



C.S.No.790 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

**C.S No.790 of 2014**

S.Sekar

.. Plaintiff

..Vs..

1.E.Dhanapal  
2.P.Krishnaveni  
3.Poongothai  
4.M/s.C.G.Construction  
Rep. by its Partner  
C.Geetha  
No.25/5, Umayal Road  
Kilpauk, Chennai-600 010  
(Substituted as per order dated  
24.06.2022 in A.No.2322 of 2022)  
5.A.I.Shaheer  
6.R.K.Jalan

.. Defendants

**Prayer:** Civil Suit has been filed under Order VII Rule 1 of C.P.C and Order IV Rule 1 of Original Side Rules, praying to pass the following judgement and decree:

i) Directing the defendants 5 and 6 to pay the plaintiff a sum of Rs.1,02,48,000/- within a prescribed period.



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ii) directing the defendants 5 and 6 to pay the costs of the suit.

(Prayer 2 is deleted as per order dated 08.02.2019 passed in Appl.No.2786 of 2018 and time extended for carrying out amendment as per order dated 21.02.2018.)

For Plaintiff : Mr.Rajamanickam  
(For Mr.V.Manoharan)  
For Defendants : Mr.S.Ramesh for D1 to D3, D5 & D6  
D4-Exparte

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### **J U D G M E N T**

This Civil Suit has been filed for recovery of money and for costs.

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

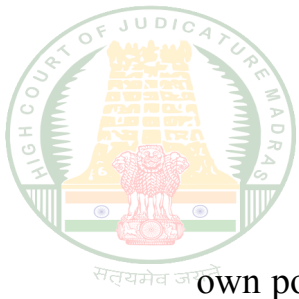
(i) The plaintiff was a close associate of the fourth defendant for more than 20 years and worked as Project Consultant and helped him in completing number of projects viz., promotion and construction of apartments and individual houses. His remuneration depended upon the value of project. The first to third defendants approached the fourth defendant to identify a good property in and around Madras City and suburban area. The work was entrusted to the plaintiff and the plaintiff



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after several visits and efforts found the lands in S.No.1455, St.Thomas Mount Village measuring about 24 grounds 252 sq.ft. which was physically occupied by legal representatives of late John Mathias for several decades. After inspection and satisfaction, the defendants 1 to 4 agreed to purchase the lands from the occupiers namely legal heirs of late John Mathias and obtain patta from the Revenue Department at their own cost and expenses. After signing the agreement and parting of advance amount, the plaintiff was entrusted with the work of getting either regular patta or assignment patta from the Tahsildar, Tambaram Taluk. The plaintiff spent his own money going to Taluk Office, R.D.O's office and later Collector's office at Kancheepuram. Only then, it was found that the land belonged to one late T.S.Swaminatha Iyer and enjoyed by him at his own right and after his demise, his legal heirs are the title holder and only if the land is purchased from the L.Rs of late T.S.Swaminatha Iyer, patta can be obtained. Hence the defendants 1 to 4 gave up the agreement with John Mathias and instructed the plaintiff to find out legal heirs of T.S.Swaminatha Iyer. Late Swaminatha Iyer left more than seven children and a widow and all of them have been residing in several places in Tamilnadu. The plaintiff after spending a few lakhs of rupees from his



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own pocket and after a man hunt in and around Tamilnadu traced the legal heirs, negotiated with them and obtained pucca sale deeds from them in favour of D1 to D3. Of course, the sale price, stamp duty etc. met by the first to four defendants.

(ii). Thereafter, the plaintiff was asked to get regular patta. He tried his best and made several attempts upto the Revenue Secretary. But due to the non co-operation among the defendants 1 to 4 who were not prompt in complying with some of the inevitable expenses, the Revenue Secretary rejected the claim for patta. The predecessors in title of the defendants 1 to 4 had been in occupation of these lands under registered sale deeds the first of such sale deed dated back to 1902. Whiles, the rejection of patta by the government was erroneous. The plaintiff advised the defendants 1 to 4 to file necessary civil suit before the District Judge at Chengalpet for declaration and mandatory injunction directing the Collector to issue patta for the said land. Unfortunately, the defendants 1 to 4 did not act as per the plaintiff's advice. The defendants 1 to 4 wanted quick money and therefore, they decided to sell the suit property for less profit leaving the purchaser to take his own course for getting patta. While the plaintiff was the man behind everything and did all the work, the question of payment



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to plaintiff was discussed and on 19.09.2003 a M.O.U was signed under which the defendants 1 to 4 agreed to pay 30% of the profit when the property was sold to some third party.

(iii).At this juncture, the defendants 5 and 6 and one Jalaludeen approached the defendants 1 to 4 and offered to purchase these lands measuring 24 grounds at a price of Rs.25 lakhs per ground and a M.O.U was signed on 07.09.2006 between the defendants. The responsibility of obtaining patta was taken by the defendants 5 and 6. A fat advance also was received by defendants 1 to 4. But they did not tell anything to the plaintiff and kept him in dark in order to avoid payment of 30% to him. Admittedly, the plaintiff is entitled to 30% of the profit and he personally contacted fourth defendant and pressed him for payment. The fourth defendant explained to the plaintiff that the first, second and third defendants had to make payment and he is only their agent and that he would get their instruction regarding the payment to the plaintiff. Again on 11.09.2006 when the plaintiff contacted the fourth defendant, he told that 30% out of profit was not possible in view of their profit fallen short of their expectation and that first to third defendants agreed to give Rs.60,00,000/- in full settlement of all the claims of the plaintiff. He also



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offered to give the same in writing and accordingly, on 11.09.2006 the fourth defendant as power agent of defendants 1 to 3 signed an agreement to pay Rs.60,00,000/- in full settlement of all the claims of the plaintiff.

The salient feature of the agreement is as follows:

- 1. Rs.60,00,000/- shall be paid to the plaintiff by D1 to D4.*
- 2. Rs.1,00,000/- paid as advance on 11.09.2006 and the balance will be paid when 6th defendant settles and pay entire sale price.*
- 3. Whatever amounts received by vendors D1 to D4 from D5 and D6 proportionately plaintiff also shall be paid.*
- 4. In case of the defendants/vendors 1 to 4 fails, the plaintiff has been authorized to recover the entire amount from D5 and D6 directly.*

(iv).The plaintiff believed the words of the fourth defendant and satisfied with the assurances and was keeping quiet hoping that he would be paid promptly. But all his hopes failed. The defendants 1 to 4 have been frequently met D6 and received part payments towards the sale price. But they did not make proportionate payment to the plaintiff. Hence the plaintiff issued a legal notice on 22.11.2006 to the defendants 1 to 4 calling upon them to pay the assured amount of Rs.60,00,000/- . To the shock of the plaintiff, the defendants 1 to 3 sent a reply on 26.12.2006 rejecting the claim of the plaintiff since the power given to fourth defendant on 26.10.2005 was cancelled on 07.09.2006 and therefore, his

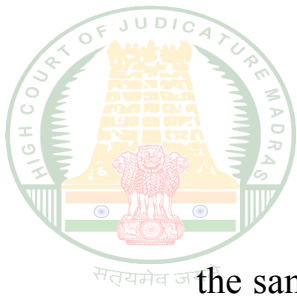


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agreement to pay Rs.60,00,000/- to the plaintiff on their behalf, on 11.09.2006 was not binding on them. The plaintiff sent a rejoinder on 12.02.2007. In the meanwhile, fifth and sixth defendant promised that they would make direct payment to the plaintiff when final settlement of payment to D1 to D4. The agreement dated 11.09.2006 signed by fourth defendant, as power agent of the defendants 1 to 3 is valid and binding on the defendants 1 to 3. The alleged cancellation of power on 07.09.2006 is not correct. The power was cancelled only on 18.09.2006. Hence the vendors/defendants 1 to 4 are liable to pay Rs.60,00,000/- to the plaintiff as otherwise the defendants 5 and 6 are liable to pay out of the sale price.

(v). As per agreement dated 11.09.2006, the defendants 1 to 4 ought to have paid amounts to the plaintiff proportionately to the amounts received by them on various dates from the purchasers/D5 & D6. But they have not done so except small amounts. The plaintiff understands now that out of Rs.6,02,62,500/- being the sale price, the vendors/defendants 1 to 4 received entire sale price from the purchasers and passed on a full and final settlement letter on 16.06.2008 and D5 and D6 also took possession of the suit property. As per that letter of final settlement, the defendants 5 and 6 agreed to pay Rs.50 lakhs to the plaintiff from and out of sale price. On



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the same day, the defendants 1 to 3 executed a power of attorney in favour of D5 in lieu of sale deed. The plaintiff contacted several times in person the 6th defendant along with the 4th defendant to receive the payment of Rs.50 lakhs. But the sixth defendant always gave evasive replies inspite of several demands including telegrams.

(vi).The following clause at Page No.3 of the agreement dated 11.09.2006 is very clear.

*"In case the payment is delayed, Mr.Sekar is authorized to recover the same from the purchaser directly on account of first party".*

The plaintiff has authority to receive Rs.60,00,000/- from the 5th and 6th defendants and late Jalaludeen who are the purchasers of the property. He had already received Rs.18 Lakhs. The balance amount is only R.42 Laksh. The defendants know about the agreement dated 11.09.2006. They have admittedly retained the above amount out of sale price. The plaintiff stepped into the shoes of the vendors D1 to D3 sofar as the payment of Rs.60 Lakhs which is a part of sale price. The plaintiff is therefore entitled to recover the amount of Rs.42,00,000/- being balance from the purchasers/defendants 5 and 6 and from the suit property as unpaid vendor and the plaintiff has got a lien on the property as unpaid vendor.



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vii.)The defendants 5 and 6 in the final settlement letter dated 16.06.2008 has admitted that they have paid only a sum of Rs.6,02,62,500/- towards the sale price of Rs.6,02,62,500/- and retained a sum of Rs.2,03,00,000/- agreeing to pay the same to several persons including the plaintiff. The balance of said amount retained by the defendants 5 and 6 is a charge on the suit property comprised in S.No.1455 of St.Thomas Mount Village, Chennai-600 016. Unless the said charge is cleared the defendants 5 and 6 will not get proper title to the property. .As per the letter dated 16.06.2008 under which the charges created the plaintiff is entitled to get a sum of Rs.50,00,000/-. But the actual amount payable is only Rs.42,00,000/- which is the balance amount. The plaintiff is entitled to interest at 24% per annum from the date of charge created viz., 16.06.2008 which works out to Rs.60,48,000/-. The total amount including the interest payable by the defendants is Rs.1,02,48,000/-. Since the defendants failed and neglected to pay the said amount, the plaintiff is constrained to file the present suit.



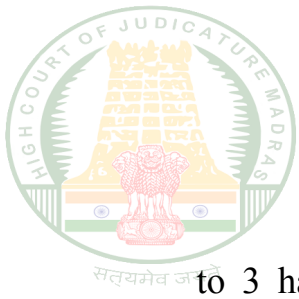
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3. The case of the Defendants 1 to 3 and 5 to 6 in a nutshell, as set

out in his written statement, is as follows:-

(i). The plaintiff is an employee of the 4th defendant. The 4th defendant to support the plaintiff has colluded and created records namely Memorandum of Understanding dated 11.09.2006 without any authority and has remained exparte in the suit. The defendants 1 to 3 did not engage services of the plaintiff on regular basis as a real estate agent and he on his own volunteered to secure the property in question for the defendants 1 to 3. Believing the words of plaintiff, defendants 1 to 3 purchased the property in question at Survey No.1455, St. Thomas Mount Village. Subsequently, the defendants noticed that the said property has been entangled in several litigations. Though the title in respect of the property was traceable by way of registered documents from 1902, patta had not been issued by the government and in the government records, the land has been classified as 'puramboke'. Since the plaintiff was the person who identified so called owners and facilitated the sale, he was made responsible for clearing the litigations and to obtain patta in favour of the defendants 1 to 3. The plaintiff relies on an agreement dated 19.09.2003 and surprisingly has not filed the same before this Court. The defendants 1

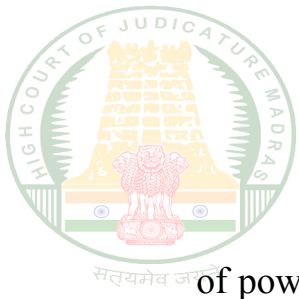


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to 3 have invested huge amount expecting to develop the property and make some income from the same. However, on account of inability of plaintiff to obtain patta, the defendants could not deal with the property and enjoy the property by developing the same.

(ii)The defendants 1 to 3 suffered huge loss in the transaction as they were not able to develop the property and they were forced to sell the property for a pittance since they could not withstand further losses. As the plaintiff is responsible for losses, the quantum of any payment for his alleged services would not arise. In fact the plaintiff has not done any service by securing the property for defendants but straddled them with a dispute which till date has not been cleared. As the land in question has been classified as 'Puramboke' in government records, no authority is ready to give planning permission and consequently the defendants are unable to do anything with the property thereby negating the very purpose of its purchase. It would be clear that the role of plaintiff is not merely identifying property but also facilitating entire aspect of the transaction including legal clearance. The plaintiff has abandoned his work halfway and is now seeking service charge which is highly unethical. The 4th defendant was never agent of defendants 1 to 3 consequent to cancellation



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of power of attorney with the knowledge and consent of the 4th defendant.

Once power of attorney stands cancelled, the 4th defendant cannot validly create a binding agreement on behalf of the defendants 1 to 3. Therefore, the reference to the agreement dated 11.09.2006 is misplaced and mischievously created for the purpose of suit. A bare perusal of agreement would reveal that when all the agreements in the transaction have been computer print outs, this agreement alone has been hastily typed in a typewriter. The plaintiff was aware of cancellation of power of attorney as he was present when the memorandum of understanding dated 07.09.2006 was executed. In fact, the 4th defendant is party to MOU dated 07.09.2006 which specifically speaks about cancellation of power of attorney. The plaintiff being employee of 4th defendant for obvious reasons MOU dated 11.09.2006 has been created. Now the 4th defendant has also chosen to remain silent in the suit. At no point of time, the 5th and 6th defendants agreed to settle the plaintiff directly when the final settlement is being made to the defendants 1 to 3.

(iii).This suit is hopelessly barred by limitation. Even as per the averments contained in the plaint, the sale in favour of 5th and 6th defendants was completed in June 2008 and the legal notices have been



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exchanged as early as in November 2006. After a period of more than 8 years after denial of liability, the present suit filed in 2014 is barred by limitation. Further, the suit is not maintainable before this Court for want of territorial jurisdiction. The suit being one for land in the light of the 2nd relief sought for in the plaint and there being repeated pleadings in plaint that a charge has been created over the property, the property being situated outside the territorial jurisdiction of this Court, the suit suffers for want of territorial jurisdiction. No charge has been created in respect of the property and the claim of the plaintiff based on the letter dated 16.06.2008 is factually and legally incorrect. The 5th and 6th defendants herein did not at any point of time admit personal liability to plaintiff for the sums claimed in the suit. In fact there is no privity of contract between the defendants 5 and 6 and the plaintiff. Therefore, the plaint is liable to be rejected insofar as it concerns the defendants 5 and 6.

(iv).The government by G.O Ms. No.99 Revenue LD-I(1) department dated 28.03.2013 rejected the claim of patta and W.P No.10423 of 2013 is pending in this regard on the file of this Court. After October 2008, parties knew that there is no possibility of plaintiff obtaining patta and therefore, all agreements in this regard were treated as cancelled. It is



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only on account of this fact that no claims were made inter se amongst defendants and other persons named under the document dated 16.6.2008 have not made any claim. Now the plaintiffs wants to resurrect a dead claim which was consensually treated as closed by all parties in 2008. Hence the suit is liable to be dismissed with exemplary costs.

4. On the pleadings of the parties and hearing the learned counsel on either side, the following issues were framed for determination:-

- (1) Whether the plaintiff is entitled to 30% of sale consideration in respect of sale transaction of the property in Survey No.1455, St. Thomas Mount amounting to Rs.42 lakhs with further interest from the defendants?*
- (2) Whether there was any agreement between the plaintiff and defendants 1 to 3 to pay 30% of the sale price for facilitation of sale of property at S.No.1455, St. Thomas Mount, Chennai to third parties?*
- (3) Whether the agreement dated 11.09.2006 filed by the plaintiff is true, valid and binding on the defendants 1 to 3?*
- (4) Whether the full and final settlement letter dated 16.06.2008 is*



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*true and valid and binding on the defendants 1 to 3 and 5 & 6?*

*(5) Whether the plaintiff has colluded with the 4th defendant, to create the agreement dated 11.09.2006 for claiming share in sale consideration?*

*(6) Whether the plaintiff is entitled to claim as claimed in plaint without completing his duty, namely obtaining patta for the property comprised at S.No.1455, St. Thomas Mount, Chennai?*

*(7) Whether the suit is barred by limitation?*

*(8) Whether the defendants are liable to pay a sum of Rs.1,02,48,000/- along with interest to the plaintiff?*

5. On the side of the Plaintiff, the plaintiff examined himself as PW1 and marked Ex.P1 to Ex.P8. On the side of the Defendants, the 5th defendant was examined as DW1 and Ex.D1 to D3 were marked. The 4th defendant was set exparte on 02.09.2022.



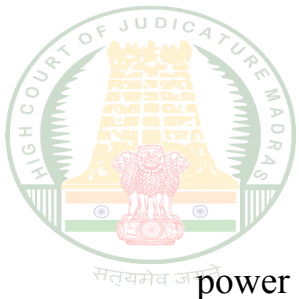
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Issue No.6:

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6.Learned counsel for the plaintiff submitted that the plaintiff acted as Project Consultant to D4 and instrumental to arrange for sale. The defendants 1 to 3 purchased the property at a cost of about Rs.2 crores from the legal heirs of Swaminatha Iyer under several sale deeds and D1 to D3 became the owners of the 74 grounds. In this regard, the plaintiff spent nearly 2 years on this project going to various places to find out the legal heirs of Swaminatha Iyer and completed the sale transaction. Again the Plaintiff's service was utilized for getting patta for the land. He visited Tahsildar Office, R.D.O. Office and also the D.R.O. at Kancheepuram. However, patta could not be obtained for this piece of land in spite of clear title by way of registered documents. The Plaintiff advised D1 and D3 to file civil suit in appropriate Court to establish the title. Unfortunately, D1 to D3 did not take the Plaintiff's advice and they tried to sell the property to D5 and D6.

7. It has been further submitted that as per the above M.O.U. Dated 07.09.2006, the 5th defendant purchased the property along with 6th defendant for Rs.6,02,62,500/- Instead of pucca sale deed a registered



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power of attorney was given by the Defendants 1 to 3 in favour of Defendants 5 and 6 and the sale transaction was completed. The Defendants 1 to 3 sold the property at a profit only. Since the Plaintiff worked on the project for several years, and the Defendants 1 to 4 offered to give 30% of the profit to Plaintiff as compensation agreeing to give 60 lakhs and executed an agreement to this effect on 11.9.2006. (Ex. P.3), they have not fulfilled their promises. However, since the defendants 5 and 6 have not paid full sale consideration, to the defendants 1 to 4, the seller confirming party nominated plaintiff and five other persons to receive the balance of sale price of Rs.2.3 crores. Under this full and final payment receipt dated 16.06.2008, the Defendants 5 and 6 agreed to pay Rs.50 lakhs to the Plaintiff as services charges, from and out of the balance of sale price which is in continuance of the earlier agreement dated 11.09.2006. (Ex.P.3). However, the said amount was also not paid to the plaintiff since the patta has not been obtained by him while the defendants 5 and 6 are responsible to obtain the Patta for the suit property as per the said MOU.

8. The Learned counsel for the plaintiff submitted that the defendants 1 to 4 agreed to give 30% of the profit. The 4<sup>th</sup> defendant

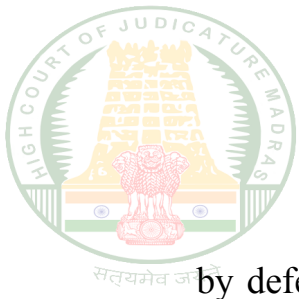


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executed an agreement on 11.9.2006 (Ex. P.3) undertaking to pay a sum of Rs.60 lakhs in full settlement. Out of this amount Rs.18 lakhs were received. Hence the defendants 5 and 6 are liable to pay to Plaintiff only Rs.42,00,000/- with interest @18% per annum from 16.06.2008 to the date of filing the suit on Rs.42 Lakhs which come to Rs.1,02,48,000. Thus, he prays the relief as sought in the suit.

9.The learned counsel for the defendants has submitted that there is no document filed for engaging the services of plaintiff to procure the property and also for the services to obtain patta. Only document relied on by the plaintiff is Exhibit P-3 which one agreement dated 11.09.2006 relied on by the plaintiff is a fabricated one. Further, Exhibit P-3 has been entered into with the 4th defendant claiming to be power agent of defendants 1 to 3 wherein 4th defendant agrees to pay a sum of Rs.60 Lakhs by referring to an agreement dated 19.09.2003. When an agreement has been disputed the person claiming benefit under the agreement will have to prove the same by examining witness to the agreement. In the present case witnesses to agreement dated 19.9.2003 has not been examined. The power of attorney executed in favour of the 4th defendant



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by defendants 1 to 3 was cancelled under agreement dated 07.09.2006 to which 4th defendant was a party. Therefore the 4th defendant could not have executed any agreement as a power agent of the defendants 1 to 3 on 11.09.2006.

10. It has been further submitted that as per the contention of the plaintiff, the plaintiff has not complied with his part since the Patta in respect of the property could not be obtained, and the property has been classified as Government purambake. In this regard, the Hon'ble Court in W.P. No.10423 of 2013 rejected the claim of Patta made by the defendants 1 to 3 vide Ex.D1. Hence, the question of payment for his service would not arise.

11. The learned counsel for the defendants further submitted that as per the averments of the plaintiff, there is a denial of liability on the part of defendants in 2006 followed by June 2008, the suit filed in 2014 is barred by limitation. Further, Exhibit P-7 is the document executed amongst Defendants 1 to 3, 4th defendant and Defendants 5 & 6. It would be noticed from the said document that Rs.50 Lakhs has been paid by



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defendants 5 and 6 for the services of plaintiff. Thereby, the Plaintiff was aware of this document from 2008 as he had given a paper publication under Exhibit P-8 on 18.04.2009. Therefore, the plaintiff having knowledge of the document in the year 2008 itself, must have enforced the same within 3 years from the date thereon. Hence, the suit is liable to be dismissed.

12.On perusal of the records, it is seen from Ex.P1 dated 25.09.2003 that an Agreement of Sale has been executed between the defendants 1 to 4 and one Mathias family for the sale of the suit schedule property. In the plaint, the plaintiff himself averred that the suit schedule property does not belong to Mathias Family and it belongs to one Swamynatha Iyer. From the beginning itself, it seems that the said sale transaction is not clear. In this regard, the plaintiff has not given proper explanation. On perusal of the records, it is seen that subsequent to Ex.P1, various sale deeds have been executed and thereafter a Power of Attorney dated 26.10.2005 has been executed. However, the plaintiff has not filed certified copy of the same.



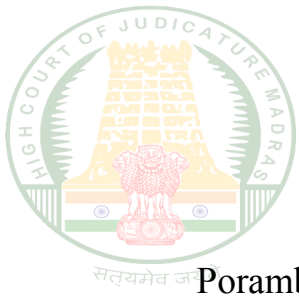
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13. On perusal of Ex.P3 in which no date has been mentioned, it is seen that the Plaintiff seeks the suit claim based on agreement dated 19.09.2003. However, even though this document is a vital document to claim the amount, the plaintiff has not filed the said document. On seeing the Ex.P3, one of the clause enumerates that in case the payment is delayed Mr.Sekar is authorized to recover the same from the Purchaser directly on account of First Party, it seems that is an unilateral clause.

14.On perusal of Ex.P8- Paper Publication, it is seen that the plaintiff claims a sum of Rs.48 Lakh to be entitled. However, the plaintiff in his plaint seeks to claim of Rs.42 Lakhs. The aforesaid difference is not explained properly. In the plaint, it is said that out of 60 Lakhs, Rs.18 Lakhs has been received. However, the plaintiff has not produced any document to substantiate the same.

15. Further, the government by G.O Ms. No.99 Revenue LD-I(1) department dated 28.03.2013 rejected the claim of patta and in this regard, this Court has passed the order dated 17.10.2022 in W.P.No.10423 of 2013 vide Ex.D3, observing that the suit property is Government



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Poramboke and dismissed the same. While the suit property is declared as Government Poramboke, the entire conveyance itself is illegal thereby claiming of commission is an illegal transaction. There cannot be any contract which is against Law. Hence, the plaintiff is not entitled to claim as sought in the plaint. Accordingly, Issue No.6 is answered. Since Issue No.6 is answered against the plaintiff having observed the aforesaid facts, other issues need not be considered.

16. In the result, this Civil Suit is dismissed. No costs.

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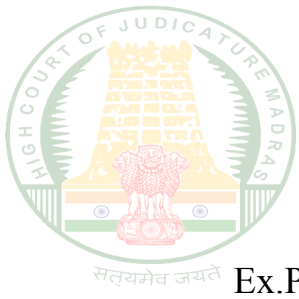
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1. List of Witnesses examined on the side of the Plaintiff:-

PW1 S.Sekar

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

Ex.P1 25.09.2003 Original Agreement.



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- Ex.P2 07.09.2006 Photocopy of M.O.U
- Ex.P3 11.09.2006 Original Agreement
- Ex.P4 22.11.2006 Copy of legal notice
- Ex.P5 26.12.2006 Copy of reply letter
- Ex.P6 12.02.2007 Copy of rejoinder
- Ex.P7 16.06.2008 Photocopy of full and final settlement letter
- Ex.P8 18.04.2009 Original paper publication in 'Deccan chronicle'

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

DW1 A.I.Sageer

4. List of Exhibits marked on the side of the Defendant:-

- Ex.D1 17.10.2022 Webcopy of order in W.P.No.10423 of 2013
- Ex.D2 07.09.2006 Original Memorandum of Understanding
- Ex.D3 16.06.2008 Original receipt

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A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in  
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