



CS.No.979 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2023

PRONOUNCED ON : 12.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CS.No.979 of 2008

1. S.Thangaraj
2. Habib Abdul Latif

Plaintiffs

Vs

The Simpson and Group Companies
Cooperatiave Society Limited, MSCS/CR
by is President and Secretary

Defendant

Prayer:- This Civil Suit has been filed, under Order VII Rule 1 of CPC read with Order IV Rule 1 of the Original Side Rules, for the reliefs as stated therein.

For 1st Plaintiffs : Mr.N.S.Sivakumar
For Defendant : Mr.P.Rajendran

JUDGMENT

This Civil Suit has been filed, seeking a judgement and decree, for the following reliefs:-

- (a) Specific performance of the sale agreement dated 24.09.2003, registered as Doc.No.4894 of 2003 in Book I in the office of the Sub Registrar, Red Hills, in respect of the plots in the approved



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layout known as "C.K.MADAVAN NAGAR EXTENSION", now named as 'ROYAL PRIME CITY' comprised in S.Nos.188/7A, 189/6, 188/7B, 188/8, 189/9, 189/4B, 189/5, 189/6, 201/25, 201/42A, 201/42B, 201/44, 201/46A, 201/46B, 201/48B, 201/54B, 201/55A(1), 201/55B1, 201/55B2, 201/56, 201/57, 201/58, 201/59, 201/62, 201/63, 201/64(A), 201/64B, 201/65, 11/2, of Chettimeedu and Vadaperumbakkam Village, admeasuring 20.35 acres at Ambattur Taluk, Thiruvallur District, more fully described in the Schedule and direction to the Defendant to accept the sale price at Rs.42/- per sq. ft. from the 1st Plaintiff or his nominee and to execute sale deeds in respect of the schedule mentioned operties, in favour of the Plaintiffs, the sale deed in respect of Plot No. 195 in favour of Selvapandi, S/o S. Selvaraj, residing at No.59, Makkaran Garden, Red Hills Road, Kolathur, Chennai - 99, in respect of Plot No. 149 in favour of R.Srividya, W/o T.G. Ravi, residing at No. 25/2B, Main Road, Teachers Association Quarters, Villivakkam, Chennai-49, in respect of Plot No.194 in favour of L. Gurusamy, S/o Lakshman Kumar, residing at No.1487A, 7th Cross Street, Poombukar Nagar, Kolathur, Chennai-99 and in respect of schedule mentioned properties except, Plot Nos.105 to 111, 112, 113, 145, 149, 166, 167, 168, 187, 188, 194, 195, 199, 203, 204, 232, 266 and Plot No.I, in favour of the 2nd Plaintiff and in respect of other plots in favour of the 1st Plaintiff and his nominees and in the event of the Defendant failing to execute the sale deeds in respect of the schedule mentioned properties as prayed for, this court may execute and register the sale deeds in favour of the Plaintiffs on behalf of the Defendant.

(b) In the event if the relief of specific performance is denied by this court, as an alternate relief, this court may be pleased to direct the Defendant to refund the advance amount Rs.5,10,000/- to the Plaintiffs with interest at 12% per annum from the date of the plaint till the date of realization.

(c) Costs of this suit.



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2.The case of the Plaintiffs, as set out, in the plaint is as follows:-

a)The 1st Plaintiff is carrying on the business of real estate in the name and style of “T.R.REAL ESTATES”. The 2nd Plaintiff is also carrying on a real estate business, in the name and style of 'LATIF ESTATE LINE INDIA LIMITED'. The Defendant, a registered co-operative Society purchased the suit properties under various registered sale deeds to convert the same as house plots for sales purpose to augment the income of the Society. The Defendant has formed a lay out in the name and style of “C.K.MADHAVAN NAGAR EXTENSION" and converted the lands into house plots. The layout was approved by the Chennai Metropolitan Development Authority, by Letter No.L1/38785/2000, dated 03.01.2000 Permit No.000635, Approval No. PPD/LO No. 88/2000. Even after such approval, the Defendant was not able to sell the house plots. In the meeting of the Board of Directors of the Society held on 15.09.2001, Resolution No.82 was passed to sell the layout plots to the 1st Plaintiff. The Defendant after an elaborate discussion with the 1st Plaintiff, passed a Resolution No.149 dated 17.01.2003 to execute a sale agreement in favour of the 1st Plaintiff, agreeing to sell the Plot Nos.1 to 285 and the



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Commercial Complex I to XX, comprised in the approved layout in "C.K. Madhavan Nagar Extension" for a price of Rs.42/- per sq.ft. and a registered sale agreement deed, dated 24.09.2003 was executed by the Defendant in favour of the 1st Plaintiff. As per the said sale agreement deed, the period was fixed as 18 months and the time is not the essence of contract. The Defendant, taking into consideration of the amount spent for the development of the lands, fixed the price at Rs.42/- per sq feet for the suit property, even though the land costs was very low at that time. Hence, it was agreed that the Defendant should not demand the expenses spent by the Society and costs of the lands allotted for canal and road for public purpose. The sale amount is only for the unsold house plots and commercial complex area only.

b)The 1st Plaintiff is empowered to sell the layout plots to his nominees either as a single plot or in wholesome the entire plots to any third parties. The Defendant has also agreed to receive the sale amount as part payment, whenever the plots are registered in favour of the prospective buyers. The Defendant has also agreed to execute a power of attorney in favour of 1st Plaintiff for the said purposes. The Defendant has also agreed for the 1st Plaintiff to issue advertisements on behalf of the



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Defendant to sell the plots. It was further agreed that the 1st Plaintiff can develop the layout by spending his own money. The 1st Plaintiff has paid an initial advance of Rs.10,000/- by way of cash on 04.08.2003, a sum of Rs.1,00,00/- on 23.09.2003 by way of a cheque No.938752, a sum of Rs.2,00,000/- on 11.10.2003 by way of a cheque No.938759, a sum of Rs.2,00,000/- by way of a cheque No.938760 and in all a sum of Rs.5,10,000/- was paid. The Defendant has handed over the management and maintenance the suit properties to him and the 1st Plaintiff made lot of improvements in the suit properties.

c)The 1st Plaintiff had entered into a sale agreement deed dated 31.1.2004 with the 2nd Plaintiff, thereby agreeing to sell the entire suit property except the Plot Nos.105 to 111, 112, 113, 145, 149, 166, 167, 168, 187, 188, 194, 195, 199, 203,204, 232, 266 and Plot No.1, in the said layout to the 2nd Plaintiff through the 1st Plaintiff. The 2nd Plaintiff paid a lump sum amount towards the earnest money and took possession of the suit property and changed the name of the lay out as 'ROYAL PRIME CITY" and developed the suit lands further by investing his own money. Similarly, the 1st Plaintiff has entered into another sale agreement with one Sri Vidya to sell the Plot No.149 and Plot No.194 was agreed upon to



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be sold to one Gurusamy under a sale agreement dated 14.10.2003. Plot No.195 was agreed upon to be sold to one Selvapandi under a sale agreement deed dated 10.10.2003. The 1st Plaintiff is always ready and willing to complete the sale transaction. The 1st Plaintiff was requesting the Defendant to accept the sale consideration from his nominees and to complete the sale transaction as per the terms of the sale agreement.

d)In the mean time, new office bearers were elected in the election held in the Society. In the said election, one Govindaraj, had been elected as the President. The new office bearers after having assumed their office, started to give trouble to the Plaintiffs. The new President called for a meeting with the 1st Plaintiff and insisted that he must be paid his share separately and then, only sale deeds would be executed in favour of his nominees and he evaded to accept the balance of sale consideration and to complete the sale transaction and attempted to interfere with the peaceful possession and management of the suit property. Hence, the 1st Plaintiff filed a suit in OS.No.55 of 2004 on the file of the Thiruvottriyur District Munsif Court for permanent injunction, restraining the Defendant from acting against the terms and conditions of the sale agreement dated 24.09.2003. The 1st Plaintiff filed IA.No.27 of 2004, seeking permission of



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the Court to file a comprehensive suit and such a permission was granted.

The 1st Plaintiff filed another application in IA.No.279 of 2004 for interim injunction and interim injunction was granted and the same was made absolute and a CRP against the same is now pending before this Court. Selvapandi, Sri Vidya and Gurusamy have filed three separate suits in OS.Nos.28, 29, and 30 of 2004 on the file of the Ponneri Sub court, against the Defendant and the 1st Plaintiff for specific performance of the sale agreement and the above suits are pending in part heard stage before the said Court and hence, they have not joined with the Plaintiffs.

e)The Defendant filed CMA against the order in IA.No.278 of /2004 in OS.No.55 of 2004 and the same was dismissed, directing the Trial Court to complete the trial within 3 months and with another direction to the Defendant not to alienate the property till the disposal of the suit. There is a finding with regard to the possession of the suit property against the 1st Plaintiff in the judgement of the appellate court. Hence, the 1st Plaintiff has preferred a CRP and the same is pending. The above proceedings would lead to the conclusion that Defendant may not complete the sale transaction. Pending above developments, a canal was formed by the Government of Tamil Nadu, which runs through a portion of



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the layout and excluding that portion of the layout now plots are available for sale in favour of the 1st Plaintiff or his nominees. The 2nd Plaintiff is indirectly affected due to violation of the contract executed by the Defendant in favour of the 1st Plaintiff. The period of limitation starts from the date of expiry of 18 months as per the terms of the contract executed and hence, the suit is within the period of limitation. After deducting the canal portion acquired by the Government, the remaining portions only are available for sale. Therefore, the Plaintiffs have given the actual measurements of the plots available for sale in the description of the schedule, out of the total extent of 20 acres and 35 cents. In such circumstances, this Civil Suit has been filed, seeking the reliefs, as stated above.

3.The case of the Defendant, as set out in the written statement, is as follows:-

a)The 1st Plaintiff filed a suit in O.S.No.55 of 2004 in the District Munsif Court, Thiruvotriyur for a decree of permanent injunction restraining the Defendant in any way acting against the terms and conditions of the sale agreement dated 24.09.2003 and the said suit was



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dismissed on 18.08.2008. The 2nd Plaintiff is claiming under the 1st Plaintiff. The matter directly and substantially in issue in the present suit was directly and substantially in issue in the former suit in OS.No.55 of 2004, between the same parties and the former suit was decided and hence, the present suit is barred under Section 11 of CPC. The suit has been filed against "The Simpson and Group Companies Co-operative Society Ltd, represented by its President and Secretary". There is no such Secretary for the Defendant Society. Therefore, the suit filed against "President and Secretary" is not maintainable. The 2nd Defendant is the Managing Director of the Society. However, he has been impleaded in the suit in his individual name and hence, such a suit is not maintainable in law.

b)The Defendant Society has been registered under the Multi-State Co-operative Societies Act. The Defendant is not aware whether the 1st Plaintiffs is carrying on real estate business. The Society formulated a scheme to provide house sites to its members and with that object purchased the suit property measuring 20.35 acres and converted the same into house sites by obtaining approval from the competent planning authority. The entire expenditure was incurred by the Defendant Society.



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c)The Society has not passed any resolution to sell the lands to the 1st Plaintiff and no such agreement was entered into between the Defendant Society with the 1st Plaintiff. The Defendant never handed over the suit properties to the 1st Plaintiff. P.Selvakumar was working as a paid Secretary in the Society when the said agreement is alleged to have been executed on 24.09.2003 and he had no power or authority to enter into any contract with any other person on behalf of the Society. The Board of Directors did not authorize the P.Selvakumar to enter into any contract. In fact, P.Selvakumar was arrayed as the 2nd Defendant in the above mentioned suit OS.No.55 of 2004. The 1st Plaintiff colluded with the said P.Selvakumar and he executed the alleged agreement and hence, the alleged sale agreement is not binding on the Defendant Society. All the averments of the 1st Plaintiff with regard to the terms of the alleged agreement dated 24.09.2003 are baseless and untenable. The alleged advance money of Rs.10000/- said to have been paid by the 1st Plaintiff on 04.08.2003 was not credited to the accounts of the Defendant Society by the said P.Selvakumar and he manipulated and fabricated the records as if the Board authorized the sale of the said lands to the 1st Plaintiff. Since the said P.Selvakumar indulged in such illegal and unlawful activities, he



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was placed under suspension on 17.11.2003 and disciplinary action was initiated against him and ultimately he was dismissed from service on 15.05.2004. The demand drafts sent by the 1st Plaintiff were sent back to him since no agreement was entered into with him for the sale of the said lands. However, he refused to accept the returned drafts and therefore, the said money is with the Defendant Society and the Defendant Society is prepared to pay it back. However, the Defendant Society is not liable to pay any interest on the said amount.

d) Since the alleged agreement dated 24.09.2003 itself is invalid, the other agreements executed by the 1st Plaintiff with the 2nd Plaintiff and other persons mentioned in the plaint on the basis of the said agreement dated are invalid and the Plaintiffs cannot claim any relief against the Defendant on the basis of the said agreements. Since the former suit itself has been dismissed on 18.08.2008, the interim orders referred to in the plaint do not survive any longer. The alleged agreements entered into between the 1st Plaintiff and Selvapandi, Sri Vidya and Gurusamy are on the basis of the alleged agreement dated 24.09.2003 referred to above. There is no cause of action at all since no agreement was entered into between the 1st Defendant and the 1st Plaintiff. The suit properties are not



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situate within the territorial jurisdiction of this Court. In such circumstances, the suit is liable to be dismissed.

4. On the pleadings of the parties, the following issues were framed:-

- (1) Whether the suit is barred under Section 11 of the Code of Civil Procedure?
- (2) Whether the Board Resolution dated 17.01.2003 is true and valid?
- (3) Whether the Plaintiff are entitled for the relief of specific performance of sale agreement dated 24.09.2003?
- (4) Whether the Defendant was ready and willing to complete the sale transaction as per the sale agreement and comply with his part of contract?
- (5) Whether the Plaintiffs carried out development works in the suit property for promoting sale of the plots?
- (6) Whether the suit is barred by non joint of necessary party and for non impleadment of P.Selvakumar?
- (7) To what other relief?

5. On the side of the Plaintiffs, Ex.P1 to Ex.P18 were marked and PW.1 and PW.2 were examined. On the side of the Defendant, Ex.D1 to Ex.D9 were marked and DW.1 was examined.



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6. The learned counsel for the plaintiff would submit that since the matter directly and substantially in issue in those suits filed by the plaintiff and others, are not the matter directly and substantially in the present suit, it is not barred under Section 11 of the CPC. Further, since the plaintiffs are claiming relief against the Defendant Society representing by the present President and Secretary, there is no need to array P.Selvakumar, then Secretary, separately as a defendant in the present suit.

7. It has been further submitted by the learned counsel for the plaintiff that even though three resolutions have been passed by the defendant to sell the property to the 1st plaintiff, vide Ex.P7, Ex.P11 and Ex.12 and Sale agreement dated 24.09.2003 has been entered into between the 1st plaintiff and the defendant in this regard, the new office bearers of the defendant have started to give troubles to the 1st plaintiff insisting huge amount for execution of sale proceedings. In the event of said Sale Agreement, the 1st Plaintiff has paid an initial advance of Rs.10,000/- by way of cash on 04.08.2003, a sum of Rs.1,00,00/- on 23.09.2003 by way of a cheque No.938752, a sum of Rs.2,00,000/- on 11.10.2003 by way of a



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cheque No.938759, a sum of Rs.2,00,000/- by way of a cheque No.938760 and in all a sum of Rs.5,10,000/- was paid. The Defendant has handed over the management and maintenance the suit properties to him and the 1st Plaintiff made lot of improvements in the suit properties. Further, if there are sale agreements with the other parties to sell the suit property as per the Sale Agreement dated 24.09.2003, he seeks to decree the suit as prayed for.

8. The learned counsel for the defendant would submit that one Mr. K. Selvakumar who was working as an employee of the said society (as paid Secretary) colluded with the Plaintiff and entered into a Sale Agreement with the Plaintiff on 24-09- 2003 agreeing to sell Plot Nos. 1 to 285 and I to XX in C.K.Madhavan Nagar Extension Lay out (DTCP approved) Chettimeedu and Vadaperumbakkam, Ambattur Taluk, Thirvallur District belonging to the first defendant society at the rate of Rs.42/- per square feet. He was never authorized by the Board of Directors to enter into any such Agreement and no resolution was passed by the Board to sell the lands to the Plaintiff. However, the said Selvakumar fabricated and



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pasted a fabricated resolution (Resolution No. 149 dated 17-01-2003 resolving to sell the said lands to the First Plaintiff) in the Minutes book and entered to Exhibit P-1 Agreement to sell the lands to the Plaintiff for a meagre price of Rs.42/- per square feet.

9. It has been further submitted by the learned counsel for the defendant that under Section 110 (3) of the Multi State Cooperative Societies Act, 2002 "in no case the minutes of proceedings of a meeting shall be attached to any such books as aforesaid by pasting or otherwise". But the said Selvakumar pasted the said fabricated resolution in the Minutes book. He also received Rs.5,10,000/- from the Plaintiff on various dates towards advance money. On coming to know of the said fraudulent action, the first defendant society placed the said Mr. Selvakumar under suspension and initiated disciplinary action against him and dismissed him from service. The first defendant society returned the money paid by the Plaintiff, that is, Rs.5,10,000/- by Demand Draft stating that the agreement was fraudulent and the society was not bound by the agreement. The Plaintiff refused to receive the demand drafts sent by the First Defendant.



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10.The learned counsel for the defendant would further submit that the plaintiff did not spend any money on developing the property and he has not filed any document to show that he spent any money in this regard. Ex.P1 is not a valid document and tainted with malafides, Even though PW-2 was examined, no questions were put to him by the Plaintiff's Counsel with regard to these documents. Hence, the Suit is liable to be dismissed.

11. Heard both sides and perused the material available on records.

Issue Nos.1, 2, 3 and 6

12.On a perusal of the records, it is seen that the suit has been filed for Specific performance based on Sale Agreement dated 24.09.2003 or if denied the relief of Specific performance, the Advance amount of Rs.5,10,000/- paid by the plaintiff may be refunded. Even though there were suits filed by the plaintiff and other third parties who are not impleaded in this suit, vide O.S. No.55 of 2004, O.S. Nos.28 to 30 of 2004, the subject matter of the suit is different. Hence, the suit is not barred



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under Section 11 of the CPC. Accordingly, the Issue No.1 is answered in favour of the plaintiff. Further, according to Ex.P1, the plaintiff has entered into an sale agreement dated 24.09.2003, based on the resolutions passed by the Society at the time of holding the post of Secretary by one Selvakumar in the Society. However, the present office bearers of the defendant are denying the same as fabricated one. In this regard, one Selvakumar-P.W2 faced disciplinary proceedings action initiated by the present officer bearers of the Society. Since the plaintiff had entered into the said agreement with the Society, it is not necessary to implead then Secretary of Society Mr.Selvakumar. Hence, the suit is not barred by non-joint of necessary party. Accordingly, the Issue No.6 is answered in favour of the Plaintiff. Further, It has been stated by the defendant that Resolution No. 149 dated 17-01-2003 has been pasted in the minutes of proceedings of a meeting. As per under Section 110 (3) of the Multi State Cooperative Societies Act, 2002, the Board Resolution dated 17.01.2003 is not valid. Hence, the 1st plaintiff is not entitled for the relief of Specific performance of Sale Agreement dated 24.09.2003. Accordingly, the Issue No.2 and 3 are answered against the plaintiffs.



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Issue Nos.4 and 5

13. In view of the allegations made by new office bearers of the Society with regard to resolutions passed by then office bearers of the Society in favour of the plaintiff, the Defendant was not ready and Willing to complete the Sale Transaction as per the Sale Agreement and comply with his part of Contract. Accordingly, the Issue No.4 is answered. Since the plaintiff has not placed any evidence for carrying out development works in the suit property for promoting the sale of the plots, it cannot be accepted by this Court. Accordingly, the Issue No.5 is answered against the plaintiff.

Issue No.7

14. However, on a perusal of the records, the plaintiff has made payment of Rs.5,10,000/- to the Defendant towards dealing of the sale of plots in the suit property. At the same time, the defendant was ready to refund the advance amount of Rs.5,10,000/- by Demand Draft to the plaintiff alleging that the said agreement was fraudulent and the Society was not bound by the Agreement. Hence, there is no dispute on the



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payment made by the plaintiff. Even though there is a dispute only on resolutions passed by the Defendant and Sale Agreement dated 24.09.2003 during the assumption of previous officer bearers, the Defendant Society agreed for receipt of the aforesaid amount paid by the plaintiff. Hence, the 1st plaintiff is entitled to receive the advance amount of Rs.5,10,000/- along with interest @12% per annum from the date of plaint till the date of realization. Accordingly, Issue No.7 is answered in favour of the 1st plaintiff.

15. In the result, the present suit is partly decreed to the extent as indicated above.

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



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List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 is the Original sale agreement dated 24/9/2003
2. Ex.P2 is the Original sale agreement dated 31/1/2004
3. Ex.P3 is the Original Cheque receipt acknowledging the receipt of Cheque No.938752 dated 24/9/2003
4. Ex.P4 is Original Cheque receipt acknowledging the receipt of Cheque No.938760. Dated 16/10/2003
5. Ex.P5 is the Original Cheque receipt acknowledging the receipt of Cheque No.938759. Dated 13/10/2003.
6. Ex.P6. (Series) Copy of Letter to the first defendant society along with the receipt. Dated 12/3/2004.
7. Ex..P7 Resolution No.82 on 15/9/2001.
8. Ex.P8 -Receipt issued by the Secretary to the first defendant. Dated 04.08.2003
9. Ex P9 -Xerox copy of CMDA Approved Plan.
- 10.Ex.P10- Proposal submitted by the plaintiff to the 1 defendant society for purchasing the suit property.
- 11.Ex.P11- Photo copy of Resolution No.149 passed by 1 defendant society to sell the property to the 1 plaintiff dated 17/1/2003.
- 12.Ex.P12- Photo copy of Resolution No.11 passed in the General Body Meeting of the 1 defendant society. Dated.25/5/2003



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- 13.Ex.P13-Photo copy of Letter issued by the 2nd defendant to the 1st plaintiff. Dated 28/11/2003
- 14.Ex.P14 Letter issued by the 1 plaintiff informing the 2nd defendant. Dated 12/3/2004
15. Ex.P15 - Letter issued by the 2nd defendant to the 1 plaintiff. Dated 25/8/2008
- 16.Ex.P16- Photo copy of Letter issued by the 1st plaintiff to the 2nd defendant.
17. Ex.P17 - is the Xerox copy of Judgement passed in O.S. No.5384/2004 on the IVth Assistant City Civil Court, Chennai dated 01.04.2010.
18. Ex.P18 - is the copy of Decree passed in O.S. No.5384/2004 on the IVth Assistant City Civil Court, Chennai dated 01.04.2010.

2. List of Exhibits marked on the side of the Defendants:-

1. Ex.D1 is the Certified copy of Judgement passed in O.S. No.55/2004 on the District Munsif Court, Thiruvottriyur. Dated 18/8/2008
2. Ex.D2 is the Certified copy of Decree passed in O.S. No.55/2004 on the District Munsif Court, Thiruvottriyur. Dated 18/8/2008
3. Ex.D3 is Certified copy of Judgement passed in O.S. No.30/2004 on the file of Subordinate Judge, Ponneri. Dated 31/3/2011



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4.Ex.D4 is Certified copy of Decree passed in O.S. No.30/2004 on the file of Subordinate Judge, Ponneri. Dated 31/3/2011

5. Ex.D5 is Certified copy of Judgement passed in O.S. No.29/2004 on the file of Subordinate Judge, Ponneri. Dated 31/3/2011

6. Ex.D6 is Certified copy of Decree passed in O.S. 29/2004 on the file of Subordinate Judge, Ponneri. Dated 31/3/2011

7. Ex.D7 is the Certified copy of Judgement passed in O.S. No.28/2004 on the file of Subordinate Judge, Ponneri. Dated 31/3/2011.

8. Ex.D8 is Certified copy of Decree passed in O.S. 28/2004 on the file of Subordinate Judge, Ponneri. Dated 31/3/2011

9. Ex.D9 is the Affidavit and Petition and order in I.A. No.278/2004.

2. List of Witnesses examined on the side of the Plaintiff:

1. PW.1 – Mr. S. Thangaraj
2. PW.2 - Mr. P.Selvakumar

3.List of Witnesses examined on the side of the Defendants:-

- 1.D.W.1 –C. Govindarajulu

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Pre-Delivery Judgement in
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