IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]

:Present:

Ravindra Hegde, M.A., LL.M.,
LXXXIII Addl. City Civil & Sessions Judge, Bengaluru

Dated this the 5th day of July 2021

COM.O.S.No.7301/2014

Plaintiff	M/s. Sapna Deepam Developers. Represented by its Proprietor N.Madhusudhana Reddy. [**By Sri.LMC/DMS, Advocate**]
	/v e r s u s/
Defendants:	Ms. Tamanna and others (**D.1 to D.3 by Sri.S.B.M, Advocate**, **D.4 to D.6 by Sri.M.S.S, Advocate)**

ORDERS ON I.A.NO.XV

This application under Order XI Rule 5 of CPC R/W Sec.16 of the Commercial Courts Act, 2015 is filed by defendants No.1 to 3 praying to direct the plaintiff to produce original bank statement dated 4/9/2006 and original bank statement of Madhusudhana Reddy for the period from 1/9/2006 to 31/12/2016 at Royal Bank of Scotland and also original deed of simple mortgage executed on 8/10/2007.

2. In the affidavit in support of the application, the 3rd defendant has stated that the plaintiff has suppressed certain facts and the transactions, which took place between the plaintiff and defendants and the documents pertaining to this transaction is very necessary and it will have larger bearing in the matter. In the affidavit, the case of the defendant No.3 has been stated and it is stated that the bank statement showing payment of Rs.2 crore by Madhusudhan Reddy in favour of ABN AMRO Mutual Fund Account of defendant No.3 is vital and necessary. It is also stated that the account statement of Madhusudhana Reddy in Royal Bank of Scotland from 2006 to 2016 which show various transactions that took place between plaintiff, defendants No.1 to 3 is also very necessary as it will reflect the transaction and the amount paid and received. It is also stated that the simple mortgage deed executed between Krishnareddy, plaintiff and the Andhra Bank on 8/10/2007 is also very necessary for deciding the matter. It is stated that plaintiff and Krishnareddy, who is brother-in-law of the plaintiff have played fraud on the defendant by mortgaging the property in question in favour of Andhra Bank before right is confirmed in favour of Krishnareddy and the plaintiff has withheld the original title deed. It is stated that these documents are in the custody of the plaintiff and are relating to question involved in the suit. Therefore, production of these documents is very necessary.

3. The plaintiff has filed objection to the application by way of counter affidavit and stated that the original copy of Andhra Bank statement showing payment of R.9 lakhs through cheque and Rs.2 crore on 5/9/2006 by cheque are produced by the plaintiff. It is stated that the original bank statement for the period from 1/9/2006 to 31/12/2016 stated in the application is not available. It is stated that ABN AMRO Bank was taken over by Royal Bank of Scotland and the said bank has closed its operation in India and as Royal Bank of Scotland is closed, it is not possible to produce the original bank statement. It is stated that the plaintiff has already produced one bank statement as per Ex.P.1, showing the payment of Rs.2.5 crores and also 3.2 crores. It is also stated that another document of simple mortgage stated in the application is not available with the plaintiff and has stated that he is not party to the said agreement and not aware of the said deed and the same is irrelevant for deciding the matter in controversy. It is stated that the averments made in the affidavit are totally irrelevant to decide the matter in controversy. It is denied that the plaintiff has suppressed certain facts and transactions and it is also denied that the plaintiff approached the 3rd defendant and paid Rs.3 crore as non-refundable amount as a pre-condition for entering into Joint Development Agreement. It is stated that except Rs.2.5 crores security deposit there was no agreement to pay Rs.3 crores as stated by the 3rd defendant. The various contentions of the defendants taken in the affidavit are all disputed by the plaintiff in detail. On all these grounds, the plaintiff has prayed to reject the application.

4. Heard both the counsels. Perused the records.

5. The points that arise for consideration are:

1. **Whether the direction is to be given to the plaintiff to produce documents as prayed in I.A.No.XV?**

2. **What order?**

6. My finding to the above points are as follows:

POINT No.1 : In the negative.
POINT No.2 : As per final order for the following:

REASONS

7. **POINT No.1 :** The plaintiff has filed this suit seeking recovery of certain amount and also for declaration regarding the gift deeds. The 3rd defendant has filed written statement. The defendants No.1 and 2 have not filed written statement in time and the subsequent application seeking permission to file written statement has been rejected. After framing of issues, when the case is posted for evidence and the evidence of PW.1 was partly lead, present application is filed by the defendants No.1 to 3 praying to direct the plaintiff to produce certain documents. The application has been opposed by the plaintiff. The defendants have stated that these documents are suppressed by the plaintiff and they are very necessary for deciding the case on merits.

8. In the affidavit in support of the application, the contentions of the defendants are stated and several allegations against the plaintiff have been made. In the objection filed by the plaintiff these allegations are denied and the plaintiff has also given reply to the contentions in detail. On considering the nature of the present application, these contentions regarding the merits of the case taken in the affidavit and in the objection need not be considered in the present application.

9. On looking to the application, the defendants have prayed to direct the plaintiff to produce original bank statement dated 4/9/2006 regarding payment of Rs.2 crores made by Madhusudhana Reddy in favour of ABN AMRO Mutual Fund Account of the defendant No.3. For this document, the plaintiff in the objection has stated that he has produced original copy of the Andhra Bank statement for payment of Rs.9 lakhs, Rs.2 crores and Rs.0.50 crores through cheques. However, this document was not produced with the objection. Later, in the course of further arguments, the learned counsel for the plaintiff on 26.6.2021 has produced the original passbook of Andhra bank account and also sent copy through Email. Since the plaintiff has produced the passbook, again issuing direction to the plaintiff to produce the document is not necessary.

10. Another document sought by the defendants is original bank statement of Madhusudhana Reddy for the period from 1/9/2006 to 31/12/2016 in the Royal Bank of Scotland through which various transactions have been taken place. Regarding this document, the plaintiff has stated that the account was in ABN AMRO Bank which was taken over by Royal Bank of Scotland and the Royal bank has closed its operation in India and it is not possible to produce the original statement from the said bank. The defendants in their arguments have not disputed the closure of the banks operation in India. Therefore, when document cannot be secured by the plaintiff and is presently not available with the plaintiff, he cannot be directed to produce the said statement as prayed in the application. Moreover, according to the defendants, through this bank account several money transactions have taken place between Madhusudhana Reddy and defendants No.1, 2 and 3 and this bank statement reflects those transactions. Even though this bank statement could not be produced by the plaintiff, the defendants can produce their bank statement showing such transaction. Therefore direction to the plaintiff to produce this document which is not available, will not serve any purpose.

11. Another document sought by the defendant is original deed of simple mortgage executed on 8/10/2007 between Krishnareddy, plaintiff and Andhra Bank. It is stated in the affidavit of the defendants that plaintiff in convenience with Krishna Reddy who is none other than his brother-in-law played fraud on the defendant by mortgaging the property in question in favour of Andhra Bank by depositing original title deeds. It is stated that simple mortgage was executed on 8/10/2007 between Krishna Reddy, Andhra Bank and Rs.8 crore was obtained and it is also stated that these documents are in the custody of the plaintiff. The defendants have not produced any document to show that such mortgage deed was executed by the plaintiff or that the said document is available with the plaintiff. In the counter affidavit, plaintiff has stated that plaintiff is not aware of such simple mortgage and such document is not available with the plaintiff and he is not party to such agreement. When the plaintiff has stated that he is not party to the simple mortgage deed stated by the defendant, there is no question of asking the plaintiff to produce the mortgage deed to which plaintiff is not party. There are no document to show that such mortgage deed is executed by the plaintiff or executed in favour of the plaintiff. Even if such document has came into existence, if the mortgage deed is executed in favour of the Andhra Bank original mortgage deed will not be with the plaintiff and it will be with the Andhra Bank. Therefore, the statement of the defendant No.3 in the affidavit that the document stated in the application are in the custody of the plaintiff is prima facie not acceptable and no materials are produced to substantiate this averment in the affidavit.

Therefore, no direction could be given to produce this document.

12. For the discussion made above out of the three documents sought document No.2 is stated to be not available with the plaintiff and plaintiff is not in a position to produce the same. The existence of third document and the availability of such original document with the plaintiff is not established. Therefore, the application filed seeking production of document is liable to be dismissed as regards the documents No.2 and 3. As regards document No.1 as it is already produced, application will not survive. Accordingly, I.A.No.XV is to be dismissed. Hence point No.1 is answered in the negative.

13. **POINT No.2** : For my discussion on point No.1, following order is passed:

ORDER

I.A.NO.XV filed by the defendants No.1 to 3 under Order XI Rule 5 of CPC R/W Sec.16 of the Commercial Courts Act, 2015 is dismissed.

[Dictated to the Judgment Writer; transcript thereof corrected, signed and then pronounced by me, in the Open Court on this the **5th day of July 2021]**

[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.

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Order pronounced in open court.
Vide separate order.

ORDER

I.A.NO.XV filed by the defendants No.1 to 3 under Order XI Rule 5 of CPC R/W Sec.16 of the Commercial Courts Act, 2015 is dismissed.

[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.