

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2009

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND
THE HONOURABLE MR.JUSTICE R.SUBBIAH

O.S.A.Nos.264 &265 of 2004

Capt. K.P.Rajagopal,
B-11, Fort Indraprastha,
18-A, Kalakshetra Road,
Thiruvanmiyur,
Chennai - 600 041. .. Appellant in OSA.264/2004/Respondent

Capt. S.Rajasekar,
J-14, Plot No.1569,
13th Main Road,
Anna Nagar,
Chennai - 600 040 ..Appellant in OSA.265/2004/Respondent

Vs.

M.Ravindran,
Senior Advocate,
Administrator,
Anubhav Group Companies,
(In Liquidation) ... Respondents/Appellants in
both Appeals.

These appeals have been preferred under Order XXXVI Rule 11 of O.S. Rules r/w Clause 15 of Letters Patent as against the order passed by the learned single Judge in C.A.Nos.1390 and 1391 of 2003 in C.P.No.13 of 2000 dated 28.11.2003.

For Appellants : Mr.P.John for
M/s.T.S.Gopalan & Co.,
For Respondents : Mr.K.Veerasingh Kumaragiri for
Administrator

COMMON JUDGMENT

(The judgment of the Court was delivered by M.CHOCKALINGAM, J.)

These two appeals challenge a common order of the learned Single Judge of this Court whereby the appellants were directed to re-convey the plot Nos.160 and 165 and Plot No.157 as requested by the Administrator in Company Application Nos. 1390 and 1391 of 2003 respectively in Company Petition No.13 of 2000.

2. The case of the respondent/Administrator for seeking the relief of re-conveyance was that after appointment as Administrator of the said Company, it came to his knowledge that originally, Plot Nos.160 and 165 were sold to the appellant in O.S.A.No.264 of 2004 by sale deeds dated 27.6.1994 and 7.10.1994 respectively and Plot No.157 was sold to the appellant in O.S.A.No.265 of 2004 and subsequently, the appellant in O.S.A.No.264/2004 requested the company to allot plot Nos. 356 and 367 instead of Plot Nos. 160 and 165 and the appellant in O.S.A.No.265/2004 requested the Company to allot plot No.357 instead of Plot No.157. Considering the request made, the sale deeds were executed in favour of the appellant in OSA.No.264/2004 on 5.5.1997 in respect of Plot Nos. 356 and 367 and a sale deed was executed in favour of the appellant in OSA.No.265/2004 on 5.5.97 in respect of Plot No.357. Though it was assured by the appellants/purchasers that they would re-convey the plots originally allotted to them viz., Plot Nos. 160 and 165 and Plot No.157 respectively, they did not re-convey the same. Hence, the Administrator wrote a letter to the appellants on 10.12.2002 requesting them to send a xerox copy of the re-conveyance but it was not done. Under such circumstances, it became necessary to approach this Court seeking the order of re-conveyance.

3. The appellants were given opportunity to file the counter. After looking into the materials available on record and the submissions made on either side, the learned Single Judge took a view that it was a fit case where re-conveyance has got to be ordered and accordingly, passed a common order. Aggrieved appellants have brought forth these appeals challenging that order.

4. Advancing the arguments on behalf of the appellants learned counsel would submit in the instant case, originally two plots viz., Plot Nos. 160 and 165 were sold on 26.7.1994 and 7.10.1994 respectively to appellant in O.S.A.No.264/2004 and a plot No.157 was sold on 7.7.1994 to the appellant in O.S.A.No.265/2004 by registered document on payment of sale consideration and the properties were actually conveyed to them and they became the owner of the properties. Subsequently, sale deeds were executed on 5.7.1997 for two plots viz., Plot Nos. 356 and 367 in favour of the appellant in O.S.A.No.264/2004 and a sale deed was executed on 5.7.1997 for Plot No.357 in favour of the appellant in O.s.A.No.265/2004. A reading of the sale deeds would clearly indicate that independent and separate considerations were made and hence they became the owners of the properties. Under such circumstances, an Administrator was appointed by the Court on 2.11.1999. All the properties of the Company vested with the Administrator from that time onwards. All these sale deeds were found to be earlier in point of time. Under such circumstances, no re-conveyance could be asked for. The learned single Judge has erroneously passed the order. Hence, the order of the learned Single Judge has got to be set aside.

5. Added further learned counsel, the letters placed by the Administrator was relied on by he learned Single Judge which was actually not written by the appellants. Hence, no evidentiary value could be attached to those documents. Under such circumstances, the

order of the learned single Judge has got to be set aside.

6. The Court heard the learned counsel for the respondent who made his sincere attempt to sustain the order of the learned Single Judge and the Court also looked into the materials available.

7. It is not in controversy that originally two plots were sold viz., Plot Nos. 160 and 165 by two independent sale deeds dated 25.6.1997 and 7.10.1994 respectively in favour of the appellant in O.S.A.No.264/2004 and a sale deed was registered for Plot NO.157 on 7.7.1997 in favour of the appellant in O.S.A.No.265/2004. What was all contended by the Administrator before the learned single Judge and equally here also is that subsequently the sale deeds came to be executed for Plot Nos. 356 and 367 in favour of appellant in O.S.A.No.264/2004 and Plot No.357 in favour of the appellant in O.S.A.No.265/2004 only on the assurance of the appellants making re-conveyance of the earlier plots viz., Plot Nos.160 and 165 and Plot No.157 allotted to them but no re-conveyance has been made.

8. In support of his contention, the learned counsel for the respondent relied on the letters written by the appellants to the Administrator. A reading of these letters would indicate that it was addressed to the Additional Superintendent of Police, Economic Offence Wing-II, Chennai. It is also seen that originally, Plot Nos. 160 and 165 and Plot No.157 were sold to the appellants respectively and subsequently other plots viz., Plot Nos. 356 and 367 and Plot No.357 were sold to the appellants respectively and the consideration were also made. Further reading of the letters would clearly indicate that the appellants were ready to surrender the original plots allotted to them if the entire consideration was made.

9. It could also be seen that on 5.5.1997 sale deeds were executed in respect of Plot Nos.356 and 367 in favour of the appellant in OSA.264/2004 and he was able to get a cheque for Rs.2,54,620/- from the Company and a sale deed was executed in respect of Plot No.357 in favour of the appellant in OSA.265/2004 and he was able to get a cheque for Rs.97,000/- from C.Natesan. The entire reading of the letter indicate that originally plot Nos.160 and 165 and Plot No.157 were sold to the appellants respectively and subsequently plot Nos.356 and 367 were given in respect of Plot Nos 160 and 165 and Plot No.357 was given in respect of Plot No.157 and the appellants agreed to surrender the plots originally allotted to them. The cheques were issued and they have also received the same but as on today no re-conveyance was made as assured by them. Under such circumstances, the contentions of the learned counsel for the appellants cannot be countenanced.

10. The Court is of the opinion that the appellants are entitled to get the amount what was found in the cheques by making a claim to the Administrator. At no stretch of imagination, they can retain the plots taking advantage of the situation. The order of the learned single Judge does not require any interference. Hence, the appeals are dismissed. No costs. Consequently, C.M.P.Nos.18853 and 18854 of 2004 are closed. The appellants are entitled to make their claims by

way of an application before the Administrator within a period of two months herefrom.

Sd/-
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

vsi

To.

The Sub Asst.Registrar,
Original Side, High Court, Madras.

+ 2 CC to Mr.T.S.Gopalan & Co,Advocate,SR.49552 & 49551
+ 1 CC to Mr.M.Ravindran,Advocate,SR.49757

OSA.Nos.264 & 265 of 2004

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