



C.S.NO.729 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.NO.729 OF 2019

Sheila Rajakumari

.. Plaintiff

VS.

M/s.Yes Square Foundations
Rep. By its Partner Mr.AMD. Shivakumar
No.11, First Floor, Anna Nagar Plaza,
C-47, II Avenue, Anna Nagar,
Chennai – 600 04.

.. Defendant

PRAYER: Civil Suit filed under Order IV Rule 1 and 2 of High Court Original Side Rules 1956 read with Order VII Rule 1 of Civil Procedure Code for the following reliefs :

(a) Recovery of a sum of Rs.51,20,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant.

(b) Recovery of a sum of Rs.21,44,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant.

(c) Recovery of a sum of Rs.5,44,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant.



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(d) Recovery of a sum of Rs.5,00,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant.

(e) Recovery of a sum of Rs.18,00,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant.

(f) Grant an order of mandatory injunction, directing the defendant to return all the original title deeds of the Item 1 of schedule of the property hereunder, morefully described in the schedule II as hereunder which were handed over to the defendant by the plaintiff in pursuance to the Joint Venture Agreement dated 09.07.2015 to the plaintiff herein on a date to be fixed by this Court.

(g) Grant an order of permanent injunction, restraining the defendant, their men, agents and servants, from, in any manner, from alienating or dealing or encumbering with the property, morefully mentioned in the schedule 1 of the property.

(h) For costs of the Suit.

For Plaintiff : Ms.Vasudha Thiagarajan
For Defendant : Set *ex parte*

J U D G M E N T

The Suit is filed for recovery of money and for mandatory injunction directing the defendant to return all the original title deeds and for permanent injunction restraining the defendant from alienating or dealing or encumbering with the property, morefully mentioned in the schedule 1 of the property.



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2.The case of the plaintiff is that she is the original owner of the property in Item I of the schedule of property. The plaintiff and the defendant entered into a Joint Development Agreement dated 09.07.2015 wherein it was mutually agreed that the property shall be developed into various Flats and a Flat measuring 1,125 sq.ft in the ground floor and a covered car parking, together with an undivided share of land measuring 583 sq.ft out of the 2175 sq.ft. shall be handed over to the plaintiff. In addition to that, the defendant has agreed to pay a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) being the money compensation for the property morefully mentioned in Item I of the schedule of property and the builder shall be entitled to retain 2,200 sq.ft in the first floor and 1,063 sq.ft in the second floor of the super built-up area in accordance with the sanctioned plan, together with the undivided shares of the land, measuring 1,592 sq.ft out of 2,175 sq.ft. Pursuant to the Joint Development Agreement dated 09.07.2015, the plaintiff also executed a General Power of Attorney in favour of the defendant on 11.08.2015 and registered the same as Document No.2215 of 2015. After completion of the building, the defendant has made payment of only Rs.1,00,00,000/- (Rupees One Crore Only) and for the remaining amount of



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Rs.50,00,000/-, the defendant has handed over 5 cheques bearing Nos.438283, 438284, 438285, 438286 and 438287 respectively, each for a sum of Rs.10,00,000/-. Besides, the defendant, in the Mutual Agreement and Declaration dated 03.10.2016 and 03.12.2016, has agreed to pay interest @ 12% per annum for the remaining amount of Rs.50,00,000/-. However, the remaining amount has not been paid and the cheques have not been encashed as per the request of the defendant and till 2019, he was paying interest and thereafter, he has stopped paying interest. Hence, the plaintiff has come up with the present Suit.

3.It is the further case of the plaintiff that it is agreed between the parties that in respect of the terrace and stilt area, the plaintiff has relinquished her right, for which the defendant has agreed to pay a sum of Rs.16,00,000/- towards such relinquishment. Accordingly, the plaintiff has relinquished her right. But however, the said amount, as agreed between the parties, has also not been paid.



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4.It is also the case of the plaintiff that the defendant has not handed over the furnished Flat, which forced the plaintiff to incur additional expenses of Rs.4,00,000/- and Rs.18,00,000/- towards the store area in the basement.

5.Admitting the Joint Development Agreement and payment of Rs.1,00,00,000/-, the defendant has not disputed that the remaining amount of Rs.50,00,000/- has not been paid by him to the plaintiff. As far as the sum of Rs.16,00,000/- is concerned, it is the contention of the defendant in the written statement that a sum of Rs.5,00,000/- has been paid by him and the same has been set off against the amount meant for relinquishment of plaintiff's right. In para 11 of the written statement, the defendant has also admitted that he is agreeing to pay interest on regular basis and seeks two years time to pay the principal amount as the same has been invested in various projects of the defendant's firm.

6.Based on the pleadings, the following issues are framed by this Court on 27.01.2021:



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“a. Whether the defendant completed their work with all specifications as mentioned by the Joint Venture Agreement dated 09.07.2015 and was completed well within a stipulated time?

b. Whether the plaintiff is entitled to receive the suit amount from the defendant?

c. Whether the Original Title Deeds of the Item No.1 of the schedule property is in the hands of the defendant?

d. Whether the plaintiff is entitled to relief of mandatory injunction as prayed for?

e. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?

d. To what relief? ”

7. On the side of the plaintiff, the plaintiff was examined as P.W.1 and Exs-P.1 to P10 were marked. P.W.1 was cross examined by the defendant. However, the defendant, has not adduced any evidence and set *exparte*. The plaintiff in her evidence has spoken about the Joint Development Agreement. Ex-P.1 is the certified copy of the registered Will executed by her father M.P.Victor in favour of the plaintiff on 17.05.1979; Ex-P.2 is the original Joint Development Agreement 09.07.2015; Ex-P.3 is the original



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General Power of Attorney executed by the plaintiff in favour of the defendant

dated 11.08.2015; Ex-P.4 is the original Mutual Agreement and Declaration dated 03.10.2016; Ex-P.5 is the original letter of undertaking given by the defendant dated 03.12.2016; Ex-P.6 is filed to show the nature of the expenses incurred by the plaintiff and Ex-P.9 is the series of cheques issued by the defendant towards remaining amount of Rs.50,00,000/-; Ex-P.10 is the legal notice. During the cross examination of P.W.1 by the defendant, non-payment of Rs.50,00,000/- by the defendant has been clearly admitted and the very question put to P.W.1 by the defendant with regard to the relinquishment of her rights in the terrace area, a suggestion was put to the P.W.1 to the effect that the defendant gave a cheque for Rs.16,00,000/- as security and the interest aspect also she has clearly spoken about that he has paid the interest. He has put a suggestion that he has paid interest as claimed by the plaintiff. Ex-P.8 is also filed by the plaintiff to show the original specifications undertaken by the defendant. P.W.1 in her evidence also clearly spoken about the incomplete building by the defendant. The defendant also in the written statement has pleaded that he will complete the remaining works.

8.Considering the very nature of the suggestion put to the



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witness and the documents executed and the cheques issued, this Court is of the view that the plaintiff has established her claim. It is relevant to note that though this Court vide order dated 08.12.2020 passed interim decree in respect of the principal amount since the same has been admitted by the defendant, now, the *lis* is pending only with regard to the other claim made by the plaintiff. As far as the sum of Rs.16,00,000/- with regard to relinquishment of terrace area is concerned, the very suggestion put to the plaintiff by the defendant and non-denial of the evidence of P.W.1 makes it clear that the plaintiff is certainly entitled to the claim. That apart, with regard to the expenses incurred by the plaintiff, she has spoken about the expenses incurred around Rs.4,00,000/- which is also not denied and since the defendant himself has admitted in the written statement that he has not completed the store area in the basement, the plaintiff has clearly established about the completion of such work by spending Rs.18,00,000/-.

9.Considering all these aspects, this Court is of the view that the plaintiff is entitled to a further decree for a sum of Rs.38,00,000/- with interest at the rate of 9% per annum from the date of filing of the Suit till the



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date of realization and this decree is passed in addition to the interim decree already passed by this Court on 08.12.2020. Apart from that, for the remaining principal amount of Rs.50,00,000/- in respect of which an interim decree has been passed, the plaintiff is entitled to 12% interest from the date of issuance of the cheques till the date of filing of the Suit and thereafter 9% interest with costs.

10.The Suit is decreed on the above terms.

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Index : Yes/No
Neutral Citation: Yes/No
Speaking / Non-speaking order
TK



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LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 – Mrs.Sheila Rajakumari

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LIST OF DOCUMENTS MARKED ON THE SIDE OF THE PLAINTIFF

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Certified copy of the registered Will	17.05.1979
2	P-2	Original Joint Venture Agreement	09.07.2015
3	P-3	Original General Power of Attorney	11.08.2015
4	P-4	Original Mutual Agreement and Declaration	03.10.2016
5	P-5	Original Letter of Undertaking	03.12.2016
6	P-6	Original Diary maintained by the plaintiff	-
7	P-7	Office copy of the police complaint – CCB, Chennai	-
8	P-8	Original specifications undertaken by the defendant	-
9	P-9	Original series of cheques (6 Nos)	-
10	P-10	Office copy of the legal notice	30.07.2019

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE DEFENDANT – NIL

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N.SATHISH KUMAR, J.

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