.362 of 2014
CMP.No.446 of 2023

K.Phanidhar

Appellant

Vs

1. P.Sarasagopal
2. S.Arunkumar
3. R.Easwaran

Respondents

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the judgement and decree, dated, 25.03.2014 , passed in OS.No.368 of 2007, by the Additional District Court, Kancheepuram.

For Appellant : Mr.C.Manishankar, SC

For Respondents : Mr.K.Chandrasekaran-RR2 and 3

JUDGEMENT

(Judgement of the Court was made by S.S.SUNDAR, J.)

1. The unsuccessful Plaintiff in OS.No.368 of 2007, on the file of the Additional District Court, Kancheepuram, is the Appellant in this appeal.
2. The Appellant filed the suit, seeking a judgement and decree, declaring that the four sale deeds, all dated, 26.03.2007, registered as Document Nos.3186, 3187, 3188 and 3189 and 3223 of 2007, respectively, in the Office



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of the Sub Registrar, Tiruporur, styled as sale deeds, said to have been executed by the 1st Defendant in favour of the Defendants 2 and 3, purporting to convey a portion of B-Schedule property in favour of the Defendants 2 and 3 are not valid and binding upon the Plaintiff and granting permanent injunction, restraining the Defendants 1 to 3 from alienating or encumbering the suit A-schedule property in any manner, without the consent of the Plaintiff and for costs.

3. The case of the Plaintiff in the plaint is as follows:-

(a) The Plaintiff entered into a Memorandum of Understanding, dated 27.05.2004, with the 1st Defendant, in respect of suit A-schedule property. As per the said Memorandum of Understanding, the Plaintiff and the 1st Defendant, who were supposed to take possession and control of the suit A-schedule property, have to identify a buyer for the sale of the suit A-schedule property and share the profits, equally between them. The Plaintiff and the 1st Defendant obtained a registered Power of Attorney deed on 25.05.2004, in the name of the 1st Defendant from the owners of the suit A-schedule property. The Plaintiff, out of trust, believed the 1st Defendant. Though the Plaintiff and the 1st Defendant are jointly in possession of the suit A-schedule property, the Plaintiff came to know that the 1st Defendant started to alienate the property in favour of the 2nd Defendant, who is his son and also in favour of the 3rd Defendant, who is a business associate of the 1st Defendant.



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(b) The documents, though styled as sale deeds, are only sham and nominal documents and same were executed only to defraud the Plaintiff, who is entitled to a share in the sale proceeds. The Defendants 1 to 3 have colluded together and brought about the documents styled as sale deeds, even though the 1st Defendant has no exclusive right to deal with the property and he was supposed to sell the property only with the consent of the Plaintiff. The suit A-schedule property is worth Rs.12 crores per acre even in March 2007. The valuable properties have been sold at the rate of Rs.25 lakhs per acre, which is grossly inadequate. The sale deeds are sham and nominal documents, created only to cause loss to the Plaintiff, who had entered into the Memorandum of Understanding with the 1st Defendant, in respect of the suit A-schedule property. Even though the Memorandum of Understanding, dated 27.05.2004 contains an arbitration clause, since the Defendants 2 and 3 are not parties to the Memorandum of Understanding, the suit had been filed, seeking the reliefs, as stated above. The suit B-Schedule property are the properties sold by the 1st Defendant in favour of the Defendants 2 and 3, out of the suit A-Schedule property and the suit C-Schedule property and stated to be the property remain unsold.

4. The suit was contested by the 1st Defendant, by filing a written statement, on various grounds. Some of the points, which were taken by the 1st Defendant as defence, are as follows:-



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- a) There is no consideration for the Memorandum of Understanding, dated 27.05.2004. The suit for declaration, questioning the validity of the documents, is not maintainable, as the remedy of the Plaintiff should be by way of filing a suit for specific performance of the Memorandum of Understanding even if the case of the Plaintiff is true as per the plaint.
- b) The 1st Defendant was doing real estate business for more than 20 years and he has earned a very good reputation while dealing with several properties in OMR and ECR areas. He has successfully completed several dealings. Though the Memorandum of Understanding, as stated in the plaint, was executed and it is stated that the Plaintiff and the 1st Defendant had invested a sum of Rs.1,00,000/-, no amount was paid as indicated in the agreement. After finding that there were multiple claims in respect of the suit A-Schedule property and there was also possibility of selling the property in the near future, the Plaintiff withdrew himself from the Joint Venture as he was not inclined to invest towards the cost of the lands or legal expenses. Therefore, the Memorandum of Understanding was not acted upon.
- c) The 1st Defendant is fighting with the real owners of the property and others as the title was still in dispute. When the 1st Defendant was fighting with the real owners of the suit property and the Plaintiff is not willing to participate in such a complicated litigations, the Plaintiff cannot lay a claim against the 1st Defendant, based on the Memorandum of



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Understanding, which was never acted upon.

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d) The 3rd Defendant made payments to the tune of Rs.36,64,400/- between 01.11.2004 and 27.03.2007 and the 2nd Defendant paid another sum of Rs.36,64,400/- towards the value of the property. Since the transaction in respect of the suit A-schedule property was made with the funds provided by the Defendants 2 and 3 in the suit, the Plaintiff executed several documents in favour of the Defendants 2 and 3, which are in terms of the understanding between the 1st Defendant and the Defendants 2 and 3. The 1st Defendant has been successfully contesting the litigations with several persons and cleared could in title one by one and at the time when he was in the verge of clearing title in his favour, the present suit was filed, conveniently by the Plaintiff, with a greedy intention to extract money from the 1st Defendant under the guise of Memorandum of Understanding, which was never acted upon.

5. The Defendants 2 and 3 have filed a separate written statement, adopting the stand taken by the 1st Defendant. The Plaintiff filed a reply statement, raising various grounds.

6. The Trial Court, on consideration of the pleadings of the parties, framed the following issues and additional issues:-

Issues:-

1. Whether the Defendant has breached the Memorandum of Understanding entered into with the Plaintiff dated 27.05.2004?
2. Whether the 1st Defendant as clandestinely transferred the property



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to the Defendants 2 and 3?

3. Whether the Plaintiff is entitled for the declaration of the sale deeds as prayed for?
4. Whether the Plaintiff is entitled for permanent injunction as prayed for?
5. To what relief?

Additional Issues:-

1. Whether the 1st Defendant took possession of the suit property by virtue of the Power of Attorney dated 25.05.2004 prior to the Memorandum of Understanding, dated 27.05.2004?
 2. Whether the Memorandum of Understanding dated 27.05.2004 was acted upon?
 3. Whether it is correct that the suit itself has wrongly been framed?
7. Before the Trial Court, the Plaintiff marked Ex.A1 to Ex.A12 and examined himself as PW.1. On the side of the Defendants, Ex.B1 to B72 were marked. The Defendants 1 to 3 were examined as DW.1, DW.2 and DW.3 respectively. The concerned SRO, Thiruporur was examined as DW.4. The Trial Court, considering the pleadings and evidence, held that the 1st Defendant took control and possession of the suit property, by virtue of the Power of Attorney deed, dated 25.05.2004, much prior to the Memorandum of Understanding dated 27.05.2004 and the Memorandum of Understanding dated 27.05.2004 was never acted upon. The Trial Court then held that the Memorandum of Understanding is not supported by consideration and that the Plaintiff is not entitled for declaration as prayed for as such. A specific finding was rendered on the issue (1) that the Memorandum of



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Understanding is not true or acted upon. The Trial Court has also held that the suit is liable to be dismissed for non joinder of necessary parties, namely, the original owners of the suit suit A-schedule property. In view of the conclusions reached by the Trial Court on all the issues against the Plaintiff, the suit came to be dismissed in its entirety by the impugned judgement. As against the same, the above appeal has been filed by the Plaintiff.

8. This Court heard the submissions of the learned counsel on either side.
9. The learned senior counsel for the Appellant made several submissions in tune with the memorandum of grounds of appeal. The learned senior counsel then referred to the judgement and decree, dated 27.04.2007, made in OS.No.257 of 2008 and the application in CMP.No.446 of 2008 for reception of additional documents under Order 41 Rule 27 of CPC.
10. The learned counsel for the contesting Respondents advanced arguments, relying upon the findings of the Trial Court and also in line with the written statements and supporting the impugned judgement of the Trial Court, dismissing the suit.
11. It is seen that a suit was filed against the Defendants 1 to 3 in OS.No.257 of 2008, by one N.Srinivasa Rao, with an identical prayer as in the present suit. It is to be noted that the said suit was decreed as prayed for. It is now submitted that an appeal is filed as against the judgement and decree made in OS.No.257 of 2008. The Plaintiff in OS.No.257 of 2008 is the person, who is claiming title to the property, which was dealt with under the Power of



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Attorney deed executed by some of the Defendants in OS.No.257 of 2008.

When the suit filed by a stranger in respect of the same property is decreed, declaring the exclusive right of the Plaintiff in OS.No.257 of 2008, this court finds that the case of the 1st Defendant is more probable. The Plaintiff proceeds on the basis of the title of the 1st Defendant, who had executed the sale deed in favour of the Defendants 2 and 3. The learned senior counsel for the Appellant states that an appeal is preferred as against the judgement and decree in OS.No.257 of 2008 and therefore, the dispute, in relation to the suit property regarding title, is still pending. Therefore, the learned senior counsel for the Appellant submitted that he is unable to concede, as there is a possibility of the suit in OS.No.257 of 2008 being dismissed in the pending appeal. In the said circumstances, this Court is unable to close this appeal on the short ground relying upon the judgement and decree, made in OS.No.257 of 2008.

12.Be that as it may, this Court, on merits, is unable to countenance the submissions of the learned counsel for the Appellant. In view of the findings of the Trial Court and the specific averments in the plaint, this Court is inclined to frame the following points for determination in this appeal:-

- (1) Whether the Memorandum of Understanding, dated 27.05.2004, is a complete agreement, supported by consideration and acted upon?
- (2) Whether the suit, seeking declaration of the documents as void, is maintainable and the remedy available to the Plaintiff is to seek for specific performance of the Memorandum of Understanding?
- (3) Whether the suit is bad for non joinder of necessary parties, namely,



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the Plaintiff in OS.No.257 of 2008 and the principal of the 1st Defendant, who has executed the Power of Attorney deed in favour of the 1st Defendant in respect of the suit properties?

(4) Whether the suit for declaratory relief as prayed for in the suit is maintainable in view of the arbitration clause found in the Memorandum of Understanding, dated 27.05.2004?

13. Issue (1):- Execution of the Memorandum of Understanding between the

Plaintiff and the 1st Defendant is admitted. However, it is contended by the 1st Defendant that the said document is not supported by any consideration.

As per the Memorandum of Understanding, the Plaintiff and the 1st Defendant have mutually agreed to invest Rs.1,00,000/- in the schedule mentioned agricultural lands to meet the cost of the land, including the legal expenses, if any. It is the specific case of the 1st Defendant that no amount was paid by the Plaintiff towards his contribution to the 1st Defendant. The Trial Court, based on appreciation of evidence, has categorically found that the Plaintiff has not proved that the Memorandum of Understanding is for consideration. Despite the fact that the Plaintiff and the 1st Defendant should contribute a sum of Rs.50,000/- towards implementation of the Memorandum of Understanding, no document is produced by the Plaintiff to show that the said amount was paid by the Plaintiff. As per the Memorandum of Understanding, receipt of money was not acknowledged by the 1st Defendant. Though the parties have agreed to share individual expenses, legal charges and the cost towards purchase of suit property, it is not the case of the Plaintiff that he paid any amount towards cost of land or litigation expenses especially when the 1st Defendant has shown payment of a sum of



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Rs.49,93,000/- towards payment to vendors and individual expenses.

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14. The Plaintiff's suit is in the nature of enforcing the right as a partner of the 1st Defendant in executing the project, namely, sale transaction, pertaining to the property referred to in the Memorandum of Understanding. The Memorandum of Understanding refers to a property in the Schedule. The parties mutually agreed that after settling the consideration to the owners of the agricultural lands, which is described in the schedule, they agreed to take possession and control of the Schedule mentioned property. The property, which is described in the Schedule, is to an extent of 6 acres and 84 cents comprised in Old S.No.9/1, Ekattoor Village, Chengalput Taluk, Kancheepuram District. The Plaintiff admitted during the cross examination that he did not know the vendors before or after the Memorandum of Understanding. Therefore, this Court is unable to find any pleading or evidence that the Memorandum of Understanding dated 27.05.2004 is supported by consideration or it was acted upon. The recitals in the Memorandum of Understanding are contradictory. Though the Plaintiff did not plead payment of any amount, in the additional written statement, he referred to payment towards development without proof of any development. He relied upon tax returns which were filed after the written statement.

15. As per the terms of the Memorandum of Understanding, the parties, namely, the Plaintiff and the 1st Defendant have to mutually share the difference amount comprised of the total sale consideration less total investment and



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the expenses equally among themselves and thereafter, the parties have to share the amount realised by selling the Schedule mentioned property as and when received from the prospective buyers. Even assuming that there is understanding between the Plaintiff and the 1st Defendant, unless the Memorandum of Understanding is supported by consideration and it was acted upon, the Court cannot grant any relief.

16.The prayer in the suit is to declare the sale deeds executed by the 1st Defendant in favour of the Defendants 2 and 3 as void. When the agreement is relating to sharing of profits out of investment, the Plaintiff has to first establish that he had contributed for the investment. The Memorandum of Understanding does not create any right in favour of the Plaintiff in respect of the property described in the schedule. There is no proof that the Memorandum of Understanding was acted upon. This Court is unable to find any error or infirmity in the conclusions arrived at by the Trial Court, in respect of the Memorandum of Understanding, dated 27.05.2004 that the Memorandum of Understanding is not supported by consideration and the same was never acted upon. Accordingly, issue (1) is answered.

17.Issue (2):- As the Memorandum of Understanding is between the Plaintiff and the 1st Defendant, it is an enforceable contract, if it is proved to be complete and acted upon. The Memorandum of Understanding speaks of mutual obligations. When the Plaintiff has not fulfilled his obligation, he cannot make the 1st Defendant accountable to the Plaintiff for the profits, the



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1st Defendant may derive out of the transaction. It is ununderstandable as to how the Plaintiff could derive benefit out of the transaction, which is not possible with the little contribution of Rs.50,000/-. As admitted by the Plaintiff himself, the value of the property is in crores of rupees and the Plaintiff, who was supposed to pay a sum of Rs.50,000/- and further payments, has filed the suit to share the profits with the 1st Defendant, who has admittedly invested huge amount, with the help of the funds advanced to him by the Defendants 2 and 3. The Plaintiff has not proved any investment. This Court is unable to visualise a situation, by which the 1st Defendant could take possession and control of the property, conveyed under the sale deeds, out of the contribution of Rs.50,000/- the Plaintiff has undertaken to pay as per the Memorandum of Understanding.

18.Be that as it may, this Court finds that the suit reliefs, as prayed for, are not sustainable as the agreement between the Plaintiff and the 1st Defendant, at best, may give raise to a cause of action only to enforce the contract, if it is complete and mutual. The present suit, which is intended to invalidate the alienations made by the 1st Defendant in favour of the Defendants 2 and 3 is not one which is justified for the breach of the Memorandum of Understanding, which could never be considered as a complete contract with mutual obligation. The Plaintiff, who has no right over the property, cannot challenge further alienations unless the alienations are fraudulent in nature and intended to defeat and defraud the Plaintiff. As pointed out earlier, this



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Court cannot go the extent of invalidating the sale deeds merely because the Plaintiff has paid a sum of Rs.50,000/-. It is to be seen that the Memorandum of Understanding relied upon by the Plaintiff does not refer to the actual investment the Plaintiff has made towards the Memorandum of Understanding. With the sum of Rs.50,000/- agreed to be paid by the Plaintiff under the Memorandum of Understanding, the Plaintiff has come forward with the huge claim, which the Trial Court has refused rightly on the basis of appreciation of evidence.

19. When the Memorandum of Understanding is not proved to be for consideration or an enforceable contract, this Court is unable to grant any relief to the Plaintiff/ Appellant especially having regard to the findings and facts, as narrated above. Accordingly, issue (2) is answered.

20. Issue (3):- The Plaintiff has come forward with the suit, assuming that the 1st Defendant has acquired the property. Acquisition of property in favour of the 1st Defendant is not complete, as the 1st Defendant has obtained only a Power of Attorney deed from the original owners. As Power of Attorney Agent, the 1st Defendant is accountable to the Principal. Even though the Plaintiff has entered into a Memorandum of Understanding with the 1st Defendant, he cannot get the relief, which is likely to affect the right of third parties, particularly, the principal owner of the property. In the absence of principal owners being impleaded as a party, who has executed the Power of Attorney deed in favour of the 1st Defendant, this Court cannot grant any



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relief in favour of the Plaintiff, declaring the invalidity of alienations by owners, who are not parties to the suit. Therefore, the suit is bad for non joinder of the original owners of the property. Accordingly, issue (3) is answered.

21.Issue (4):- As rightly held by the Trial Court, the Memorandum of Understanding, dated 27.05.2004 is not supported by consideration and it was never acted upon. Even though the Memorandum of Understanding, dated 27.05.2004 contains an arbitration clause and even assuming that the case of the Plaintiff is true as per the plaint, the suit for declaration, questioning the validity of the documents, is not maintainable, as the remedy of the Plaintiff should be by way of filing a suit for specific performance of the Memorandum of Understanding upon proof that the Memorandum of Understanding is a complete contract and fulfilment of mutual obligation.

22. Since it is pointed out that there is a third party's claim and the suit filed by a stranger for declaration of his title in respect of the same property, has been decreed, this Court, even if a suit for specific performance was filed by the Plaintiff, cannot grant any relief for want of mutuality or on the ground of frustration of contract. Therefore, the Plaintiff may not get any relief, even if he files a suit for specific performance in the absence of a concluded contract. The relief as prayed for in the suit cannot be granted. The suit is also liable to be dismissed for want of further relief or proper relief on the cause of action alleged. This Court finds no merits in the above appeal and accordingly, it deserves to be dismissed.



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23. In the result, this appeal is dismissed with costs. Consequently, the connected MP is closed.

(S.S.S.R.J.) & (A.A.N.J.)
23.01.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Additional District Court, Kancheepuram
2. The Record Keeper, VR Section, Madras High Court



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