

KABC170012572025



**IN THE COURT OF LXXXIV ADDL. CITY CIVIL &
SESSIONS JUDGE, AT BENGALURU (CCH-85)
(Commercial Court)**

THIS THE 20th DAY OF SEPTEMBER 2025

PRESENT:

**SRI. ANAND T. CHAVAN. B.Com.,LL.B.(Spl.)
LXXXIV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com.OS.No.510/2025

Plaintiff:- **Mr. Prakash Babu B. K,**
S/o Late B N Krishnappa,
Aged about 48 years,
R/at 29, 13th Cross, M.R.S. Layout,
Sunkadakatte, Bengaluru-560 091.
Mobile No.9986137232.
Email- prakashbabubk@gmail.com

(Rep by Mr. S. Suresh Kumar -Adv)

V/s

Defendants:- **1. Pearl Builders and Developers,**
Proprietary concern of
Late. Bruno Cardoza,

Having its office at No.5,
 Victoria Road, Bengaluru-560 047.
 Email: chrislvnc@yahoo.com
 Email: admin@pearldevelopers.com
 (Rep by its authorised signatory
 Mr. Chrislyn Cardoza.
AND OTHERS.

(Rep by Smt. Anitha C Adv for D1 & 2)
(Rep by Nargund Associates- Adv for D3 to 6)

PARTIES TO IA.NO.II

Applicants/ 1. Pearl Builders and Developers
Defendant Nos.1 &2: & Ors,
V/s

Opponent/ Mr. Prakash Babu B. K,
Plaintiff:

(i)	Provisions under which the application is filed	U/Or.VII Rule 11 R/w Sec.151 of CPC
(ii)	Relief sought for	Rejection the plaint
(iii)	The date on which the application is filed	18.07.2025
(iv)	Number of the application	1
(v)	The date on which the objection is filed by opponents	By plaintiff on 30.07.2025
(vi)	The date on which the orders were passed on the said application	20.09.2025

ORDER ON IA No.II

Defendant Nos.1 and 2 have filed present application U/Or.VII Rule 11 R/w Sec.151 of CPC seeking to reject the plaint on the ground that this court has no jurisdiction to try the suit under Section 2(c) of Commercial Courts Act.

2. It is averred in the affidavit of the defendant No.2 filed in support of the application that, present suit is not maintainable both in law and on facts and same is an abuse of process of law. Further the suit is speculative with false, frivolous and vexatious allegations without any iota of truth and substance in it and same is liable to be dismissed with exemplary costs. Further transaction between the plaintiff or his vendor is not commercial transaction and hence it does not fall under Section 2(c) of Commercial Courts Act. Hence the plaint is liable to be rejected. If application is not allowed, defendants will be put to irreparable loss and injury. These amongst other grounds, it is prayed to allow the application.

3. The plaintiff has filed his objections to above

application, wherein it is averred that, the application is not maintainable and same is liable to be dismissed. It is further averred that plaint schedule A property falls within the jurisdiction of this court and as such this court is competent to try the suit. The plaintiff has reproduced Section 2(c) of Commercial Courts Act in his objections and it is further averred that the defendants have entered into joint development agreement on 01.07.2004 and entire cause of action revolves and arise from said joint development agreement. Hence the suit is filed within the jurisdiction of this court. It is further averred that provisions of law invoked by the defendants is erroneous. These amongst other grounds, it is prayed to reject the application.

4. The following points arise for consideration:

1. Whether defendant Nos.1 and 2 have made out grounds for rejection of plaint U/Or.VII Rule 11 R/w Sec.151 of CPC, as prayed in the application?

2. What order or decree?

5. Heard arguments of both sides, perused

records.

6. The followings are answers to above:

Point No.1:- In the Negative.

***Point No.2:- As per the final Order
for the following;***

REASONS

7. **POINT No.1:-** The plaintiff has filed present suit against defendants seeking to declare that possession of suit schedule property by defendant Nos.1 to 6 as illegal, to direct said defendants and their representatives to vacate and deliver possession of said property to plaintiffs and to pay mesne profits and damages in respect of said property. It is further prayed to grant consequential injunction against defendant Nos.1 to 6 and their representatives from interfering plaintiffs peaceful possession, occupation and enjoyment over suit schedule property.

8. It is averred in plaint that defendant No.1 is a Proprietorship concern owned by late Bruno Cardoza, which was in the business of real estate, development of land and building construction.

Defendant No.1 entered into a registered joint development agreement to construct residential cum commercial building over immovable property bearing Municipal No.162 and 162/2 of Margosa Road, 3rd Main, Malleshwaram Bengaluru, which belonged to one Late Paulino Fernandes. The said JDA between Paulino Fernandes (owner) and Pearl Builders and Developers (builder) was executed on 01.07.2004 and registered on 06.07.2004 before Sub Registrar Gandhinagar, Bengaluru. As per said JDA it was agreed between defendant No.1 represented by aforesaid Bruno Cardoza and Paulino Fernandes that ground floor of building to be constructed for commercial purpose and properties stated above shall be shared between defendant No.1 and Paulino Fernandes in ratio of 70%:30% respectively. Further both parties shall share frontage on same proportion and basement equally. Further entire first floor portion of commercial building shall be exclusively allotted to defendant No.1 represented by Proprietor Bruno Cardoza and entire 2nd floor portion of residential building and two rooms on terrace and

remaining terrace shall be allotted exclusively to owner Paulino Fernandes.

9. On 10.01.2005 the plaintiff entered into an agreement of sale with owner to purchase portion of his entitlement. Since period of execution of sale deed was lapsed and also due to some typographical errors, said agreement was cancelled and cancellation deed was registered on 18.07.2005. On same day they entered into another agreement of sale in respect of front portion of 2nd floor and subsequently entered into an agreement in respect of entire entitlement of the owner in terrace floor portion of said property. Thereafter Bruno Cardoza being Proprietor of defendant No.1 knowing said transactions, filed OS No.17015/2005 before court against Paulino Fernandes for injunction restraining him from alienating the portion. During pendency of said suit Bruno Cardoza and owner Paulino Fernandes entered into Memorandum of Settlement on 08.07.2006 by deleting Clause 6 and 8 of JDA and allowing owner and developer to sell their respective shares in the constructed portion of suit schedule

property. Further defendant No.1 agreed to perform and fulfill certain conditions. Subsequent to 2006 defendant No.1 handed over possession of entire portion allotted to the owner and since said date the owner has been in peaceful possession and enjoyment of his share of property consisting of commercial and residential portions.

10. Owner rented out his portion in ground floor i.e., undivided built up area of 375 sq.ft., in favour of one Mr. Ravichandran and Smt. Sarala vide Lease dtd.27.04.2007, currently the said portion is rented to Utkarsha Small Finance Bank Ltd., by legal heirs of Paulino Fernandes. Subsequently due to some unavoidable reasons, the owner was out of station from 2008 to 2013 and had locked his residential portion occupied by him and his family by keeping entire household and belongings in the house. Though it was specifically agreed by defendant No.1 to withdraw OS No.17015/2005, on the contrary Mr. Chrislyn Cardoza S/o Late Bruno Cardoza had filed memo on 21.07.2009 seeking permission to dismiss the said suit as not pressed with liberty to file fresh

one on same cause of action by suppressing facts about Memorandum of Settlement on 08.07.2006.

11. In the meanwhile since Paulino Fernandes did not execute sale deed in favour of plaintiff as per Agreement of Sale dtd.16.07.2005, plaintiff filed OS No.8237/2009 before City Civil Court for specific performance of said agreement. During pendency of above suit owner agreed to execute sale deed in favour of plaintiff and entered into memorandum of agreement. Accordingly suit was decreed on 10.04.2013 as per terms of compromise between them. In terms of said decree the owner executed sale deed in favour of plaintiff in respect of residential apartment bearing No.S1 of 2nd Floor and another residential apartment bearing No.T of terrace floor together with proportionate UDS (schedule B properties of the plaint) under sale deed dtd.09.04.2013 before Sub-Registrar Gandhinagar, Bengaluru. Thereby plaintiff became absolute owner of portion of said properties purchased by him. Thereafter plaintiff approached BBMP for transfer of Khatha of said properties in his name, but he came to

know that defendant No.1 had filed objections for not changing the katha in the name of plaintiff as defendant No.1 is in physical possession of said property. Thereafter plaintiff came to know that defendant No.2 by taking advantage of death of Bruno Cardoza and in the absence of owner, illegally broke open door of the property, he stole household belongings of owner and took illegal possession of his property. Further defendant Nos.1 and 2 had executed unregistered lease deeds in favour of defendant No.3, who is represented by defendant Nos.4 and 5 in respect of 2nd floor portion and terrace portion in favour of defendant No.6 and one Shanthkumar S/o Late Krishnamnaidu, though defendant Nos.1 and 2 has no such right. Thereafter plaintiff and owner Paulino Fernandes filed complaint before Malleshwaram PS vide FIR No.148 dtd.21.07.2017 under Sec.34, 120B, 380, 454 and 455 of IPC against defendant Nos.2, 4 to 6, which is pending before CJM Court Bengaluru.

12. In the meanwhile the owner came to know

about death of Bruno Cardoza and defendant No.2 was acting against owners interest by misusing GPA executed by him in favour of defendant No.1. Hence said owner canceled GPA dtd.01.07.2004 vide Cancellation Deed dtd.19.07.2013. Thereafter defendant No.2 impersonating as representatives of defendant No.1 filed OS No.26168/2013 before City Civil Court, Bengaluru for injunctive relief against plaintiff and same was dismissed for non-prosecution on 28.03.2017. In said suit it was contention of defendant No.2 that the owner has illegally sold his entitlement without giving first preference of purchase to defendant No.1 as per Clause of JDA and defendant No.1 claims that owner has not taken over possession of his entitlement/ share after completion of construction of building as per JDA by repaying the sum of Rs.7,00,000/- interest free refundable security deposit, which was paid by defendant No.1 to him under JDA.

13. The above contention was contrary to plaint averments made by Bruno Cardoza in OS No.17015/2005, according to which the owner

Paulino Fernandes is in peaceful possession and enjoyment of respective shares entitled to him as per terms of JDA. Hence contention of defendant No.1 in OS No.26168/2013 that Paulino Fernandes was not having legal possession of his entitlement is baseless. Further defendant No.2 filed said suit only against plaintiff to harass him and to hold illegal possession of suit schedule property, without arraying the owner as necessary party. After dismissal of suit rather filing application for restoration, defendant No.1 filed fresh suit in OS No.25899/2017 on 02.08.2017 for injunctive relief against owner and the plaintiff. Hence defendant No.2 is illegally holding possession of property belonging to plaintiff and if owner was supposed to repay the refundable deposit, defendant Nos.1 and 2 should have filed recovery suit after exhausting remedy under Clause 27 of JDA. Hence defendant Nos.1 and 2 have leased out property belonging to plaintiff and plaintiff being absolute owner of said property is entitled for possession, mesne profits and damages from defendants. Hence present suit.

14. It shows that, defendants have appeared before court in pursuant to summons and defendant Nos.1 and 2 have filed their joint written statement denying the right of plaintiff to claim possession over suit schedule property. Further defendant Nos.1 and 2 have specifically contended in their written statement that there is no commercial transaction between plaintiff and defendant Nos.1 and 2 and as such this court has no jurisdiction to try the suit. However among other grounds defendant Nos.1 and 2 have narrated the terms of Joint Development Agreement between defendant No.1 and the owner, liability of owner to refund interest free sum of Rs.7,00,000/- to the developer against handing over the possession of the property and they have further proposed that defendant Nos.1 and 2 are ready to vacate the schedule property subject to refund of Rs.7,00,000/- along with interest at the rate of 9% per annum as per JDA between themselves and owner.

15. Further defendant No.3 to 5 have also appeared before court and they have filed their common

written statement by narrating with regard to lease transaction between themselves and defendant No.2 in respect of suit schedule properties under various lease agreements and they have also claimed for dismissal of the suit against them.

16. Sec.2(c) of Commercial Courts Act, reads thus:

(c) “commercial dispute” means a dispute arising out of-

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements;

- (xii) shareholders agreements;
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- (xiv) mercantile agency and mercantile usage;
- (xv) partnership agreements;
- (xvi) technology development agreements;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

17. In present case plaintiff has specifically pleaded that defendant No.1 constructed commercial and residential building in A schedule property as per registered Joint Development Agreement, which belonged to vendor of plaintiff by name Late Paulino Fernandes as per Joint development agreement on 01.07.2004 with agreement to share properties

between defendant No.1 and Paulino Fernandes in ratio of 70%:30% respectively and suit B Schedule properties fell to the share of plaintiff's vendor. In 2006 defendant No.1 handed over possession of entire portion allotted to the owner and subsequently defendant No.2 alleged to have trespassed and took possession of such portion of vendor of plaintiff in his absence.

18. Subsequently as per Sale agreement dated 18.07.2005, plaintiff filed OS No.8237/2009 before City Civil Court for specific performance of said agreement and as per settlement, said suit was decreed and vendor of plaintiff executed sale deed in favour of plaintiff in respect of Schedule B residential apartments under sale deed dtd.09.04.2013. Thereby plaintiff became absolute owner of portion of said properties purchased by him. Further only contention of defendant no.2 is that the owner, who is vendor of plaintiff illegally sold his entitlement without giving first preference of purchase to defendant No.1 as per Clause of JDA and defendant No.1 claims that owner has not taken over possession of his entitlement/

share after completion of construction of building as per JDA by repaying the sum of Rs.7,00,000/- interest free refundable security deposit, which was paid by defendant No.1 to him under JDA. Hence as per plaintiff, defendant No.2 is illegally holding possession of B schedule property sold to plaintiff and they have leased out said property to other defendants on rent, which constrained plaintiff to file present suit for possession, Mesne profits and damages from defendants.

19. In present case admittedly the schedule B properties purchased by plaintiff from it's owner Paulino Fernandes, which have fallen to his share under JDA. However nowhere plaintiff has pleaded that he purchased above property for his personal and residential use. Further it is argued by plaintiff side, that plaintiff has purchased the above properties for his commercial benefit under aforesaid sale deeds and as such the dispute in present case falls under section 2(c) of commercial Courts Act. Further admittedly even defendant No.1 and 2 appears to have rented the suit schedule property to

defendants No.3 to 6 on rent and as such they are utilizing the same for commercial purpose. Further as per written statement of defendants No.1 and 2, they have also contended non refund of certain amount by vendor of plaintiff under above JDA, which was also entered into between said vendor and defendant No.1 developer for commercial purpose of sharing portion of above building. Hence when plaintiff has filed present suit for possession of above B Schedule flats of second and Terrace floor, which are already used by defendants No.1 and 2 for commercial purpose of gaining rent and when even plaintiff has purchased such property for his commercial gain, the dispute in question definitely falls under purview of section 2(c) of Commercial Court Act. Moreover the dispute between parties appears to be with regard to Joint venture agreement between vendor of plaintiff and defendants No.1 and 2. Hence this Court has got jurisdiction to entertain and to decide the suit as per clause (vii) and (xi) of section 2(c) of Commercial Courts Act.

20. Moreover as rightly argued by plaintiff side,

mere lack of jurisdiction to try the suit cannot be ground for rejection of plaint under Order 7, Rule 11 of CPC. Hence for the aforesaid reasons, defendants No.1 and 2 have failed prove that the dispute in present suit is not commercial dispute and as such the plaint is liable to be rejected. Hence the present application deserves to be rejected. **Accordingly, Point No.1 is answered in the negative.**

21. Point No.2:- For the reasons stated and findings given on Point No.1, the following is:-

ORDER

IA No.II filed by defendant Nos.1 and 2 Under Order VII Rule 11 R/w Sec.151 of CPC, is hereby rejected.

No order as to costs.

[Dictated to the Stenographer Grade-III, directly on the computer, typed by her, then corrected and signed by me and pronounced in the Open Court, dated **this the 20th day of September 2025**]

(ANAND T. CHAVAN)

LXXXIV Addl.City Civil & Sessions Judge,
Bengaluru.