



A.Nos.4542 & 4543 of 2024
in C.S.No.201 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 09.12.2024	Pronounced On: 16.12.2024
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THE HONOURABLE DR JUSTICE G. JAYACHANDRAN

A.Nos.4542 & 4543 of 2024

in

C.S.No.201 of 2024

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Mr. Om Prakash Agarwal,
G-1125, P' Street, 10th Main Road,
Anna Nagar West,
Chennai-600 040.

... Applicant/Plaintiff

/versus/

1. Vijaya Enterprises,
A registered partnership firm,
Rep. by its Partner Mr. Sivakumar,
No. 14, Lynwood Lane,
Mahalingapuram, Nungambakkam,
Chennai - 600 034.

2. Lokaa Housing Private Limited,
Rep by its Director Mr. Santhosh Sharma,
Having their registered office at Lokaa House,
No. 14, 2nd Main Road, Kannappa Nagar Extension,
Thiruvanmiyur, Chennai - 600 041.

3. M/s. AKS Housing Development Company Private Limited,
Represented by its Managing Director,
Mr. Anand Seshadri,
Having Office at: AKS Dhruva,
F-1, No.12 (Old No.17), Balaji Avenue, 1st Street,
T.Nagar, Chennai - 600 017.



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4. Mr.V.Kumaravel,
Residing at: No.1 1/19,
Kalyanapuram,
Chooliamedu,
Chennai - 600 094.

... Respondents/Defendants

Prayer: These applications are filed:-

A. To direct the 1st respondent, pending disposal of the suit to deposit the original documents as listed in the annexure to the Judges Summons with the Registrar General.

B. Direct the 1st Respondent to not deal with the Original Documents as listed in the annexure to the Judges Summons until the same is deposited with the Registrar General of this Hon'ble Court; and

C. pass such further or other orders as this Hon'ble Court.

For Applicant :

Mr.S.R.Raghunathan

For Respondents:

R1 : Mr.R.Sankaranarayanan, Senior Counsel,
for Mr.R.Pradeep.

R2 : Mr.S.S.Rajesh

R3 : Ms.Preethi S.Araul

R4 : Mr.P.S.Amalraj



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COMMON ORDER

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The suit filed by Mr.Om Prakash Agarwal is for a direction to the first defendant, M/s.Vijaya Enterprises, represented by its partner Mr.Sivakumar, to deliver possession of the original documents mentioned in the annexure to the plaint to the plaintiff.

2. The case of the plaintiff/Applicant:

The 3rd and 4th defendants are the owners of property measuring about 444 cents of vacant land at Thiruvanmiyur, Chennai. The plaintiff, evincing interest to purchase the said property, entered into a Memorandum of Understanding with the 3rd and 4th defendants on 29/06/2010. The entire sale consideration was paid to them on various dates and the receipt of the same was duly acknowledged by them. On payment of the entire sale consideration, vacant possession of the said land and the original documents pertaining to the property were handed over to the plaintiff.

3. In the year 2018, the 2nd defendant (M/s.Lokaa Housing Pvt Limited), represented by its Director, Mr.Santhosh Sharma, offered to purchase the vacant land and entered into an agreement dated 01/12/2019. The second



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defendant paid Rs.22,75,00,000/- (Rupees Twenty-Two Crores Seventy Five Lakhs only) as advance and agreed to pay the balance sale consideration as below:-

- (i) Rs.12,25,00,000/- to be paid on or before 31/12/2019.
- (ii) Rs.70,00,00,000/- to be paid on or before 30/01/2020.

4. After execution of the agreement, the original title deeds pertaining to the land were handed over to the 2nd defendant. Though the time was essence of the contract, the 2nd defendant failed to pay the balance as per the schedule and committed a breach of the terms of agreement dated 01/12/2019.

5. The 2nd defendant, invoking Section 11 of the Arbitration and Conciliation Act, 1996, filed Arb.OP (Comm.Div) No:29 of 2022 for the appointment of Sole Arbitrator and also filed an application under Section 9 of the Arbitration and Conciliation Act, 1996, seeking an order of interim injunction not to encumber the property pending disposal of the suit. The Hon'ble High Court appointed Mr.Justice K.Ravichandra Babu and disposed the Petition.



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6. In the Arbitral proceedings, the first defendant (Vijaya Enterprises) filed an application before the Arbitral Tribunal to get itself impleaded. In this petition, it disclosed that the original documents of the properties are with them. According to the first defendant, they got the custody of the documents from the second defendant, with whom they have entered into an agreement on 21/08/2022.

7. Alleging that the custody of the property document with the first defendant is illegal and wrongful, without any legal basis. The 2nd defendant was not authorised by the plaintiff to encumber the property or create, charge or mortgage. The first and second defendants in collusion with each other, unlawfully and without any authority whatsoever claims to be in custody of the original title deeds. The second defendant, who had obtained the custody of the documents, has illegally parted with the same to the first defendant to defeat the plaintiff's right.

8. The cause of action for the suit is explained in paragraph No.21 of the plaint, which reads as follows:-



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The cause of action arose at Thiruvannamiyur where the property is situated and where agreement dated 01.12.2019 was entered between the Plaintiff and the 2nd Defendant, following which the original documents of title were handed over to the 2nd Defendant in safe custody and trust by the plaintiff, on 30.09.2022 when application under Section 11 & Section 9 of the Arbitration & Conciliation Act, 1996 preferred by the 2nd Defendant were allowed, on 07.10.2023 when it was brought to the knowledge of the Plaintiff that the annexure mentioned original documents of title are lying in the custody & possession of the 1st Defendant through the implead application filed by the 1st Defendant, on 08.01.2024 and 27.03.2024 when the 1st Defendant in its own letter addressed to the Plaintiff has admitted that the original documents of title are in their possession and subsequently thereafter.

9. Counter by the first defendant/first respondent:

The first defendant, admitting the possession of the original documents mentioned in the schedule to the application, contended that the suit itself is not maintainable since the original documents were not given by the plaintiff to this defendant. There is no privity between the plaintiff and the first



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defendant and relief against the stranger is not sustainable. After entering into an agreement with the second defendant and handing over the original documents, the plaintiff has relinquished his right over the property and the title deed. The plaintiff claims to have repudiated the contract with the second respondent. If the plaintiff has rescinded the contract, then he should have restored the benefit received under the contract.

10. Relying on the judgement of the Hon'ble Supreme Court rendered in *Dorab Cowasji Warden -vs- Coomi Sorab Warden and others* reported in *1990 (2) SCC 117* and the judgment of the Allahabad High Court rendered in *Raghunath and others -vs- The Municipal Board, Mathura and others* reported in *1952 AIR ALL 465*, the Learned Senior Counsel for the first respondent submitted that no mandatory injunction can be granted unless the applicant has personal interest in the matter. Under Section 56, Clause (k) of the Specific Relief Act, the plaintiff must have vested with legal right or legal interest in the documents. Having handed over the documents to the second defendant, the plaintiff have no more interest in the property. The owners of the property are the 3rd and 4th defendants. The plaintiff has no locus to file the suit. For the plaintiff, the contract with the 3rd and 4th defendants will not create any



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interest in the property. The agreement by the plaintiff on 01/12/2019 and the supplementary agreement dated 02/12/2019 with the 2nd defendant lost his interest in the suit property. Therefore, the relief of mandatory injunction is not maintainable, since the first defendant has no obligation to perform with regard to the plaintiff.

11. The 2nd defendant, in his counter, has stated that he has no objection in allowing the application. According to the 2nd respondent, under the agreement dated 01/12/2019, the plaintiff agreed to sell the property for Rs.1,05,00,000/- and received Rs.22,75,00,000/-. The balance sale consideration was mutually agreed to be paid on or before 30/01/2020 in two instalments. In the sale agreement, the 3rd and 4th defendants, the title holders of the property, were also signatories as confirming parties. Later, due to failure to honour the covenant of the agreement, the dispute was referred to arbitrator and the same is pending. While so, after elucidating from this defendant in the cross-examination that the original documents are not in his possession and after the categorical assertion by this defendant that the documents were shown to him for verification and then taken back by the plaintiff, the first defendant tried to get himself impleaded in the arbitral proceedings, but his application to



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get impleaded was dismissed by the Arbitrator. Thereafter, this suit C.S.No.201/2024 is filed by the plaintiff in collusion with the first defendant.

12. The first defendant had filed an application under section 11 of the Arbitration and Conciliation Act against M/s.Lokaa Developers Pvt. Ltd., for the appointment of arbitrator and the same is pending in Arb.O.P.No.66/2024. The said M/s.Lokaa Developers Pvt Ltd is under the administration of Resolution Professional, as per the order of the NCLT dated 06/06/2024. The dispute between the first defendant and M/s Lokaa Developers Pvt Ltd is in respect of financial transaction and has nothing to do with the dispute under consideration in this suit, which is in respect of sale of an immovable property.

13. The claim of the first defendant that the original documents were handed over to him by the 2nd defendant is denied. The allegation that the 2nd defendant created mortgage on the property or charged it as security for the loan advanced to M/s.Lokaa Developers Pvt Ltd is also denied. According the second defendant, all original documents were returned to the plaintiff and the first defendant has to independently prove how the documents came to his possession. However, in the interest of justice, the documents has to be secured



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and kept in safe deposit under the custody of the High Court.

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14. The third defendant, in his counter, admits the Memorandum of Understanding dated 30/06/2010 with the plaintiff and the receipt of entire sale consideration for the suit property. He also confirms the fact that the original documents and possession were handed over to the plaintiff. According to him, due to existing litigation, the sale deed not yet executed by him. The 3rd defendant further states that the 2nd defendant has no right or authority to create any mortgage or charge over the property and cannot part away the original documents to the first defendant.

15. The counter of the 4th defendant is almost on the same line of the 3rd defendant sailing with the plaintiff.

Point for determination:-

Whether the suit is maintainable and if so, whether the first defendant is legally liable to hand over the original documents mentioned in the annexure to the application ?



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16. The relief sought in the suit is in the nature of mandatory injunction. The subject matter of the suit is the original documents pertaining to the property, which was sold to the plaintiff by the 3rd and 4th defendants. The 2nd defendant is the holder of agreement dated 01/12/2019 entered with the plaintiff. In this agreement, the 3rd and 4th defendants are confirming parties. In this agreement the first covenant specifically records the fact of handing over all the original documents of the schedule-mentioned property to the purchaser, namely, M/s.Lokaa Housing Pvt Ltd (second defendant herein).

17. The reading of the MoU dated 21/08/2022, which was entered between Vijaya Enterprises (first defendant in this suit), M/s.Lokaa Developers, M/s.Lokaa Pride of Porur LLP, M/s.Lokaa Housing Pvt Ltd, M/s.Style One Retail Concepts Pvt Ltd, Santhosh Sharma and Kalpana Sharma, reveals that it is a tripartite agreement in which M/s.Vijaya Enterprises Pvt Ltd (the first defendant herein) is the first party, M/s.Lokaa Housing Pvt Ltd (second respondent herein) is the third party and the other entities of the second defendant and the Directors, in their personal capacity, are shown as the party of the second part.



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18. One of the clauses in the Memorandum of Understanding says that the party of the third part (second defendant herein) has offered 444 cents of land (which is the subject matter of the present suit) as security to repay a loan of Rs.46 crores due and payable to the party of the first part (first defendant herein).

19. The tripartite agreement dated 21/08/2022 between the first defendant, second defendant and M/s.Lokaa Developer Pride of Porur LLP and four others is primarily in respect of the repayment of the loan advanced to the parties of the second part, i.e., M/s.Lokaa Developer Pride of Porur LLP and four others, for the purchase of the property at Thiruvananthapuram. In this tripartite agreement, it is stated that the title documents of the property are deposited as security for repayment.

20. Thus, it is obviously clear that the property documents are admittedly in possession of the first defendant and it has been handed over by the second defendant to the first defendant as security for the repayment of the loan advanced to M/s.Lokaa Developer Pride of Porur, LLP and four others.



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The second defendant, M/s.Lokaa Housing Pvt Ltd., is one among the four. In this Memorandum of Understanding, the 2nd defendant and others have agreed to repay the first defendant a sum of Rs.46 crores on or before 31/12/2022 and had deposited the title documents of the suit property as security. As the Memorandum of Understanding was not honoured, therefore the first defendant has initiated arbitration proceedings and same is pending.

21. Hence, this Court is of the view that the first defendant cannot claim to be a stranger to the plaintiff and therefore, he has no obligation to hand over the original documents of the property in which the plaintiff has a right based on the agreement with the title holders. The first defendant also cannot question the maintainability of the suit since, it is for a civil remedy to assert a civil right vested on the plaintiff.

22. As per the agreement dated 01/12/2019, the plaintiff has admittedly received an advance of Rs.22,75,00,000/- from the second defendant and agreed to sell the property. The delivery of the original documents to the second defendant is also recorded in the agreement. The documents are presently in the custody of the first defendant, who claim lien over it as security



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for the loan availed by the second defendant and others. It is also brought to the notice of this Court that the first defendant has filed application against the 2nd defendant and others under Section 11 for the appointment of Arbitrator and the same is pending.

23. Offering a property for which the second defendant is not a owner but only an agreement holder, cannot give a right to the first defendant to withhold the original documents of the suit property, which still remains in the name of the 3rd and 4th defendant. The dispute regarding the enforcement of the agreement entered between the plaintiff and the second defendant on 01/12/2019 is the subject matter before the Arbitrator.

24. The first defendant's interest is to recover the money lend to the second defendant and others. The second defendant's interest is to enforce the agreement of sale entered with the plaintiff. The plaintiff's interest will be based on the outcome of the pending arbitration proceedings before the Learned Mr.Justice K.Ravichandra Babu. The 3rd and 4th defendants have unequivocally stated that they have sold the property to the plaintiff and waiting for the end of the litigation to execute the sale deed. In such circumstances, no prejudice will



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be caused to either of the parties if the original documents are taken into custody by the Court. By securing the custody of the documents, the interest of all the parties will be protected.

25. As a result, *Applications No.4542 and 4543 of 2024 are allowed.* The first defendant is directed to hand over the documents listed in the annexure, to the Registrar General of Madras High Court, within 10 days, from today. All parties to the proceedings are restrained from dealing with the property in any manner, in the nature of creating encumbrance, until further orders.

26. List the Civil Suit on 24/01/2025.

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Index : Yes/No.
Internet : Yes/No.
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Dr.G.JAYACHANDRAN,J.

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Pre-delivery common order made in
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