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O.S.A.No.107 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

O.S.A.No.107 of 2024

and

C.M.P.No.13777 of 2024

1.S.Thangaraj

Proprietor of T.R. Real Estates,
Having office at
No.109, Makkaram Garden,
Red Hills Road,
Kolathur,
Chennai – 600 099.

2.Habib Abdul Latif

Managing Director of Latif Estate Line India Limited,
Having office at
No.16, Millers Road,
Kilpauk,
Chennai – 600 010.

... Appellants

Vs.

The Simpson & Group Companies
Co-operative Society Limited,
MSCS/CR, represented by its President,
And Secretary,



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No.1, 3rd Street, A.C.Colony,
Perambur High Road,
Perambur, Chennai.

... Respondent

Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules against the judgment and decree dated 12.01.2024 in C.S.No.979 of 2008 on the file of this Court.

For Appellants : Mr.Haja Nazirudeen
Senior Counsel
for Mr.R.Vishnu

For Respondent : Mr.P.R.Raman
Senior Counsel
for Mr.P.Rajendran

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the judgment and decree of the learned Single Judge in C.S.No.979 of 2008, dated 12.01.2024.

2.The appellants are plaintiffs 1 and 2 in the said suit. The appellants herein as plaintiffs filed the suit in C.S.No.979 of 2008 for specific performance of an agreement of sale, dated 24.09.2003, which is also registered as Doc.No.4894 of 2003, or in the alternative, to direct the



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defendant to refund the advance amount of Rs.5,10,000/- to the plaintiff with interest @ 12% p.a.

3. Brief facts that are pleaded in the plaint filed by the appellants are as follows :

The plaintiffs 1 and 2 are carrying on Real Estate business in the name and style of different entities. The defendant, a registered Co-operative Society, purchased the suit properties measuring an extent of 20 and odd Acres under various registered sale deeds to convert the same as house plots for selling it to third parties to augment the income of the Society. The defendant formed a layout in the name and style of "C.K.Madhavan Nagar Extension" and converted the land into house plots. The layout was also approved by the Chennai Metropolitan Development Authority by proceedings dated 03.01.2000. Since the defendant was not able to sell the house plots, the Board of Directors of the defendant Society passed a resolution on 15.09.2001 to sell the plots in the layout to the 1st plaintiff. After elaborate discussion with the 1st plaintiff, the defendant Society passed a resolution on 17.01.2003 to execute the suit agreement in favour of the 1st



plaintiff agreeing to sell the entire plots, i.e., Plot Nos.1 to 285 and the commercial plots I & XX comprised in “C.K.Madhavan Nagar Extension” for a price at the rate of Rs.42/- per sq.ft. A registered sale agreement was executed by the Society in favour of the 1st plaintiff on 24.09.2003. As per the agreement, 18 months' time was fixed tentatively, and time was not the essence of the contract. As per the agreement, the 1st plaintiff was empowered to sell the layout plots to his nominees either as single plots or in lumpsum to any third party. The defendant agreed to execute a Power of Attorney so that the 1st plaintiff will execute sale deeds. The 1st plaintiff was also given power and authority to develop the layout by spending his own money. The 1st plaintiff paid an initial advance of Rs.10,000/- by way of cash on 04.08.2003; a sum of Rs.1,00,000/- by way of cheque on 29.03.2003; a sum of Rs.2,00,000/- by way of cheque on 11.10.2003; and a further sum of Rs.2,00,000/- by way of cheque on 16.10.2003, totally, a sum of Rs.5,10,000/-. The defendant handed over the management and maintenance of properties to the 1st plaintiff who made lot of improvements. The 1st plaintiff entered into a sale agreement dated 31.01.2004 with the 2nd plaintiff agreeing to sell the entire suit property except a few plots to the 2nd



plaintiff. The 2nd plaintiff paid a lumpsum towards Earnest Money and took possession of the entire suit property and changed the layout name as "Royal Prince City". The 1st plaintiff also entered into agreement with third parties and his nominees were always ready and willing to complete the sale transaction. Despite the 1st plaintiff requested the defendant to accept the balance of sale consideration from his nominees and to complete the sale transaction as per the terms of the sale agreement, the defendant failed to receive the amount and perform their part of the contract under the agreement in view of change of management. The 1st plaintiff filed a suit in O.S.No.55 of 2004 for permanent injunction as the 2nd defendant tried to interfere with possession and the same was dismissed with permission to file a comprehensive suit for specific performance. After obtaining permission, the present suit is filed for specific performance.

4.The defendant filed a written statement raising a specific objection as to the truth, validity and binding nature of the suit agreement. It is further contended by the defendant that the matter was directly and substantially in issue in the former suit in O.S.No.55 of 2004 between the same parties and



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therefore, the dismissal of said suit in O.S.No.55 of 2004 will operate as *res judicata*. It is contended by the defendant that the suit was originally filed against the President and Secretary of Society. The defendant Society was registered under the Multi-State Co-operative Societies Act, 2002. It is stated by the defendant that the defendant formulated a Scheme to provide house sites to its members and with that object, purchased the suit property measuring about 20.35 Acres and converted the same into house sites by obtaining approval from the competent planning authority. The defendant specifically denied the plaint averments and it is the specific case of the defendant that the Society never passed any resolution to sell the lands to the 1st plaintiff and there was no agreement between the 1st plaintiff and the defendant as alleged in the plaint. It is also the case of the defendant that the paid Secretary by name Mr.P.Selvakumar signed the agreement dated 24.09.2023 fraudulently, without any authority. Since the Board of Directors had never authorised the said Mr.P.Selvakumar to enter into any contract, the suit agreement, according to the defendant, is wholly void and not binding on the defendant. It is their further case that the suit agreement is a product of collusion between Mr.P.Selvakumar and 1st plaintiff to defraud the Society



and that therefore, the agreement cannot be enforced. It is also contended by the defendant that the advance money of Rs.10,000/- paid by the 1st plaintiff was never credited to the account of the defendant Society and the said Mr.P.Selvakumar, the Paid Secretary of the Society, manipulated and fabricated records as if the Board authorised the sale of lands to the 1st plaintiff. The Demand Drafts, as stated by the 1st plaintiff, according to the defendant, were returned to the 1st plaintiff, as Society was never a party to any agreement. Since the plaintiff refused to accept the returned drafts, it is stated by the defendant that the paid Secretary of the Society had encashed the cheque and it is contended by the defendant that the money brought back to their account would be returned to the plaintiff.

5.On the pleadings, the learned Single Judge framed the following issues :

- 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



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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?

6.As regards Issue No.1, the learned Single Judge held that, even though other suits in O.S.No.55 of 2004 and O.S.Nos.28 to 30 of 2004 filed by the nominees of plaintiff were dismissed, since the said third parties are not impleaded in the present suit, the subject matter is different and hence, the suit is not barred by Section 11 of Code of Civil Procedure. Issue Nos.2 and 3 were answered against the plaintiff. Learned Single Judge held that the erstwhile Secretary pasted a fabricated Resolution in the Minutes Book contrary to Section 110(3) of Multi-State Cooperative Societies Act, 2002,



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and that Ex.P1 agreement is not a valid document. The learned Single Judge also held Issues Nos.4 and 5 as against the plaintiff after observing that the defendant was not ready and willing.

7.Even though it is not necessary to deal with every issue, the learned Single Judge has rendered specific findings against the plaintiffs. Having gone through the pleadings and the arguments of all the parties, this Court is required to decide the following points for determination :

- i. Whether the suit agreement is valid and binding on defendant Society?
- ii. Whether the plaintiff was ready and willing ?
- iii. Whether the suit is barred by *res judicata* ?
- iv. Whether the plaintiff is entitled to the equitable relief of specific performance ?

8.Section 110(3) of Multi-State Co-operative Societies Act, 2002,



reads as follows :

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“110. Minutes of proceedings of general meetings and of board and other meetings

...

(3) In no case the minutes of proceedings of a meeting shall be attached to any such books as aforesaid by pasting or otherwise.”

It is brought before the trial Court that the Minutes of the proceedings of the meeting is not recorded in the Book. However, the Minutes of the proceedings is pasted. From the records, it is established that there was no meeting of the Board and the contention of the defendant that the paid Secretary of the Society has manipulated records as if the defendant Society had passed a Resolution in its Board meeting, is acceptable. Therefore, there is no binding contract between the 1st plaintiff and the defendant.

9.Learned Senior Counsel appearing for the appellant has not produced any record or material to demonstrate before this Court that there was a valid Board Resolution taking a decision to sell the suit property in favour of the 1st plaintiff. Having regard to the specific stand taken by the defendant, this Court finds that the agreement, which was signed by



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Secretary on behalf of the Society, is not valid. It is pertinent to note that the Society purchased the property only for the development of the property as layout so as to distribute among its members. There is no decision of the Society to sell the entire plots. Therefore, this Court finds that the case of the plaintiff rests on the unenforceable agreement. Even as regards readiness and willingness, the plaintiff has not produced any material to show that they were ready with the money. Even according to the plaintiffs, they paid only a sum of Rs.5,10,000/- to the 1st defendant till the suit for specific performance was filed. The plaintiffs miserably failed to prove their readiness and willingness. It is established in the course of evidence that the paid Secretary of the Society had manipulated records as if there was a Board Meeting authorising the Secretary to enter into the suit sale agreement. Further, the learned Judge has recorded a finding that the Resolution was not even recorded in adherence to the statutory provisions.

10.The plaintiff has produced only a document Ex.P3 which is only a copy of alleged Resolution. Even this document is certified only by a person



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signed as Secretary. Therefore, in the absence of any valid Resolution in compliance of Statute, that is Section 110 of the Multi-State Cooperative Societies Act, this Court is unable to sustain the argument of the learned Senior Counsel appearing for the appellant that the agreement is real and valid one. The Secretary is the person who has signed the agreement. There is no Resolution which authorises the Secretary to represent the Society or to sign the agreement. Therefore, the agreement is invalid and not binding on the defendant Society. The question is also about the enforceability of the agreement of this nature. Section 20 of Specific Relief Act gives a discretion for the Court whether to grant specific performance even if the agreement is found to be true and valid. In the present case, it is the specific case of the defendant that the property was purchased by the Society to develop the layout and to sell the same as plots to its members. Therefore, the agreement, which is demonstrated to be a fraudulent manipulation of the paid Secretary of the Society, cannot be enforced by a Court of equity. Except the sum of Rs.5.1 Lakhs, no further amount was paid, even though the 2nd plaintiff collected lumpsum amounts from several others. The suit was filed without any valid explanation for the delay. The person who has



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signed the agreement was terminated from service for the alleged fraud. The plaintiff who has filed the suit on the basis of an invalid agreement is not entitled to the discretionary relief.

11.In view of the position that the plaintiff has not produced any relevant records to prove his case as to the validity and genuineness of the agreement, the plaintiff is not entitled to the relief. Even assuming for a moment that the agreement is true, the agreement signed by the Secretary without a valid Resolution of Board is not enforceable against the Society. Therefore, the plaintiff is not entitled to enforce the agreement and this Court or any Court will not come to the aid of the plaintiff to enforce such a fraudulent agreement for granting specific relief. Hence, the appeal is liable to be dismissed.

12.Even though the learned Single Judge did not agree with the defendant that the suit is barred by *res judicata* in view of several suits filed



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by others who have entered into agreement with the plaintiff in the present suit, this Court finds that the plaintiff is also a party to the earlier suits.

Since the suits filed by persons claiming under the plaintiff for specific performance are dismissed in the presence of the plaintiff and the judgment in those suits have become final, this Court also finds that the matter is substantially an issue in the previous suits. Therefore, the judgment and decree in the other suits filed by the nominees of plaintiffs who have filed suits for specific performance against the defendant in which the plaintiff is also a party, is binding on the plaintiff in the present suit. Therefore, the suit is also liable to be dismissed on the ground that the judgment and decree in the earlier suits in O.S.No.55 of 2004 and O.S.Nos.28 to 30 of 2004 will operate as *res judicata*. Learned Senior Counsel appearing for the appellants is unable to sustain any of the grounds raised in the appeal.

13.For the reasons stated above, this Court finds no merit in the appeal. Accordingly, this Original Side Appeal is dismissed. No costs.



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Consequently, connected miscellaneous petition is closed.

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(S.S.S.R., J.) (K.R.S., J.)
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