

IN THE COURT OF THE DISTRICT MUNSIF, HOSUR.

PRESENT:

Ms. M. Anbuselvi, M.A., M.L.,
District Munsiff, Hosur.

Dated this the 29th day of October, 2010, Friday.

Original Suit. No. 142 /2003

PLAINTIFFS...

1. Association of Plot Owners of M/s. Rema Rainbow Valley, (APOORRV) represented by its President, Sri. Ivan D'Souza.
2. M/s. Rema Country Holdings Ltd., Bangalore represented by its Managing Director, Sri. Ivan D'Souza.

-:Versus:-

DEFENDANT...

M/s. Rema Rainbow Valley Residents and Plot Owners Association, (RRVRPOA) represented by its Present Secretary, Mr. Vikram Rao.

This suit coming up on 20-10-2010 for final hearing before me in the presence of by Sri. N.S. Vidhya Baskar, Advocate for Plaintiffs, and Messrs. R. Narasimhan, N. Srinath and N. Sharath Kumar, Advocates appearing for Defendants, upon hearing the arguments of both sides and perusing the records and having been stood over for consideration till this day this Court doth order the judgment as follows:

:JUDGEMENT:

This suit is instituted by the Plaintiffs to declare that the formation of the Defendant Association vide Registration No.77 of 2003 dated 4.4.2003 before the District Registrar, Krishnagiri is illegal, void and *non est* in law and for the grant of permanent injunction against the Defendant, to restrain the Defendant either by themselves or through their men or agents from carrying out or conducting all and any activity which has the effect of interfering with the activities of the First Plaintiff and to grant the cost of suit.

2) **Plaint averments :-**

The English translation
N. S. J. Advocate, HOSUR

That the first Plaintiff is an Association registered under Tamilnadu Societies Registration Act, 1975. The Association was registered before the District Registrar, Krishnagiri vide. No.140/2003. The Second Plaintiff as promoter/Developer has formed the First Plaintiff Association. That the Second plaintiff is the promoter and Developer of Rema Rainbow Valley project, a residential farm house project in Pancheeswaram and Thandrai village, the 2nd Plaintiff having acquired the lands formed individual plots and entered into a memorandum of agreement for sale of land and formation of club with individual plot owners. The 2nd Plaintiff as promoter/Developer was required to promote and develop the project which consisted of developing a club house, health club, shopping complex, Children Park, road, drains and other amenities for the benefit and use of the purchasers of individual plots. That after the completion of the aforesaid works the 2nd Plaintiff as promoter/ developer was required to form an association/society to which the aforesaid infrastructure facilities was required to be transferred and based on this agreement, sale deeds are executed for individual plots, but not the undivided share of land or rights in respect of the aforesaid infrastructures/amenities/ facilities developed by the 2nd Plaintiff and further that in this connection on 17-01-2003 a meeting was convened at Bangalore to discuss the various modalities and formalities for the formation of the association of the plot owners and that only about 50 to 60 owners were present in Bangalore and participated in the meeting and a draft memorandum of association and bye laws for the purpose of formation of the association and its registration was circulated and any changes to the same was solicited on or before 14-02-2003, that only 30 members participated and 90% of the members abstained from the meeting and that meeting was conducted in illegal manner. The 2nd plaintiff was shocked to know that the Defendant association was formed by registering the same before the District Registrar, Krishnagiri without its knowledge and concurrence and that the 2nd Plaintiff alone had the right to form the association as the promoter/Developer and that on 06-06-2003, 05-07-2003 and 26-08-2003 the 2nd Plaintiff was constrained to issue legal notices to the defendant and that the defendants have formed their association illegally and hence the formation of the Defendant's association vide Registration No.77/2003 dated 04-04-2003 before the District Registrar, Krishnagiri is illegal, void and *non est* in law and the Plaintiffs further pray for the grant of permanent injunction restraining the defendant either by themselves or through their men or agents from carrying out or conducting all and any activity which have the effect of interfering with the activities of the 1st Plaintiff. Hence the suit.

True English translation
N. S. H. F.
Advocate, Hosur

3) Averments of the written statement filed by the Defendants:-

That the Plaintiff averments are denied in toto as false and concocted. That the suit is bad for misjoinder of parties and the Plaintiffs have no locus standi to file the present suit and that the Plaintiff by their letter dated 18-02-2003 have admitted the complete divestment of their rights and that plaintiffs are no longer associated with the business affairs of Rema Rainbow valley and that each plot owners have paid additional charges apart from the payment of Rs.22,500/- as sale consideration for the plot and that under the scheme contemplated they have paid the contribution for the common properties like Club House scheme and other schemes including Health club, Shopping complex, children's parks roads, drains, solar fencing around the project, overhead tanks, reservoirs, bore wells, underground sumps, water supply lines and 63 KVA transformer for power supply etc. That Plaintiffs are only promoters and by their completion of project should simply walk way out of the Rema Rainbow Valley. They are the contractors for the plot owners. That the Plaintiffs cannot claim any right to form an association for the defendants' properties which is the absolute prerogative of the defendants. That the defendants association was formed for the welfare of the plot owners of REMA and the members of the defendants association. That it is the duty of the Defendants to take over all the responsibilities and assets and to run the maintenance of the REMA Rainbow valley.

4) Gist of the Additional written Statement filed by the Defendants:-

That the suit is not maintainable before this Court and the plaintiff averments are denied. The Court suffers for the want of jurisdiction to entertain the suit since the said jurisdiction is specifically barred under Sec. 36 of the Tamilnadu Societies Registration Act, 1975 (Act 27/1975). The suit should have been filed before the District Court after exhausting all remedies under Sec. 36 of the Tamilnadu Societies Registration Act. That each site is sold for over a Lakh of rupees and more and by the sale deeds executed by the Plaintiffs the value of 325 sites sold by them would be much more than the jurisdictional value of the Hon'ble Court and would exceed the pecuniary jurisdiction. That a Court Commissioner needs to be appointed to assess the value of the suit property which exceeds the value allegedly mentioned in the plaint. That the electricity bills for the period from 20-01-2003 to 20-03-2003 of Rs.10,534/- was not paid by the Plaintiffs but by the Defendants and that the Plaintiffs have no right, title or interest after the execution of the sale deed and the

The English translation.
N. S. J. Advocate, Hosur

Plaintiffs have not honoured all the obligations on which they sold the property to the individual owners and that the suit liable to be dismissed with costs.

5) On these pleadings of the parties and upon hearing the arguments of the respective counsels, the following issues are framed.

ISSUES.

- 1) Whether the Association formed by the 1st Defendant dated 04-04-2003 is legal and valid in law?
- 2) Whether the Plaintiffs are exercising their rights as the promoters and developer of Rema Rainbow Valley project?
- 3) Whether this Court has jurisdiction to try the suit on merits?
- 4) Whether the Plaintiffs are entitled to the relief of declaration sought for?
- 5) Whether the Plaintiffs are entitled to the permanent injunction as prayed for?
- 6) To what other reliefs are the Plaintiffs entitled to?

6) On behalf of the Plaintiffs Mr. Ivan D' Souza has been examined as P.W. No.1 and no documents are marked through him. No witnesses were examined on behalf of the Defendant. No documents have been marked on their side as Exhibits.

7) Issues No. 1 to 6:

This suit is laid in respect of the entire land, plots buildings and all the amenities provided in Rema Rainbow Valley of Thandarai Village. That since all the infrastructures/ amenities/ facilities are all situated in Plaintiff's land and the defendants attempted to interfere with the conduct of business of plaintiff by forming an association bearing Regn. No.77/2003 dated 04-04-2003 and that the Defendant association is invalid and illegal one, the Plaintiffs sought to restrain the defendant by means of a permanent injunction from carrying out or conducting all or any activity which has the effect of interfering with the activities of the 1st Plaintiff and also sought for a declaration to the effect that the formation of the

True English translation.

N. S. H. Advocate, Hassan.

defendant association is illegal, void and *non est* in law. In this suit, Mr. Ivan D' Souza has been examined as P.W.1. He is the Managing Director of the 2nd Plaintiff Company. In his deposition he has deposed in chief examination that "1st Plaintiff association is formed by the 2nd Plaintiff. The 2nd Plaintiff Company formed Rema Rainbow valley layout in Thandarai village. Such plots formed in the layout are sold to various purchasers. Such purchasers have *suo motto* formed an association of their own. They are the Defendants. That the defendants association objected to the smooth functioning of the plaintiffs association. During the pendency of this suit for disposal on merits on 18-04-2008 an agreement is reached between both parties putting an end to the controversies. That the Plaintiffs do concede and agree that the defendant association is a legitimate and valid one. All the business affairs and activates of the Plaintiff association are entrusted to the defendant association as agreed under the mutual agreement dated 18-04-2008. Hence the suit is not pursued further. That Plaintiffs do not pray for the grant of any of the reliefs sought for in the suit".

The P.W.1 in his cross examination deposed that "previously the 2nd Plaintiff owned 407 plots. 325 plots were sold and 82 plots are retained by the Plaintiffs. These unsold 82 plots exclusively belong to the Plaintiffs. In the event of the 82 plots being sold by Plaintiffs the prospective buyers should enroll themselves as members of the defendant's association. In terms of the agreement reached with defendant dated 18-04-2008, the Plaintiffs are not entitled to claim any of the suit reliefs originally prayed for. All financial commitments pending and in operation entered into by the 1st plaintiff shall be determined and settled without leaving any liability on the Defendant prior to this date of 18-04-2008. The common assets and the roads shall henceforth be maintained only by the Defendnat association. The certificate or registration of the 1st plaintiff's association has not been renewed. It is now defunct. There are no legal proceedings pending either in Tamilnadu or at Bangalore in regard to the subject matter of this suit. There are no other proceedings pending in any other Court of law or with the Registration Department. The agreement dated 18-04-2008 is executed by Plaintiffs out of free will and volition without any coercion or intimidation. Hence the no objection for the suit being dismissed with costs". No oral evidence is let in on the side of the Defendants.

The learned counsel appearing for the Defendant while addressing his arguments submitted that as regards the business affairs of Rema Rainbow valley

The English translation
N. S. J. Advocate, Hosur

since an agreement dated 18-04-2008 is arrived at between both Plaintiffs and Defendant which fact is also brought out in the evidence of P.W.1 and reiterated in his cross examination. That 325 plots are sold by Plaintiff No.2 and the remaining unsold plots are 82 in numbers and the purchasers of these said 82 plots would *ipso facto* be members of the defendant association. That the defendant association shall be vested with all rights of maintenance of common assets and amenities in the layout. In view of the agreement entered dated 18-04-2008 and in view of the fact that the defendant's association is the only functioning body as on date, the relief No.1 prayed for in the suit become infructuous. This court is also of the view that this suit is liable to be dismissed *in toto*. Considering the nature of the suit and the compromise effected between the parties to the suit, it would be prudent to order that both parties bear their respective cost of the suit.

In fine, the suit is dismissed. Both parties are ordered to bear their respective costs.

Dictated this judgment to the stenographer, transcribed by her, corrected by me and then pronounced by me in open Court on this 29th day of October 2010.

Sd/-
M. Anbuselvi,
District Munsiff, Hosur.

Annexure:

List of witnesses examined by Plaintiffs:-

P.W.1 Ivan D'Souza.

List of documents marked:-

NIL.

List of witnesses examined by Defendants and documents marked:-

NIL.

True English translation
N. Sh. J.

Sd/-
M. Anbuselvi,
District Munsiff, Hosur.

R. Narasimhan, B.A., B.L., 15/1415/True Copy/9th Page/ Last Sheet.Corr-1.

N. Srinath, B.L.,

N. Sharathi Kumar, B.Sc., L.L.B.,

ADVOCATES
11, 1st Cross, 1st Colony,
HOSUR - 600 009