

**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE
BENGALURU RURAL DISTRICT, BENGALURU**

Present: Ashok R. H.
I Additional Civil Judge,
Bengaluru Rural District,
Bengaluru.

This the 2nd day of March, 2021

O.S.No. 1578/2014

Plaintiff/s : Max Concorde Developers

-V/s-

Defendant/s: Nanda Estates and others

Parties in IA No. III

Applicant/s : Nanda Estates and others

-V/s-

Respondent/s: Max Concorde Developers

ORDERS ON IA No. III

The defendants have filed the present application under Order 7 Rule 11 (d) of CPC seeking rejection of plaint as the same is not maintainable under Section 41(e) of Specific Relief Act. In the accompanying affidavit, the 3rd defendant has stated that the plaintiff has filed this suit seeking the relief of bare injunction. On reading of the entire averments made in the plaint, it is forthcoming that in furtherance of their desire for procurement of residential sites and sale of the same to prospective purchasers, the plaintiff came across the defendant

NO. 2 and 3 who represented that they are having approved layout consisting of more than 115 sites and they have rights to dispose off the same. There is no document or privity of contract between the plaintiff and the defendants pertaining to the property. In the absence of a privity of contract, the present suit is not maintainable and is liable to be dismissed. The suit for bare injunction on the basis of oral contract or written contract is not maintainable. The allegations made is a breach of terms of contract and therefore the relief of perpetual injunction is to be refused under Section 41(e) Specific Relief Act. The plaintiff has failed to invoke proper provision of law. As such, the suit is not maintainable and is liable to be dismissed. On these grounds, these defendants have prayed to allow the application.

2. Perused the materials on record.

3. The points that would arise for consideration of this court are.

1. Whether the defendants have made out grounds to allow the application?

2. What Order?

4. My answers to the aforesaid points are as hereunder:

Point No. 1 :In the Negative

Point No. 2 :As per the final order for the following

REASONS

5. **Point No. 1:** The plaintiff has filed the present suit seeking the relief of injunction restraining the defendants from alienating the suit schedule properties to any third parties. It is pleaded that the plaintiff is a registered partnership firm and it is in the business of real estate and development of lands. The defendant NO. 1 is the partnership firm consisting of defendant NO. 2 to 6 as partners. The 1st defendant entered into an understanding with the defendant No 2 to 4 who are the owners of converted land in Sy.No. 77/2A and 82/1 of B.M. Kaval village, Kengeri Hobli which was subject to development of layout. The plaintiff and the defendants entered into an arrangement. It was agreed that the entire residential sites formed shall be purchased by the plaintiff at Rs. 1000/- per square feet and the defendants agreed to sell the same. The advance sale price of Rs. 25,00,000/- has been received by the defendants. It has been specifically agreed that the plaintiff would exclusively market and sell the residential sites to its customer and prospective purchasers at the rate as decided by the plaintiff and the defendants shall join in execution of registered sale deeds in respect of prospective purchasers. The plaintiff advertised the availability of the residential sites. Several sites were sold to prospective purchasers. It is alleged that in the remaining sites which are referred to as suit schedule property, even though they have solely entrusted to the plaintiff, the defen-

dant, without any reasons, have put their board with an intention to realize the benefits agreed to the plaintiff. The substantial sites have been sold only due to the genuine and hard efforts putforth by the plaintiff. Since the defendants have also not refused to register the properties, there is no cause of action for filing specific performance. These being the pleadings, the plaintiff has sought for injunctive relief. It is also noteworthy that the plaintiff has filed an application under Order 2 Rule 2 of CPC seeking leave to institute the suit by splitting up cause of action.

6. These being the pleadings, the defendants herein have sought for the rejection of plaint on the ground that the suit is barred under Section 41(e) of Specific Relief Act. Section 41(e) of the Specific Relief Act states that the injunction cannot be granted to prevent the breach of contract performance of which would not be specifically enforced. The applicants have contended that there is no document or privity of contract between the plaintiff and the defendants pertaining to the property. But in the plaint pleadings, the plaintiff has stated that the plaintiff and the defendants had entered into an arrangement and that it was agreed that the residential sites shall be purchased by the plaintiff and the defendants agreed to sell the same by receiving advance sale price of Rs. 25,00,000/-. Further in order to refuse injunction, breach of contract the per-

formance of which would not to be specifically enforced, should have been alleged. S. 41 of the Specific Relief Act is germane.

7. Section 14 of the Specific Relief Act reads: The following contracts cannot be specifically enforced, namely:—

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms;and

(d) a contract which is in its nature determinable.

8. It is an established principle that at the time of considering an application under Order 7 Rule 11 CPC, it is only the plaint averments that are to be looked into. The written statement contentions and the contentions taken in the application cannot be considered while exercising powers under Order 7 Rule 11 of CPC. The court must make a meaningful reading of the plaint. If it appears that the plaint does not disclose cause of action or the suit appears to be barred by law from the statements made in the plaint, then only the plaint shall be re-

jected. In the instant case, looking into the pleadings, at this stage, there is nothing to hold that the performance of the contract entered into between the plaintiff and the defendants cannot be specifically enforced. Under such circumstances, at this stage, there are no materials to hold that the suit is not maintainable under Section 41(e) of Specific Relief Act. Hence, this court is of the considered opinion that the defendants have not made out grounds to reject the plaint. Accordingly, IA No. III filed by the defendants is liable to be rejected. Hence this court has answered point No.1 in the negative.

9. **Point No. 2:** In view of the answer to Point No 1, this court proceeds to pass the following:

ORDER

IA No. III filed by the defendants under Order 7 Rule 11(d) of CPC is hereby rejected. No orders as to costs.

(Ashok. R.H.)
I Additional Civil Judge,
Bengaluru Rural District,
Bengaluru.