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A.No.5626 of 2022 in C.S.No.642 of 2019

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RESERVED ON : 13.12.2022

PRONOUNCED ON : 15.02.2023

C.SARAVANAN, J.

This application has been filed by the applicant/plaintiff for amending the decree dated 29.06.2022 in Application No.4393 of 2021 filed by the second respondent/second defendant. The present application has been filed to correct the error in the decree dated 29.06.2022 drafted in Application No.4393 of 2021. Application No.4393 of 2021 was filed filed by the second respondent/second defendant in C.S.No.642 of 2022. The above suit was filed by the applicant/plaintiff for the following reliefs:-

“(i). Granting a decree for specific performance directing the 1st defendant to execute and register a sale deed joining the 2nd defendant as 2nd vendor conveying the schedule “A” & “B” mentioned properties free of all encumbrances in favour of the plaintiff as per the terms of the agreement for sale dated 29.12.2014 entered into between the plaintiff and the 1st defendant to convey clear and marketable title to the plaintiff and consequently direct the 1st and 2nd defendant to hand over vacant



possession of the suit schedule “A” & “B” mentioned properties to the plaintiff within time to be fixed by this Court; failing which appoint an officer of Court to perform the same.

OR

In the Alternative

(i) directing the 1st defendant to refund the advance sum of Rs.26,89,23,147/- (Rupees Twenty Six Crores Eighty Nine Lakhs Twenty Three Thousand One Hundred and Forty Seven only) as described in schedule “C” together with interest at the rate of 24% per annum which works out to Rs.23,76,83,061/- (Rupees Twenty Three Crores Seventy Six Lakhs Eighty Three Thousand and Sixty One only) from the date of payment till the date of the plaint as described in suit document no.30 in all amounting to Rs.50,66,06,208/- (Rupees Fifty Crores Sixty Six Lakhs and Six Thousand Two Hundred and Eight Only), together with subsequent interest at the rate of 24% per annum on Rs.26,89,23,147/- (Rupees Twenty Six Crores Eighty Nine Lakhs Twenty Three Thousand One Hundred and Forty Seven Only) from the date of plaint till date of realization.

(ii). Directing the 1st defendant to pay a sum of Rs.5,00,00,000/- (Rupees Five crores only) towards damages;

(iii) For permanent injunction restraining the defendants 1 and 2, their men, agents and servants and everyone claiming under them and acting on their behalf from in any way alienating or encumbering the suit schedule “A” & “B” mentioned property till they convey the schedule “A” & “B” property in favour of the plaintiff as prayed for in the plaint, in any manner whatsoever;

(iv) Directing the defendants to pay the costs of the suit.”

2. Application No.4393 of 2021 filed by the second respondent/



second defendant under Order XIII-A of CPC as amended for Commercial Courts Act, 2015. Application No.4393 of 2021 came to be allowed by this Court by its order dated 29.06.2022. The operative portion of the order dated 29.06.2022 and the decree drafted read as under:-

Para 26 of the Order dated 29.06.2022	Decretal order
26. In the result, the application is allowed by pronouncing a summary judgment rejecting the suit claim insofar as it relates to prayer (i) for execution of a sale deed by the defendants in favour of the plaintiff and prayer (iii) of paragraph 37 of the plaint. The plaintiff is at liberty to prosecute the suit with regard to the reliefs claimed against the first defendant. *	That the suit claim insofar as it relates for specific performance directing the 1 st defendant to execute and register a sale deed joining the 2 nd defendant as 2 nd vendor conveying the schedule “A” & “B” mentioned properties free of all encumbrances in favour of the plaintiff as per the terms of the agreement for sale deed dated 29.12.2014 entered into between the plaintiff and the first defendant to convey clear and marketable title to the plaintiff and consequently direct the 1 st and 2 nd defendant to hand over vacant possession of the suit schedule “A” & “B” mentioned properties to the plaintiff within time to be fixed by this Court, failing which an officer of Court to perform the same properties to to prayer (i) for execution of a sale deed by the defendants in favour of the plaintiff and for permanent injunction restraining the defendants 1 and 2, their men, agents and servants and everyone claiming under them and acting on their behalf from in any way alienating or encumbering the suit schedule “A” & “B” mentioned property till they convey the said



Para 26 of the Order dated 29.06.2022	Decretal order
	schedule “A” & “B” property in favour of the plaintiff as prayed for in the plaint, in any manner whatsoever, be and are hereby dismissed. 2. That the plaintiff herein shall be at liberty to prosecute the suit with regard to the reliefs claimed against the first defendant herein.

* Application No.4393 of 2021

3. It is the case of the applicant/plaintiff that though the applicant/plaintiff has filed an appeal before the Hon'ble Division Bench in O.S.A.No.127 of 2022 against the order dated 29.06.2022 in A.No.4393 of 2021, it cannot be said the suit dismissed. It is submitted that there is an error in the decree drafted by the Registry pursuant to the order dated 29.06.2022 in Application No.4393 of 2021.

4. The application is opposed by the learned counsel for the respondents/defendants. It is submitted that there are no error in the decree drafted by the Registry. It is submitted that therefore, this application is liable to be dismissed.



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5. The content of paragraph 26 of the Order in A.No.4393 of 2021 in C.S(Comm.Div) No.642 of 2019 dated 29.06.2022 passed by this Court is clear. The application that was filed by the second respondent /second defendant herein was allowed by pronouncing a summary judgment rejecting the suit claim of the applicant/plaintiff insofar as it related to prayer (i) i.e. for execution of a sale deed by the defendants in favour of the plaintiff and prayer (iii) of paragraph 37. Prayer (iii) in paragraph 37 of the plaint pertains to a permanent injunction to restrain the respondents from encumbering the suit schedule property. The last sentence of paragraph No.26 of the summary Judgment, makes it clear that the applicant/plaintiff was at liberty to prosecute the suit that with regard to relief claim against the first defendant. Order dated 29.06.2022 in A.No.4393 of 2021 has not dismissed the suit in *toto*. Therefore, decree drafted by the Registry is defective as it states that the suit was dismissed. Therefore, the words “**are hereby dismissed**” in the decree drafted has to be substituted with the words “**are hereby rejected**”.



A.No.5626 of 2022 in C.S.No.642 of 2019

WEB COPY

6. This application thus stands allowed. Registry is directed to carry out necessary corrections and issue a fresh copy of the decretal order in A.No.4393 of 2021 dated 29.06.2022.

kkd

15.02.2023



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A.No.5626 of 2022 in C.S.No.642 of 2019

C.SARAVANAN,J.

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Pre-delivery Order in
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