

WEB COPY

Civil Revision Petition No. 1485 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.Pd.No.1485 of 2025

and

C.M.P.No.8687 of 2025

N.Asha Devi

... Petitioner

-VS-

1. R.Aravind Kumar

2. R.Umraw Bai

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decree made in I.A.No.1 of 2023 in O.S.No.632 of 2022 dated 11.09.2024 passed by the learned Additional District Judge, Chengalpet.

For Petitioner : Mr.A.K.Sriram, Senior Counsel
for Mr.P.Gopalan

For Respondents : No Appearance



WEB COPY

Civil Revision Petition No. 1485 of 2023



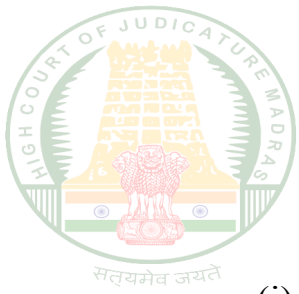
ORDER

Challenging the order passed in I.A.No.1 of 2023 in O.S.No.632 of 2022 by the learned Additional District Judge, Chengalpet, the defendant/revision petitioner is before this Court.

2. The said interlocutory application has been filed under Order VII Rule 11(d) and Section 151 of C.P.C to reject the plaint in O.S.No.632 of 2022.

3. The above suit has been filed by the plaintiffs seeking a partition and separate possession of 44% of their share both in the land and the built-up area of the property described in the suit schedule by enforcing the two joint venture agreements dated 18.08.2014 entered into between the plaintiffs and the defendant.

4. The short facts which have culminated in the filing of the above suit are as follows:



WEB COPY

(i) The defendant who is the owner of the property had entered into two Memorandum of Joint Venture Agreements dated 18.08.2014 with the plaintiffs. The plaintiffs are building contractors and promoters carrying on their trade in the name of M/s.M.R.Shelters. As per the agreement between the parties, 8 flats were to be constructed on the suit property at the cost of the plaintiffs. The plaintiffs had agreed to construct 4 flats in Plot S4 and 4 flats in Plot No.S7 at their cost. Out of the 8 flats, the plaintiffs were entitled to 44% of the land and built-up area and the defendant was entitled to the remaining 56% of the land and built-up area.

(ii) Pursuant to the above agreements, the defendant had given vacant possession of the vacant site in Plot Nos.S4 and S7 to the plaintiffs and the plaintiffs had built a super built up area of 4834 sq.ft and 4954 sq.ft respectively in Plot Nos.S4 and S7. The structures put up in each of these plots consisted of a ground floor, car parking, lift and two flats each in the first floor and the second floor and both together the total number of 8 flats.



(iii) The plaintiffs would submit that the defendant has been visiting the premises regularly and checking on the progress. She was therefore very much aware that except for the erection of the main gate and fixing of switch boards, all other construction work in respect of 8 residential flats had been completed in the 2nd week of April 2016.

(iv) While so, to a shock and surprise of the plaintiffs, the defendant had sent a letter dated 20.04.2016 to the plaintiffs stating that the construction could not be completed within the stipulated period of 15 months and that she has not been informed about the stage of the construction and that more than 20 months had passed, she has not been informed about the completion of the construction of the residential apartments. Therefore, she sought to cancel the Joint Venture Agreements dated 18.08.2014. This was followed by a lawyer's notice dated 22.07.2016 from the defendant containing to the very same facts.

(v) The plaintiffs had sent a reply notice dated 23.07.2016 refuting the claim of the defendant and stating that the construction work was completed in all respects except for the fixing of switches and erection of main gate and

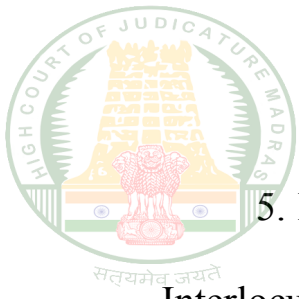


that the entire construction work had been completed even as in the first week of August 2016 and therefore, there cannot be a unilateral cancellation of Joint Venture Agreements. The defendant had sent lawyer's notices dated 20.09.2016 and 22.11.2016 once again reiterating the contents of the original legal notice.

(vi) The plaintiffs would submit that the eight flats measuring a super built up area of 9788 sq.ft had been put up at the cost of Rs.2,14,96,700/- There has been no delay in the execution of the terms of the two memorandum of Joint Venture Agreements. The plaintiffs were given possession of the land only on the date of the Joint Venture Agreements, i.e on 18.08.2014. After the soil testing, they had come to understand that a pile foundation had to be installed to ensure the structural stability and safety of the building. Therefore, as per this soil test report dated 27.08.2014, pile foundation was laid to reach the solid rock to ensure the structural stability and the safety of the buildings. All of this was with the knowledge and concurrence of the defendant. For 45 days construction activities had been held up on account of the rainfall and flood in the year 2015. Due to which, damage has been caused to the construction materials stored in the site. The



plaintiffs had suffered a loss to an extent of Rs.15,00,000/-. By reason of all the above incidents, the work was pushed back by 8 months and these are reasons beyond the control of the plaintiffs. The plaintiffs spent a huge sum of money in constructing the 8 flats. The plaintiffs had ventured into the project as they had known the defendant. Despite the fact that the constructions had been completed by the 2nd week of August 2016, a notice was issued by the defendant regarding the unilateral cancellation of the agreement on 22.07.2016 would clearly highlight the fraudulent conduct of the defendant. The plaintiffs have also put out a public notice in Daily Thanthi on 08.06.2022 informing the general public that 44% of the land and in the super built up area was owned by them. The terms of the Joint Venture Agreements would also provide that the joint venture cannot be cancelled by the defendant. The plaintiffs would submit that they are in possession and enjoyment of their 44% share in the property. The suit is filed to enforce the joint venture agreements and to divide their 44% share in the property.



5. Even before filing her written statement, the defendant has filed the Interlocutory Application seeking rejection of the plaint. The grounds on which the plaint was sought to be rejected are herein below set out.

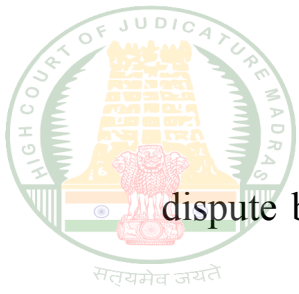
As per Clause 6 of the Joint Venture Agreement, the plaintiffs had agreed to complete the construction within a period of 15 months from the date of the two Joint Venture Agreements and the same expired on 18.11.2015. The construction of the apartments could not be completed by them. The terms of Clause 7 was also not fulfilled. Therefore, for reason of the non-performance of the contract where time is the essence of the contract, the defendant had cancelled the two Joint Venture Agreements dated 18.08.2014 and 20.04.2016. The cancellation of the Joint Venture Agreements had been informed to the plaintiffs by the defendant by her notice dated 20.04.2016 separately for each of the plots. After the cancellation of the agreement, the suit cannot be maintained and the suit in question has been fraudulently filed. The possession has been taken by the defendant in the 1st week of June 2017 and from that day, she has been calling the plaintiffs for discussion but they failed to respond to do the same. After 6 years, from the date of the cancellation of the agreements, the suit has



been filed. The suit is belated inasmuch as it has been filed 6 years after the cancellation.

6. The plaintiffs had filed a counter affidavit *inter-alia* contending that the plaint cannot be rejected at the threshold as there are several issues which have to be considered in detail during the trial. The plaintiffs had completed construction of a super built-up area of 4834 Sq.ft in Plot No.S4 and 4954 Sq.ft in Plot No.S7 each consisting of a ground floor, car parking, lift, and two flats each in the first and second floor. The defendant who has been visiting and inspecting the property was aware that the construction had been completed and what required to be completed was the fixing of the main gate and switch boards. Having completed construction of the 8 flats, it is rather strange that the defendant would come forward to cancel the joint venture agreements on the ground that work has been delayed. The cancellation appears to be *malafide* and made with an ulterior motive.

7. The learned Principal District and Sessions Judge, Chengalpet, after hearing the parties, had rejected the application on the ground that the very cancellation of the joint venture agreements is the subject matter of the



dispute between the parties and the same has to be decided during trial. A mere reading of the plaint would clearly show that the plaintiffs have made out a cause of action and the suit has been filed questioning this cancellation. Therefore, the learned had held that the application has to be rejected. Challenging the same, the defendant is before this Court.

8. Heard the learned counsel for the petitioner /defendant and perused the materials available on record.

9. The plaintiffs' case is that they had entered into two Joint Venture Agreements with the defendant and as per the Joint Venture Agreements, the plaintiffs were entitled to 44% of the super built up area and the land. The construction has also been completed and the plaintiffs are in occupation of their 44% share. On the date of the cancellation of the Joint Venture Agreements, the construction had been completed in all respects except for fixing of switch boards and erection of main gate. The statement has not been categorically denied by the defendant. Therefore, by reason of the Joint Venture Agreements, the plaintiffs have entered into possession of the 44% built up area as well as the land. That apart, the joint venture agreements



Civil Revision Petition No. 1485 of 2025

which are coupled with interest and cannot be unilaterally cancelled. Since the defendant has not contributed any amount for the construction of the superstructure and it is the plaintiffs who have invested for the same. All these are issues that have to be decided during the trial and at the very threshold. Therefore, the plaint cannot be rejected and the learned Principal District and Sessions Judge, Chengalpet had rightly rejected the application and I see no reason to interfere with the order. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.04.2025

Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

srn

To,

The learned Additional District Judge, Chengalpet.



WEB COPY



Civil Revision Petition No. 1485 of 2025

P.T.ASHA, J.,

srn

C.R.P.Pd.No.1485 of 2025
and
C.M.P.No.8687 of 2025

09.04.2025