



C.S. No.980 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.04.2024

Pronounced on: 07.06.2024

CORAM:

THE HON'BLE MR.JUSTICE P.B.BALAJI

CS. No.980 of 2007

M/s.Aruna Theatres and Enterprises Pvt. Ltd.,
Represented by its Director
Mr.K.Shanmugasundaram
having its registered office at
No.9, Davidson Street, Chennai 600 001 and
having its Corporate Office at
No.3, Pillar Road, Ashok Nagar,
Chennai – 600 083.
(Amended as per order dated 09.02.2023
in A.No.3203 of 2018)

.. Plaintiff

/versus/

1.M/s.Karur Vysya Bank Limited,
Rep. by its Deputy General Manager,
Divisional Office, K.V.B.Towers, (1st Floor),
568, Anna Salai, Teynampet,
Chennai – 600 018.

2.Mr.S.Paramasivam Pillai

3.M/s.Ashoka Associates,
Partnership firm rep. by its partner,
Mr.V.Manthiram having office at
No.9, Davidson Street, Chennai -600 001.

4.M/s.Lavanya and Co.,



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C.S. No.980 of 2018

Proprietorship firm,
Rep. by Ms.Lavanya Narayanan,
Having office at
No.245/6, R.K.Mutt Road,
Mylapore, Chennai – 600 004.

5.M/s.Pyramid Saimiara Theatre Ltd,
Represented by its Director,
No.672, 2nd Floor, Temple Towers,
Anna Salai, Nandanam, Chennai – 600 035.

6.The Hon'ble Mr.Justice K.Swamidurai,
Receiver of M/s.Aruna Theatres & Enterprises Pvt. Ltd.,
No.3, Pillar Road, Ashok Nagar,
Chennai 600 083.
(Amended as per order dated 09.02.2023 in
A. No.3203 of 2018)

...Defendants

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, prayed for a judgment and decree against the Defendant:-

a) For a declaration declaring that the alleged deed of assignment dated 09.10.2007 executed by 1st defendant to and in favour of 2nd defendant in document No.954 of 2007 which was registered at Joint Sub Registrar's Office-II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.

b) For a declaration declaring that the alleged deed of assignment dated 09.10.2007 executed by 2nd defendant to and in favour of 3rd defendant in document No.955 of 2007, which was registered at Joint Sub Registrar's Office -II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.



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c) For a declaration declaring that the alleged mortgage deed dated 09.10.2007 executed by 3rd defendant in favour of 5th defendant, which was registered as document No.956 of 2007 at Joint Sub Registrar's Office -II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.

d) For a declaration declaring that the alleged lease deed dated 09.10.2007 executed by 3rd defendant in favour of 4th defendant, which was registered as document No.957 of 2007 at Joint Sub Registrar's Office-II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.

e) Permanent injunction restraining the defendants 1 to 5 their men, agents, servants and anyone claiming under them or acting on their behalf from in any way disturb the peaceful possession and enjoyment of the schedule mentioned property owned by the plaintiff and also the management of the plaintiff company either by virtue of the lease deed dated 09.10.2007 or by any other document whatsoever.

f) Permanent injunction restraining the defendants 1 to 5 their men, agents, servants and anyone claiming under them or acting on their behalf from in any way interfere with the peaceful possession and enjoyment of the theatre complex namely Udayam, Mini Udayam, Chandran, Suriyan and Udayam Kalyana Mandapam which is morefully described in the Schedule hereunder without following the due process of law.

g) to direct the second Defendant to pay a sum of Rs.3,38,00,000/- (Principal sum of Rs.2.60 Crores + interest @ 12 % p.a over the Principal from 10.04.2010 till date of realization.

h) to pay the costs of the suit.



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C.S. No.980 of 2017

For Plaintiff : Mr. C.Umashankar

For Defendants : Mr.Sahayadevan for D4

J U D G M E N T

The plaintiff has filed the above suit for the following reliefs:-

a) *For a declaration declaring that the alleged deed of assignment dated 09.10.2007 executed by 1st defendant to and in favour of 2nd defendant in document No.954 of 2007 which was registered at Joint Sub Registrar's Office-II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.*

b) *For a declaration declaring that the alleged deed of assignment dated 09.10.2007 executed by 2nd defendant to and in favour of 3rd defendant in document No.955 of 2007, which was registered at Joint Sub Registrar's Office -II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.*

c) *For a declaration declaring that the alleged mortgage deed dated 09.10.2007 executed by 3rd defendant in favour of 5th defendant, which was registered as document No.956 of 2007 at Joint Sub Registrar's Office -II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.*

d) *For a declaration declaring that the alleged lease deed dated 09.10.2007 executed by 3rd defendant in favour of 4th defendant, which was registered as document No.957 of 2007 at Joint Sub Registrar's Office-II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.*

e) *Permanent injunction restraining the defendants 1 to 5 their men, agents, servants and anyone claiming under them or acting on their behalf from in any way disturb the peaceful possession and enjoyment of the schedule mentioned property owned by the plaintiff and also the management of the plaintiff company either by virtue of the lease deed dated 09.10.2007 or by any other document whatsoever.*

f) *Permanent injunction restraining the defendants 1 to 5 their men, agents, servants and anyone claiming under them or acting on their behalf from in any way interfere with the peaceful possession and enjoyment of the theatre complex namely Udayam, Mini Udayam, Chandran, Suriyan and Udayam Kalyana Mandapam which is morefully described in the Schedule hereunder without following the due process of law.*



g) to direct the second Defendant to pay a sum of Rs.3,38,00,000/- (Principal sum of Rs.2.60 Crores + interest @ 12 % p.a over the Principal from 10.04.2010 till date of realization.

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2. As seen from the plaint, it is the case of the plaintiff that the Company is registered under the Companies Act, 1956, having 52 shareholders representing six branches of families, totalling in all 7,596 shares. The plaintiff owns Cinema Theatres which are constructed in the suit property and the main business of the plaintiff is exhibiting Films in the Theatre Complex owned by him.

3. It is the further case of the plaintiff that the plaintiff stood as a Corporate Guarantor for a loan borrowed by the 7th defendant from the first defendant's bank. It is also stated that disputes arose between the family members of the six branches and the same resulted in non payment of bank dues and other Governmental dues. The 7th defendant also defaulted in repaying the loan and therefore, the first defendant, Bank filed OA No.178 of 2004 before the Debt Recovery Tribunal-I against the 7th defendant as well as the plaintiff and other Guarantors, seeking recovery of a sum of Rs.12,53,77,604.56. The Bank also initiated proceedings under SARFAESI Act, 2002 and took symbolic possession of the Theatre Complex.



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4. A Hon'ble Retired Judge of this Court viz., Justice. Mr.K.Swamidurai (Retired) was appointed as Administrator of the Theatre on 19.06.2006. The past Directors of the plaintiff's Company who had indulged in mis-appropriation and acted detrimental to the interest of the plaintiff's Company were removed from the Directorship at the EGM dated 05.01.2007. The said action was approved by the Company Law Board, Additional Principal Bench at Chennai in CA. No.41 of 2007 dated 09.08.2007.

5. Challenging the said order of the Company Law Board, CMA. No. 1900 of 2007 was preferred before this Court and the same was also dismissed on 19.09.2007. Despite the first defendant Bank being informed about the order dated 19.09.2007, the Bank ventured to create documents against the interests of the plaintiff's Company, in collusion with defendants 2 to 5 and brought about the alleged Deed of Assignment dated 09.10.2007, in favour of the second defendant herein, who was one of the Directors in the 7th defendant's Company, the principal borrower. On the same date, i.e., 09.10.2007, the second defendant also executed a Deed of Assignment in



favour of the third defendant in Doc. No.955 of 2007, in furtherance of which, the third defendant executed a mortgage deed in favour of the 4th defendant in Doc. No.956 of 2007 also dated 09.10.2007.

6. The third defendant also executed an alleged Lease Deed in favour of the fifth defendant, leasing out the Theatre Complex belonging to the plaintiff, for a period of 15 years, vide Doc. No.957/2007. All these documents, according to the plaintiff are fraudulent deeds brought about by collusion amongst defendants 1 to 5 and they are not binding on the plaintiff.

7. The learned counsel for the Plaintiff further contended that once the entire dues of the Bank were settled, the Corporate Guarantee given by the plaintiff ceased to exist and the plaintiff's interest in the suit property could not be jeopardised by fraudulent acts, that too in collusion amongst defendants 1 to 5.

8. On 17.04.2024, all the defendants were set exparte and the suit was posted before the learned I Additional Master for recording exparte evidence. Before the learned I Additional Master, on the side of the



plaintiff, one Mr.K.Shanmugasundaran was examined as P.W.1 and 22 documents have been marked as Ex.P1 to P22.

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9. Apart from setting out the plaint averments and allegations, in his proof affidavit, P.W.1 has also narrated subsequent developments in the matter, pending the suit.

10. It is seen that the Division Bench of this Court in OSA. Nos. 44 to 47 of 2008 and 101 to 110 and 188 of 2008, vide order dated 31.10.2008, directed the second defendant to compensate the loss suffered by the plaintiff as a result of his actions. In this regard, the second defendant is liable to pay a sum of Rs.3,38,00,000/- to the plaintiff. Further, in OSA No.344 of 2017, on other Division Bench of this Court, to which I was a party, held that only a sum of Rs.68 lakhs and odd was due and payable to M/s.Lavanya and Company, under the mortgage dated 09.10.2007. Contempt Petition was also filed in Cont.P.No.1387 of 2023, in furtherance of which, the claim of M/s.Lavanya and Company was settled and the original title deeds of the plaintiff's Company were also handed over to the interim Administrator. In fact, in the said proceedings, a Developer also



came forward to undertake joint development of the Theatre Complex and most of the share holders wanted their shares to be purchased/bought back. They were also paid their respective consideration and some of them have entered into an agreement with the Developer for taking a share in the said property, in lieu of their share holdings. In fact, symbolic possession of the property was also given to the Developer, to enable the Developer to proceed with lawful development of the property, especially considering the huge upfront payments made by the Developer to clear the claims of several of the share holders. In view of the above, not all of the reliefs originally prayed for in the suit actually survive for consideration as on date.

11. The Lease Deed dated 09.10.2007 executed by the third defendant in favour of the fifth defendant is admittedly without even possession being delivered to the lessee under the alleged lease deed. The possession of the property has already been delivered to the Developer who has undertaken development of the entire property and therefore, the lease deed executed by third defendant is clearly non est, illegal and invalid in the eye of law and certainly not binding on the plaintiff, especially after the first defendant's dues were fully settled as early as on 05.10.2007, on which date the entire



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dues of the Bank were settled and consequently the Corporate Guarantee executed by the plaintiff in favour of the first defendant, Bank as a guarantor for repayment of the loans borrowed by the second defendant/principal borrower stood extinguished in full. Consequently, the lease deed executed by the third defendant is also not valid and binding on the plaintiff. The plaintiff, through oral and documentary evidence adduced through P.W.1, has proved the suit claim and consequently becomes entitled to the following reliefs:-

(iii) Declaration that the alleged lease deed dated 09.10.2007, executed by the third defendant in favour of the fifth defendant registered as Doc. No.956 of 2007 on the file of the Joint Sub Registrar Office-II, Chennai is illegal, non est in the eye of law, not valid and binding on the plaintiff.

(iv) Permanent Injunction restraining the defendants 1 to 5, their men, agent, servants or anyone claiming under them from in any manner disturbing the plaintiff's peaceful possession and enjoyment of the suit property and management of the plaintiff's Company except by due process of law.

(v) Permanent injunction restraining the defendants 1 to 5 their men,



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agents, servants and anyone claiming under them or acting on their behalf from in any way interfere with the peaceful possession and enjoyment of the theatre complex namely Udayam, Mini Udayam, Chandran, Suriyan and Udayam Kalyana Mandapam which is morefully described in the Schedule except by due process of law.

(vi) The second Defendant is directed to pay a sum of Rs.3,38,00,000/- (Principal sum of Rs.2.60 Crores + interest @ 12 % p.a over the Principal from 10.04.2010 till the date of decree and thereafter, 6% per annum.

12. In fine, the suit is partly decreed, directing the second defendant to pay a sum of Rs.3,38,00,000/- to the plaintiff; declaring the lease deed dated 09.10.2007 in Doc.No.956 of 2007 on the file of the Joint Sub Registrar's Office-II, Chennai being illegal and non est in law and not valid and binding on the plaintiff; permanent injunction restraining defendants 1 to 5 or anybody claiming through or under them from in any manner disturbing the plaintiff's peaceful possession and enjoyment of the suit property and also Management of the plaintiff's company, either by virtue of lease deed dated 09.05.2007 or under any other documents; permanent



injunction restraining defendants 1 to 5 or anybody claiming through under them from in any manner interfering from the Theatre complex viz., Udayam, Mini Udayam, Chandran, Suriyan and Udayam Kalyana Mandapam which is morefully described in the Schedule, except by due process of law. There shall be an order of proportionate costs, limited to the reliefs decreed in favour of the plaintiff.

07.06.2024

Index : Yes/No
Speaking/Non-speaking order
rkp

Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.K.Shanmugasundaram

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P1	--	List of Shareholders names and Addresses of the Plaintiff's Company
2.	P2	--	Articles of Association of the Plaintiff Company
3.	P3	--	The photocopy (Notary Attested) of the Articles of Association of the 7 th Defendant Company
4	P4	12.10.1998	The photocopy of the (Notary Attested) Corporate Guarantee given by the Plaintiff Company
5	P5	--	The order in I.A. No.414 of 2004 in O.A. No.178 of 2004.



6	P6	19.09.2007	Order in CMA. No.1900 of 2007 passed by the Hon'ble Court.
7	P7	19.09.2007	The photocopy of the Paper Publication
8	P8	19.09.2007	The photocopy (Notary Attested) of the Paper Publication given by the 1 st Defendant Bank for Possession Notice.
9	P9	06.10.2007	The photocopy (Notary Attested) of the Letter sent from the Plaintiff Company to the Chairman, Karur Vysya Bank Ltd.
10	P10	06.10.2007	The photocopy (Notary Attested) of the Letter sent from the Plaintiff Company to the Manager, Karur Vysya Bank, Ltd.
11	P11	06.10.2007	The photocopy (Notary Attested) Letter sent from the Plaintiff Company to the Deputy General Manager, Karur Vysya Bank Ltd.
12	P12	08.10.2007	The photocopy of the Acknowledgment Cards 2 Nos.
13	P13	09.10.2007	Certified copy of the Deed of Assignment executed by the 1 st defendant Bank to and in favour of S.Paramasivam Pillai.
14	P14	09.10.2007	The certified copy of the Deed of Assignment executed by S.Paramasivam Pillai to and in favour of Ashoka Associates.
15	P15	09.10.2007	The certified copy of the Deed of Mortgage executed by Ashoka Associates to and in favour M/s.Lavanya and Company.
16	P16	09.10.2007	The certified copy of the Deed of Lease executed by Ashoka Associates to and in favour of M/s.Pyramid Saimira Theater Limited.
17	P17	09.10.2007	The photocopy (Notary Attested) of the Complaint given by the Plaintiff against 5 th Defendant to R6 Police Station.
18	P18	10.10.2007	The photocopy (Notary Attested) of the Letter given by the 1 st Defendant Bank to the Receiver/Administrator.
19	P19	--	The photocopy (Notary Attested) of the Notice issued to the Plaintiff by counsel in C.S. No.937 of 2007
20	P20	12.10.2007	The photocopy (Notary Attested) of the Letter



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			given by the 1 st Defendant Bank to S.Muthuvel Director to the 8 th Defendant Company.
21	P21	13.10.2007	The Complaint given by the Manager of Plaintiff to R6 Police Station.

Witnesses examined on the side of the defendants:

Nil.

Documents marked on the side of the defendants:

Nil.

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P.B.BALAJI.J.

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P.B.BALAJI, J.,

The learned counsel for the Plaintiff made a mention after the disposal of the Civil Suit. Hence, the Registry was directed to list the matter today under the caption '*for being mentioned*'.

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2. After hearing the learned counsel for the plaintiff and perusing the records, the following corrections are made in the Judgment dated 07.06.2024:-

2.1. The defendants 7 to 14 are added in the short and long cause titles viz.,

- 7. M/s. Annai Mookambikai Flour Mills Private Limited,**
- Represented by its Director, Mr.S.Muthuvel,**
- 8. Mr.M.Kalyanasundaram**
- 9. Mr.S.Balasubramaniam**
- 10. Mrs.K.Muthulakshmi**
- 11. Mrs. Indira**
- 12. Mr.K.Vadivel Murugan**
- 13. Mr.K.Muthukrishnan**
- 14. Mr.K.Muthuselvakumar**

2.2. Registry is directed to correct the name of the learned counsel appearing for the 4th defendant as **Mr.Sagadevan** instead of Mr.Sahayadevan for D4.

2.3. The ninth line in the Paragraph No.12, the lease deed date was inadvertently typed as 09.05.2007 instead of 09.10.2007, hence the same is changed to **09.10.2007**.

2.4. In Fifth line of the Paragraph No.11, after the word therefore, the following line is added, **“the assignment deeds dated 09.10.2007 executed by the first defendant in favour of the second defendant and the second defendant in favour of the third defendant in Doc. Nos.954 & 955 of**



2007 respectively and”

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2.5. In paragraph No.11 at Page No.10, before Point No.(i), the following two reliefs are added viz.,

(i) For a declaration declaring that the alleged deed of assignment dated 09.10.2007 executed by 1st defendant to and in favour of 2nd defendant in document No.954 of 2007 which was registered at Joint Sub Registrar's Office-II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.

(ii) For a declaration declaring that the alleged deed of assignment dated 09.10.2007 executed by 2nd defendant to and in favour of 3rd defendant in document No.955 of 2007, which was registered at Joint Sub Registrar's Office-II, Chennai as illegal, non est in the eye of law not valid and binding upon the plaintiff.

2.6. In Page No.10 at paragraph No.11, Point No.(i), the sentence viz., “the alleged lease deed dated 09.10.2007, **executed by** the third defendant **in favour of the** fifth defendant”, is changed as “the alleged lease deed dated 09.10.2007, **between** the third defendant **and the** fifth defendant”.



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2.7. In Point No.(i) at page No.10, the Document Number is inadvertently typed as Doc. No.956 of 2007 instead of **Doc. No.957 of 2007** and the same is corrected as **Doc. No.957 of 2007**.

2.8. In the third line at paragraph No.12, the word “Doc.No.956 of 2007 on the file of the Joint Sub Registrar's Office-II, Chennai” is hereby deleted and instead of the above add the following sentence viz., “**Doc. No.957 of 2007 and assignment deeds registered as Deed Nos.954 & 955 of 2007 on the file of the Joint Sub Registrar's Office -II, Chennai as being illegal**”.

2.9. The rankings of the defendants wherever mentioned in the judgment will incorporate the following:- The First defendant- M/s.Karur Vysya Bank Limited; Second defendant-Mr.P.Paramasivam Pillai; Third defendant- M/s.Ashoka Associates; Fourth defendant -M/s.Lavanya and Company; the Fifth defendant- Pyramid Saimira Theatre Limited and the seventh defendant- M/s.Annai Mookambikai Roller and Flour Mills Private Limited.

3. Except for the aforesaid modifications, Judgment dated 07.06.2024, remains unaltered in all other respects.



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- Note: (i) Registry is directed to issue a fresh copy of the Judgment after incorporating aforesaid corrections.**
- (ii) Registry is directed to communicate the corrected copy of the above judgment to the S.R.O, Ashok Nagar.**

P.B.BALAJI, J.,

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