IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S No.959 of 2010

1.G. Ragupathy,
2.G. Varadaraj,
3.D. Sriram, ... Plaintiffs

..Vs..

1.Meena Maheswari
2.N. Krishnaraj .. Defendants

Prayer: Civil Suit has been filed under Order IV Rule 1 read with Order IV Rule (1) of O.S Rules of the High Court of Madras, praying to pass the following judgment and decree against the defendants:

a) directing the Defendants to pay a sum of Rs.1,22,00,000/- to the Plaintiffs towards compensation and damages

b) directing the Defendants to pay the Plaintiffs the costs of the Suit and

c) granting such further or other reliefs as this Hon'ble Court may deem fit and proper under the circumstances and thus render justice.

For Plaintiffs : Mr.T.Gowthaman
(For Gokula Krishnan)

For Defendants : Mr. M.K.Kabir Senior Counsel,
For M/s.T. Jayaraman

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JUDGMENT

This Civil Suit has been filed, seeking the relief as prayed therein.

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

(i) The Plaintiffs 1 and 2 are brothers and the 3rd Plaintiff is the co-brother of the first Plaintiff. The second Defendant is the husband of the first Defendant. The property measuring about 55 cents and 170 Sq.ft. situated at S.F. No. 771/4-C at Kalapatti Village, Coimbatore Taluk, originally belonged to one P.V. Rajan. Vide a Sale Deed Document No. 1543 of 1982 dated 12.04.1982. The second Defendant herein purchased the same from the said P.V. Rajan under a Sale Deed dated 16.7.1986 and registered as Document No. 3867 of 1986 before the Sub- Registrar, Gandhipuram, Coimbatore. In the year 2003, the second Defendant executed a settlement deed dated 21.03.2003 in favour of the first Defendant, which was registered as document No. 1092 of 2003. By virtue of the said settlement deed, the first Defendant herein became the absolute owner of the property described herein above.

(ii)The Defendants offered to sell the property to the Plaintiffs representing to the Plaintiffs that the title deed for the said properties were missing. The second Defendant had given a paper publication in an issue of 'Maalai Malar' dated 05.08.1998, claiming that his original sale deed for the property dated 16.7.1986 had been misplaced and Lost. After producing a Xerox copy of the said advertisement to the Plaintiffs, the second Defendant also showed the preamble of the settlement dated executed by him in favour of the first Defendant, wherein he had specifically stated that the title deed for the said property had been lost and misplaced and that he had given an advertisement to that effect in an issue of 'Maalai Malar' dated 05.08.1998. Both the Defendants claimed that the title deed of the said properties were irretrievably lost but there was no legal impediment in them selling the properties. On the basis of the undertaking through an affidavit confirming the loss of the title deed along with the sale deed, the Plaintiffs 1 and 2 agreed to purchase an extent of 27

Cents and 384 Sq.ft. and the third Plaintiff agreed to purchase the remaining extent of 27 Cents and 244 Sq.ft of the suit schedule property. After receiving the consideration for the said properties, two separate affidavits, both dated 15.12.2003, were sworn by the second Defendant in favour of the Plaintiffs to the effect that his title deed dated 16.07.1986 was irretrievably lost and he had given a paper publication to that effect in an issue of 'Maalai malar' dated 05.08.1998. Thereafter, the first Defendant executed a sale deed dated 15.12.2003 and registered as document No. 4891 of 2003 in favour of the first and second Plaintiffs and as document No. 4892 of 2003 in favour of the third plaintiff to an extent as stated above.

(iii) In both the sale deeds, the first Defendant has confirmed that the title deed for the said properties was lost and an advertisement had been given in 'Maalai malar' to that effect. She has also expressly represented in the sale deeds that the properties thus conveyed by her were free from all encumbrances or Court proceedings and has undertaken therein that she would indemnify the Plaintiffs in the event of the property being encumbered in any manner. The second Defendant has also attested-both the sale deeds as a witness. After the sale deeds were executed, the

Plaintiffs took possession of their respective portions of the property. The Plaintiffs 1 and 2 applied for a building plan approval to put up buildings in the said land and the same was approved on 16.6.2004 as Approval No. 174 and 179 of 200405. After having invested their lifetime savings and having taken private loans for the purchase of the said property, the Plaintiffs 1 and 2 availed a loan Rs. 25,00,000/- from the State Bank of India, Coimbatore and put up construction in the said land admeasuring about 4632 Sq.ft. Apart from the same, the Plaintiffs 1 and 2 invested about Rs. 15,00,000/- for purchasing the machinery and also availed cash credit loan facility to tune of Rs. 15,00,000/- from the State Bank of India, Coimbatore.

iv)After establishing the industry and their business in the said property, the Plaintiffs 1 and 2 started running it successfully with as many as 11 workers employed in the same. The 3rd Plaintiff, for his part, was carrying on cotton waste trade in the name and style of 'Sri Chandra Traders'. He also availed a loan of Rs.45,00,000/- from Indian Bank, Singanallur Branch for the said business by mortgaging the property purchased by him. Thus, they were running their respective businesses in the said properties from the date of their purchase. The common building put up in the property is assessed for the property tax in their names and they have also been paying property tax without any default to the authorities. They also secured electricity service connection in SC No. 1643 for the premises and were proper uninterrupted ownership, possession and enjoyment of their respective properties from the date of their purchase.

v).While this was so, on 19.05.2007, the Bank officer, from United Bank of India, Kolkata, informed the Plaintiffs that the second Defendant had given the said property as a collateral security with the United Bank of India (UBI), Kolkata even in 1994 for the loan availed by M/s. Laxmi Rocks Pvt. Ltd., wherein the second Defendant was functioning as an erstwhile Director. Since the loan availed from UBI has not been discharged, the Bank had moved the DRT-1, Kolkata by way of O.A. No.23 of 1994. Further, recovery proceedings had also been initiated by the Bank in R.P. Case No.31 of 2003, wherein the order of attachment of the Plaintiffs' property had been passed on 26.04.2007. The said officer served a copy of the order of attachment as well as the inspection report to the Plaintiffs and took their signatures in the inspection report. The

Plaintiffs were informed that all the necessary formalities relating to the attachment were complete and the property was going to be brought to public auction to discharge the loan availed by the 2nd Defendant.

vi)When the Plaintiffs confronted the Defendants to do the needful immediately before the DRT-1, Kolkata to set aside the order of attachment, the Defendants reluctantly informed the Plaintiffs that the second Defendant had already moved a Civil Suit bearing O.S.No.403 of 1994 before the Sub-Court, Coimbatore seeking to restrain UBI, Kolkata from taking any coercive action against the said property. While the Plaintiffs checked the status of the said Civil Suit, they came to know that the said Suit had been dismissed even in 2005 for non- prosecution. Thereafter, the Plaintiffs contacted the Defendants and informed them about the dismissal of the Suit and desperately asked them to move the DRT-1, Kolkata to protect the property, for which the Defendants brusquely told the Plaintiffs that they had no subsisting interest in the property and asked the Plaintiffs to do the needful themselves, if they wanted to protect their properties. Left with no option, the Plaintiffs rushed to DRT-1, Kolkata and moved Appeal No.4 of 2007 against the orders dated 03.04.2003 and 26.04.2007 made in O.A.No.23 of 1994 and

R.P.Case No.31 of 2003 respectively. On 12.06.2007, the DRT-1, Kolkata passed an order of status quo. From that point on, the Plaintiffs diligently followed the case with DRT-1 Kolkata in person and through their counsel spending huge amounts of money and their time. There was no cooperation whatsoever, much less any support from the Defendants throughout the entire period. Soon after the problem arose, the Defendants started avoiding the calls made by the Plaintiffs seeking their cooperation. The Defendants, having played an active fraud and deliberately making false representations in the sale deeds as well as the affidavits to the effect that the title deeds were missing, did not even show the slightest interest in the proceedings and completely dissociated themselves from all the efforts taken by the Plaintiffs. The deliberate fraud played by the Defendants put the Plaintiffs in a critical position whereby the Plaintiffs were being put on day-to-day loss and hardship on account of the money spent towards the litigation expenses as well as the travel, boarding, lodging and incidental expenses in Kolkata, apart from the loss sustained by the Plaintiffs on account of their inability to concentrate in the business because of the continuing litigation. Further, the Plaintiffs preferred a criminal complaint against the Defendants and an F.I.R was also registered on the basis of the same. Soon after the complaint was registered, the Defendants moved this Hon'ble Court seeking anticipatory bail and the same was granted to them on the condition that they should surrender the title documents of their properties at Neelangarai before the Judicial Magistrate 1, Coimbatore. Since the Plaintiffs genuinely apprehended that the Defendants may sell the properties to some third parties without disclosing the surrender, of the title deeds before the Criminal Court, the Plaintiffs filed O.S.No.2304 of 2007 before the District Munsif, Coimbatore seeking a decree of permanent injunction restraining them from alienating or encumbering the properties till they discharge the dues payable to UBI, Kolkata. The Hon'ble Civil Court also granted an order of status quo on 02.11.2007, which continues till date.

vii) The illegal actions of the Defendants had forced the Plaintiffs to spend astronomical sums towards the litigation expenses and the other incidental expenses highlighted herein above. The meager returns from the business were sufficient only for the purposes of paying the interest for the loans, paying the salary of the employees and to barely keep the business afloat. The auction proceedings were stalled for nearly five months by virtue of the order of status quo passed by DRT-1, Kolkata. In the meantime, since no steps were taken by the Defendants and their Co-borrowers to settle the dues to the Bank, the Presiding Officer of DRT- I, Kolkata made it clear that the status quo could not be continued and UBI would be free to proceed with the auction. The Plaintiffs pleaded with the Presiding Officer of DRT-I, Kolkata to extend the order of status quo for one hearing so as to enable them to settle the matter with the Bank and the same was accordingly granted. After many rounds of protracted negotiations, the Bank finally agreed to release the properties of the Plaintiffs from the DRT proceedings on the condition that the Plaintiffs should pay a sum of Rs.61,00,000/- as one time settlement immediately on 29.11.2007. Realizing that this was the last chance for them to save their properties and left with no other alternative, the Plaintiffs borrowed heavily from private financiers as well as their known sources for exorbitant interest rates and were forced to pledge the jewels of the female members of their families to finally muster the said sum of Rs.61,00,000/- so as to settle the dues and protect their properties from the auction proceedings. With great difficulty, they settled the sum of Rs.61,00,000/- in accordance with the sanction letter issued by the bank and the receipt for the same was also issued by the bank on 12.12.2007.

viii) In view of the above, the Plaintiffs are entitled to damages for the physical loss suffered by them as well as the mental trauma and hardship undergone by them at the instance of the Defendants. Apart from the same, the Defendants are legally liable to compensate the monetary loss as well as the notional loss sustained by the Plaintiffs on account of the actions of the Defendants set out herein above. Therefore the total compensation and damages payable by the Defendants to the Plaintiffs under the above heads is Rs.1,22,00,000/- and the same is prayed for in the present suit.

3.The 1st Defendant filed a memo adopting the averments made in the Written Statement of the 2nd Defendant in short, is as follows:-

i) The 1st defendant is not aware of any of the transactions stated in the Plaint. Even the share in Lakxmi Rock Pvt. Ltd. was purchased by the 2nd Defendant in her name, 1st Defendant has not participated in any meetings of the said company nor is a signatory to any transaction of the said company. Consequently, the question of this Defendant committing any fraud as against the Plaintiffs or anyone else does not arise. The 2nd Defendant had settled the property in the name of this Defendant after taking all precautions in law pursuant to the letter dated 25.06.1996 sent by one Mr. Tapan Das informing the 2nd Defendant that the original title deed is lost. This Defendant never met the Plaintiffs at any point of time nor did she negotiate or deal with the property to sell the same to the Plaintiffs. This Defendant is not personally liable to repay any amount much less the amount of Rs. 1,22,00,000/- claimed in the suit. The suit without impleading the company and its directors is bad for nonjoinder of necessary parties.

ii) In the Written Statement filed by the 2nd Defendant it was one Mr. Manimuthu who was the advisor to the 2nd Defendant and it was through him that the sale dated 15.12.2003 came to be executed and registered. The suit is filed against this Defendant merely because the property was settled in her favour by the 2nd Defendant. The suit is therefore unsustainable both in equity and in law.

4. The case of the 2nd Defendant, in a nutshell, as set out in his written statement, is as follows:-

(i)The Claim of Rs.1,22,00,000/- towards the alleged expenditure, damages and amount remitted to UBI, Kolkatta, cannot be fastened on these Defendants. On 13.04.1988, this Defendant entered into an Agreement with the landowners of a land measuring about 11.67 acres in Muthampatty Village in Salem District @Rs.69,000/- per acre, for a total sale consideration of Rs.8,05,230/- and paid a sum of Rs. 1,20,000/- as advance. The said land was being purchased for the construction of the factory to carry on the granite business. The entire amount was paid by this Defendant from his personal funds. One Tapan Das requested this Defendant to join in the company Lakxmi Rock Pvt. Ltd. at Kolkatta. The 1st Defendant joined as Directors of Lakxmi Rock Pvt. Ltd. on 08.06.1988 by purchasing 1,200 equity shares each @ Rs. 100/- per share. As these Defendants were inducted as Directors of the said company at the instance of Mr. Tapan Das the aforesaid land was registered in the name of the said company. Though Mr. Tapan Das promised to repay the said amount, till date it has not been paid. Though the Ist Defendant was not keen to be associated with Lakxmi Rock Ltd., due to the then prevailing circumstances this Defendant thought that it would be prudent to do business with persons already in the business.

ii)This Defendant was unaware about the events which would unfold to his detriment by virtue of this joint venture. This Defendant was the owner of the property situate at SF No. 7714-C at Kalapatti Village, Coimbatore Taluk, under a Sale Deed Document No. 3867 of 1986, dated 16.07.1986. In the year 1989 at the request of Mr. Tapan Das, this Defendant pledged the said property which is near Coimbatore Aerodrome with SBI, Sulurpeta- 524121, for availing a loan of Rs. 25 lakhs as Mr. Tapan Das required the same urgently. The said amount was repaid to the SBI in the said year itself and this Defendant after the said incident wanted to exit from the company. After signing the necessary papers, the Defendants were allowed to exit on 13.12.1989. Mr. Tapan Das informed the Defendants not to enter the office premises and that one Mr. Karuppiah would manage the affairs under the instruction of Mr. Chatterjee who was then in the Bangalore office. SBI released the title deed of the said property to Mr. Tapan Das instead of this Defendant after his exit from the company. This Defendant requested Mr. Tapan Das to return the title document to him. On request of Tapan Das, ccordingly, on 12.04.1993, this Defendant went to Kolkatta to receive the title document where he was forced to sign certain papers in the office of UBI Overseas Branch. Fearing for his life this Defendant signed the said papers and left Kolkatta. On reaching Coimbatore this Defendant by telegrams dated 13.05.1993, 15.06.1993, 21.06.1993, 12.07.1993 & 19.07.1993 called upon Mr. Tapan Das to release the title document. As there was no response to the same, this Defendant issued a legal notice to UBI, Overseas Branch, Kolkatta. Thereafter, this Defendant instituted O.S. No. 403 of 1994 before the II Addl. District Munsiff Court, Coimbatore for the relief of Permanent Injunction restraining Lakxmi Rock Pvt. Ltd. represented by Mr. Tapan Das and UBI from using any document signed under coercion and to return the documents. The Suit was decreed on 28.01.1998 by the II Addl. DMC Coimbatore.

(iii)This Defendant reiterates that he never offered to stand guarantee nor did he issue any letter expressing his willingness to guarantee payment of any loan advanced to Lakxmi Rock Pvt. Ltd. This Defendant left the company as early as 1989 and hence he was not involved in obtaining any sanction of loan or credit facilities from the bank. Consequently the alleged document of guarantee is not binding on this Defendant. In the meanwhile, Mr. Tapan Das, by letter dated 25.06.1996 informed this Defendant that the aforesaid document is lost and it is not traceable. Consequently, this Defendant advertised in one edition of Malai Malar on 05.08.1998 about the loss of the document. Pursuant to the decree passed by the Court and the publication effected about the loss of the document, this Defendant waited for about 5 years to ensure that there is no claim by any person over the said property. In fact, this Defendant moved out of Coimbatore and permanently resided in Chennai from 1999 onwards. The counsel for the Defendant also passed away on 18.02.1999 and as the entire matter was given a quietus this Defendant under a deed of settlement dated 21.03.2003 registered as Document No. 1092 of 2003 at the Office of the Sub Registrar, Gandhipuram, settled the property in favour of the I Defendant. Thus, the 1 Defendant became the absolute owner of the same. The aforesaid facts would reveal that this Defendant had taken all the precautions as an ordinary prudent man prior to settling the property in favour of his wife, the Ist Defendant herein. However, it transpires that UBI, Kokatta had filed an Application to set aside the Decree dated 28.01.1998 which was allowed by the learned District Munsiff on 07.10.2002. He was unaware of the said Application, as he had permanently shifted to Chennai and his counsel S.V. Narayanan had also passed away. The said Suit is still pending on the file of the learned District Munsiff for conduct of trial. This Defendant submits that UBI Kolkatta had instituted proceedings before the DRT, Kolkatta for recovery of money from the company. This Defendant did not receive any notice from the Tribunal. However, it seems that by Order dated 25.03.2003, DRT Kolkatta allowed the claim of the bank.

iv)It transpires that one Mr. Basu Rai, Advocate, was appointed as the Receiver and he visited the site on 19.05.2007 for the purpose of assessing the process of sale of the said property. This is despite the pendency of O.S. No. 403 of 1994 as the said Suit which was dismissed for default was restored to file. The Plaintiffs have filed a Memo before the learned District Munsiff, Coimbatore for return of documents filed in the above suit. The documents have been removed from the Court on obtaining permission. Thereafter, the Plaintiffs have filed a Criminal Complaint against the Defendants and they have been granted conditional bail by the Judicial Magistrate VI Coimbatore on giving Plot No. 1 &2 in Sholinganalur as security. The Plaintiffs have been given security which is still in force. The Plaintiffs also instituted O.S. No. 2304 of 2007 against the Defendants for the relief of permanent injunction which has been dismissed for non prosecution on 06.09.2012. The Plaintiffs have now contended that they have settled the dues to UBI as early as 12.12.2007. This Defendant never met the Plaintiff nor dealt with them prior to the day of registration. The entire documents including the pleadings in O.S. No. 403 of 1994 were handed over to Mr. Manimuthu and in turn to the Plaintiffs. The Plaintiffs were aware of the entire situation and only after verifying the title deeds and obtaining legal opinion they purchased the property. In fact, the Plaintiffs acted upon the deed of sale and Plaintiffs I & II obtained a loan from SBI Main Branch, Coimbatore and the III Plaintiff from Indian Bank, Singanallur Branch, Coimbatore. The bank had cleared the title deeds and hence the question of suppressing any material fact causing damage to the Plaintiffs does not arise. Hence, the contention of the Plaintiff that this Defendant played a fraud and deliberately made false representation in the deeds of sale as well as in the affidavits to the effect that the title deed was missing cannot be countenanced. The loss of title deed was communicated on 25.06.1996, it was advertised on 05.08.1998 after O.S. No. 403 of 1994 was also decreed on 28.01.1998 and that through Mr. Manimuthu the entire documents were handed over to the Plaintiff prior to execution of the deed of sale on 15.12.2003. These

Defendants have not played any fraud as contended by the Plaintiffs. Consequently, the suit is liable to be dismissed.

5.On the pleadings of the parties, the following issues were framed in the suit:-

1).Whether the Execution of the Deed of Guarantee by the Defendant at Kolkatta was under duress?

2) Whether the Deed of Guarantee is not binding on the Defendants?

3) Whether the Decree passed by the Court of the II Additional District Munsif, Coimbatore is binding on the plaintiffs?

4)Whether the Deed of Settlement dated 21.03.2003 registered in favour of the 1st Defendant is valid and binding on the plaintiffs?

5).Whether the Plaintiffs purchased the property after obtaining legal opinion and hence cannot assail the Deed of Sale dated 15.12.2003 executed in their favour?

6).Whether the inter se settlement between the Plaintiffs and the Union Bank of India, Kolkatta is binding on the defendants?

7). Whether the cause of action for repayment of the amount paid to Union Bank of India, Kolkata can be maintained only against the borrower Laxmi Rock Pvt. Ltd.?

8).Whether the suit is bad for non-joinder of necessary parties?

9). Whether the suit is barred by limitation?

10). Had the defendants misrepresented to the plaintiffs that they had lost the original sale deed of the property sold to the plaintiffs?

11). Had the defendants deliberately created records as if the original sale deed had been lost after the 2nd Defendant had deposited the original sale deed as guarantee/collateral security for the loan taken by his enterprise and defrauded the plaintiff?

12). Had the defendants acted in bad faith by representing in the sale deed executed in favour of the plaintiffs and the affidavit that there was no charge, lien or encumbrance or litigation in the property sold to them?

13).Have the Plaintiffs been forced to expend substantial money to clear the charge/lien/encumbrance created on the property sold by the defendants to them?

14). Have the defendants taken any responsibility in furtherance of the indemnification clause in the sale deed or *assist the plaintiffs in any manner to clear the charge/lien/encumbrance created on the property sold by the defendants to the plaintiffs?*

15).Have the Plaintiffs been put to enormous financial loss, mental trauma and hardship for which they ought to be adequately compensated?

16). Are the plaintiffs are entitled to the reliefs prayed by them in the suit and the interest?

6. On the side of the Plaintiffs, the 1st plaintiff examined himself as PW1 and Ex.P1 to Ex.P15 were marked. On the side of the defendants, neither any evidence was examined nor any exhibits were marked.

7. Heard both sides and perused the materials available on record.

Issue Nos.4 and 5:

8.The learned counsel for the plaintiffs submitted that while the 2nd defendant had actually surrendered the Title Deeds to the bank as a collateral for a loan taken by his company, he wantonly misrepresented that he had lost the original title deeds of the property and had given a false paper publication to that effect. The 2nd Defendant had also executed a registered settlement deed in favour of the 1st Defendant declaring falsely that he had lost the title deeds of the property and made paper publication to that effect in the settlement deed. The 2nd Defendant had executed 2 affidavits in favour of the Plaintiffs specifically averring that the title documents of the property had been lost.

9.It has been further submitted that the 2nd Defendant had filed a frivolous Suit bearing O.S.No. 403 of 1994 before the Sub-Court, Coimbatore against the bank, which was pending when the sale deed had come to be executed in favour of the Plaintiffs. He had suppressed the same and executed the sale deeds in favour of the Plaintiffs specifically falsely averring that there were no legal proceedings pending against the said property. As the said Suit had not been followed up by the Defendants the same was dismissed.

10.The learned counsel for the plaintiffs further submitted that there was a specific indemnification clause in the sale deeds executed in favour of the Plaintiffs wherein the 1st Defendant had undertaken to indemnify the Plaintiffs and to clear any cloud or encumbrance over the title of the subject property in the event that there was any such issue in future. Apart from the fact that such an undertaking itself was in bad faith , she did not do anything to resolve the issue or make good the loss suffered by the Plaintiffs.

11.It has been further submitted that none of the Plaintiffs have anything to do with M/s Laxmi Rocks and there is no privity of contract between the Plaintiffs and the said Company. The said loan was a completely third-party transaction involving M/s Laxmi Rocks and the 2nd Defendant. The property purchased by the Plaintiffs had been given as the collateral security for the said loan, in which process the Plaintiffs had no role to play.

12. The learned counsel for the plaintiffs further submitted that the only issue with regard to the property was that the title documents had been handed over as a collateral to the bank and the same had been

acted upon to the detriment of the Plaintiffs. The Plaintiffs had acted in good faith all along and the Defendants had consciously defrauded them. Apart from being guilty of active fraud and conscious misrepresentation, the Defendants did not act upon the indemnification clause in the sale deeds. Therefore, the Defendants are liable to pay damages to the Plaintiffs. In this regard, the Plaintiffs have established through their pleadings, documents and evidence that they are entitled to the Decree prayed for. On the contrary, there are no substantial pleadings on the part of the Defendants in the written statement to nullify the case of the Plaintiff and neither there is evidence examined nor documents are marked on their side to deny the contention of the plaintiffs. Hence, he prays to grant relief as prayed for.

13.The learned counsel for the defendants submits that the fact that there was a paper publication on 05.08.1998 about the loss of the Original Title Deed dated 16.07.1986 and institution of O.S.No.403 of 1994 were known to the plaintiffs. The Defendants were allowed to exit from the Company on 13.12.1989. Therefore, on 12.04.1993, the Defendants had nothing to do with the said Company and they were not Directors therein.

The signatures obtained in Kolkatta cannot be construed as voluntarily given and hence, the only inference that can be drawn that the alleged Deed of Guarantee was under duress and not binding on the defendants.

14.It has been further submitted that as the Settlement Deed was acted upon, the properties were purchased by the Plaintiffs, after clearance of the marketable title by the Advocate of the Plaintiffs. Therefore, by their own pleadings the plaintiffs have accepted the Deed of Settlement and thereafter, agreed to purchase the subject property. Since the suit being one for Damages and compensation, the burden is on the plaintiffs to prove the same. The question that arises before this Hon'ble Court is whether the plaintiff have discharged their burden in proving the case. The Plaintiffs stands or falls on their own pleading and if they have not discharged their burden, the Defendants need not adduce any evidence to disprove the plaintiffs case.

15.The learned counsel for the defendants further submits that admittedly, the defendants have not borrowed the amount and no proceedings have been initiated by the Bank as against the Defendants and the One Time Settlement is also not on behalf of the Defendants and the said amount has been paid to clear the liability of Laxmi Rocks Pvt. Ltd. While being so, the defendants are not liable to pay the loss incurred to the plaintiffs. In support of his arguments, the Defendants has relied upon the following proposition:-(i) 1977(1) SCC 379 and (ii) 2001 AIHC 2955, (i) 1998 (4) SCC 539, (ii) 2008 (11) SCC 306, (iii) 2011 (12) SCC 220 (iv) 2014 (2) SCC 269 (v) AIR 1959 SC 31. Thus, he prays to dismiss the suit as devoid of merits and render justice.

16. On perusal of the records, it is seen that while the 2nd defendant was the absolute owner of the suit schedule property vide Ex.P1-Sale Deed Document No.3867 of 1986 dated 29.07.1986, subsequently, the suit schedule property was settled out to the 1st defendant/wife of the 2nd defendant by virtue of Settlement Deed Document No.1092 of 2003 on 21.03.2003 vide Ex.P2. In the Settlement Deed itself, the 2nd defendant has clearly mentioned therein that the Original Title Deed was lost and published the same in the Malai Malar on 05.08.1998. However, it seems that the defendants have not lodged any complaint before the Police station for the lost of the original documents and they have not produced any oral

and documentary evidence to that effect. In such circumstances, the 1st defendant has executed the Sale Deed Document Nos.4891 and 4892 of 2003 in favour of the plaintiffs in respect of the suit schedule property, having undertaken by the 2nd defendants vide Ex.P5 in his affidavits that original Title Deed of the suit schedule property was missing and Paper publication was effected accordingly. It is also admitted that the paper publication has been effected without lodging any police complaint or without taking any other steps with regard to missing of original title deed. Based on the Settlement Deed and certificate copy of the title deeds, the plaintiffs have purchased the suit schedule property in two sale deeds dated 15.12.2003. Further, in the sale deeds also, it is also clearly mentioned that the property thus conveyed by her were free from all encumbrances or Court proceedings and undertaken therein there, she would indemnify the plaintiffs in the event of the property being encumbranced in any manner. It was also attested by the 2nd defendant as one of the witness in both Sale Deeds. In view of the above, the Settlement Deed dated 21.03.2003 registered in favour of the 1st defendant is valid and binding on the plaintiffs. Accordingly, Issue No.4 is answered. Even though the learned counsel for the defendants contended that the suit property has been purchased after obtaining the legal opinion, however, there is no record filed from whom legal opinion obtained before purchasing the suit schedule property. Accordingly, Issue No.5 is answered.

Issue Nos.1, 10, 11, and 12:

17. Further, it is also averred in the Written Statement filed by the defendants, that the defendants were made as the Directors on 08.06.1988 in the company of Lakxmi Rock Pvt. Ltd, Chennai and Salem branch at request of one Mr.Tappan Das who was carrying on the Head Office, at Kolkatta. In view of the business purpose, the suit schedule property pledged in SBI Bank, Sullurpettah branch for the amount of Rs.25 Lakhs and the same was redeemed from the said bank and however, the original documents have been handed over to Tapan Das not in the hands of the defendants. Due to misunderstanding, Tapan Das removed the defendants as directors from the Company. Thereafter, the defendants requested Tapan Das to return the original title deed kept in his hand. At request of the Tapan Das, while the defendants went to Kolkatta on 12.04.1993 to receive the original documents, he was forced to sign certain papers in the office of UBI, Overseas Branch, Kolkatta and accordingly he

signed in the papers and left Kolkatta fearing for his life.

18. The 2nd defendant himself admitted in the Written Statement that he had signed in the bank papers of UBI, Overseas Branch, Kolkatta under the coercion of Tapan Das. However, in this regard, he has not made any complaints before the concerned police authority and also, he has not made any attempt to convey the concerned Bank authority. From the above, it is seen that the execution of Deed of Guarantee by the defendants at Kolkatta was not under duress. Accordingly, Issue No.1 is answered. Further, it is averred that the original Title Deed is lost and not traceable as per letter dated 25.06.1996 issued by Tapan Das to the 2nd defendant. The 2nd defendant by suppressing the entire facts, merely conveyed to the plaintiffs that the Title Deed of the suit schedule property is lost and for lost of the original title deed, a paper publication was effected on 05.08.1998 in Malai Malar. It is seen that the the defendants have misrepresented and defrauded the plaintiffs by creating records as if the Original Title Deed is lost even if it has been deposited as Collateral Security for the taken by the enterprise. Accordingly, issue Nos.10 and 11 are answered. In view of the above, it has been made clear that the defendants acted in bad faith by representing in the sale deed executed in

favour of the plaintiffs and the affidavits that there was no charge, lien or encumbrance or litigation in the property sold to them. Accordingly, Issue No.12 is answered.

Issue Nos.2 and 8:

19. As per the order passed in RP. No.31 of 2003 on 26.04.2007, by DRT-1, Kolkatta, the Officer of UBI, Kolkatta surveyed the site on 19.05.2007 vide Ex.P12 and informed to the plaintiffs that the suit schedule property was issued as collateral security by the 2nd defendant for having availed the loan by Lakxmi Rock Pvt. Ltd, Kolkatta. Subsequently, while the plaintiffs have approached the defendants for the aforesaid issue, the defendants accepted the same and informed that he has already filed the suit in O.S. No.403 of 1994 before Sub-Court, Coimbatore, restraining the coercive action of the UBI Bank against the suit property. The same has been dismissed in the year 2005. The execution of the Deed of Guarantee is binding on the defendants. Accordingly, Issue No.2 is answered. Since the suit schedule property which was made as collateral security for availing loan in UBI, Kolkatta is in the name of the defendants and the suit is between the plaintiffs and defendants only, the suit is not bad for non-joinder of necessary parties. Accordingly, Issue No.

8 is answered.

Issue No.3:

20.The plaintiff approached DRT1-Kolkatta filed an appeal No.4 of 2007 against the order dated 03.04.2003 and 26.04.2007 made in O.A. No.23 of 1994 and RP No.31 of 2003. In the appeal, DRT-1, Kolkatta passed an order of Status Quo dated 12.06.2007 vide Ex.P13. Subsequently, the plaintiffs filed the suit in O.S. No.2304 of 2007 before the II Additional District Munsif, Coimbatore seeking permanent injunction restraining from alienating or encumbering the properties till the discharge of the dues payable to UBI, Kolkatta. In the suit, Status Quo was ordered on 02.11.2007. Hence, the Decree passed by the II Additional District Munsif, is binding on the plaintiffs. Accordingly, Issue No.3 is answered.

Issue Nos.6,7,9,13,14 and 15:

21. Based on the aforesaid orders, the plaintiffs approached the UBI, Kolkatta to settle the matter, finally, the Bank agreed to release the property in favour of the plaintiff on condition of payment of Rs.61 Lakhs as one time settlement immediately by way of sanction letter dated 29.11.2007 vide Ex.P9. Accordingly, the plaintiffs have paid an amount of Rs.61 Lakhs in favour of the UBI, Kolkatta on 12.12.2007 and received

the receipt of the same issued by the Bank vide Ex.P10 and also received the original title deeds from them. From the aforesaid fact, it is seen that the the inter se settlement between the Plaintiffs and the UBI, Kolkatta is binding on the defendants. Accordingly, issue No.6 is answered. The loan amount was borrowed by using the 2nd defendant's Title Deed as Collateral Security, therefore, the cause of action for repayment of the amount paid to UBI, Kolkatta, cannot be maintained only against the borrower Laxmi Rock Pvt. Ltd. Accordingly, Issue No.7 is answered. The plaintiffs received the receipt of the payment from UBI, Kolkatta on 12.12.2007. It is seen that the defendants have not taken any responsibility to clear the charge/lien/encumbrance created on the property sold by them and the the plaintiffs have been forced to expend substantial money to clear the charge/lien/encumbrance created on the property sold by the defendants to the plaintiffs. Because of the aforesaid facts, the plaintiffs have been put to enormous financial loss, mental trauma and hardship for which they ought to be adequately compensated to the plaintiffs. Accordingly, issue Nos.13,14 and 15 are answered. Based on the bank receipt dated 12.12.2007, the plaintiffs have filed the present suit against the defendants within the period of limitation. Hence, Issue No.9 is answered accordingly.

Issue No.16:

22. In view of the above, the defendants have not entered in the Witness box and marked any documents to disprove the claim of the plaintiffs. The loss incurred to the plaintiffs because of the defendants for having suppressed the entire facts relating to the suit property which was made as Collateral Security in UBI, Kolkatta. It is seen that the plaintiffs have paid the dispute amount of Rs.61 Lakhs and received the original Title Deed. The same has been confirmed by way of Ex.P.9 and Ex.P10. Hence, the plaintiffs are entitled for the amount of Rs.61 Lakhs only along with interest @6% p.a. from the date of the plaint till the date of realization and not entitled for any other expenses incurred in this regard. Accordingly, Issue No.16 is answered. Time for payment is two months.

23. In the result, the suit is partly decreed. No costs.

29.11.2024

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

lbm

List of Witnesses examined on the side of the Plaintiff:-

PW1- Mr.G. Ragupathy

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

1. Ex.P1 is the Certified copy of the Sale Deed dated-16.07.1986.

2. Ex.P2 is the Certified copy of the Settlement Deed dated-21.03.2003.

3.Ex.P3 is the Certified copy of the Sale Deed dated-15.12.2003.

4.Ex.P4 is the Certified copy of the Sale Deed dated-15.12.2003.

5.Ex.P5 is the Original Affidavit of the 2nd Defendant dated-15.12.2003.

6.Ex.P6 is the Original Approved Building Plan dated- 11.06.2004.

7.Ex.P7 is the Original Tax Receipt dated 11.06.2004.

8. Ex.P8 is the Original Loan sanction letter dated-04.08.2006.

9.Ex.P9 is the Original Sanction letter of UBI, Kolkata dated-29.11.2007.

10.Ex.P10 is the Original Receipt issued by UBI, Kolkata dated-12.12.2007.

11.Ex.P11 (Series 102 papers) is the Original Bills and receipts. (3rd bill in page no.1, 1" bill in page no.2, 3rd bill in page no.5 and 2nd bill in page no.7 are not marked since original is not filed.)

12.Ex.P12 is the certified copy of the Proceedings of the Receiver dated-19.05.2007.

13.Ex.P13 is the certified copy of the Interim order of DRT-I, Kolkata dated-12.06.2007.

List of witnesses and Exhibits marked on the side of the Defendants:-

Nil

29.11.2024

A.A.NAKKIRAN, J.

lbm

Pre-Delivery Judgement in
C.S.No.959 of 2010

29.11.2024