

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.03.2015

CORAM

THE HONOURABLE MRS. JUSTICE S.VIMALA

C.S.No.997 of 2010

and

OA.Nos.206 of 2014, 1273 AND 1274 of 2010

and Application No.1946 of 2014

S.P.Velayutham ... Plaintiff

Vs.

1.M/s.T.S.Hajee Moosa & Company

a partnership firm rep. by its

partners

(1)Mr.Abdul Majid Ahmed and

(2)Mr.Moosa Ahmed (Deceased on 24.11.2011)

2.Mr.Abdul Majid Ahmed

3.Mr.Moosa Ahmed (Deceased)

4.M/s.Canara Bank

Rep. by its Manager,

No.131 Audiappa Naicken Street

Chennai 600 079

5.M/s Canara Bank

Rep. by its Authorised Officer

Asset Recovery Management Branch

Spencer's Towers-II, First Floor

No.770-A Anna Salai

Chennai 600 002.

6.Bilkis Moosa

7.Ashfaaq Moosa

8.Faheem Moosa

9.Zoheb Moosa

10.Arsheen

(Defendants 6 to 10 are
brought on record as legal heirs
of deceased 3rd defendant as per
order dated 12.06.2013 in

PRAYER: Plaint under Order VII Rule-1 C.P.C. Read with Order IV, Rule-1 of High Court (Original side) praying for a Judgment and decree for:

(a) Specific Performance of the Agreement for sale dated 09.12.2007, and the supplemental Agreement dated 17.01.2008 by directing the defendants 1,2,6 to 10 to execute and register the sale deed conveying the suit property after discharging the claim of the Defendants 4 & 5 free of all encumbrances, in favour of the plaintiff and after receiving the balance sale consideration and put the plaintiff in vacant possession of the remaining portion of the schedule property failing which directing the Registry of this Court to execute the sale Deed in favour of the Plaintiff.

Or in the alternative

Direct the Defendants 1,2 & 6 to 10 to refund the sum of Rs.6 crores and 10 lakhs paid as advance under the sale Agreement dated 09.12.2007 and supplemental Agreement dated 17.01.2008 together with interest at 18% per annum from the date of respective payments till date of realization;

b) mandatory injunction directing the Defendants 4 and 5 to file a statement of account with break up details about the amounts that they are claiming from Defendants 1,2 & 6 to 10 with regard to suit property to enable the plaintiff to pay the amounts that may be legitimately found to be due to them out of the balance sale consideration or otherwise as this Court may be pleased to direct;

c) for a permanent injunction restraining the Defendants 1 to 10 their agents, servants, men and everyone claiming under them or acting on their behalf from in any way alienating, auctioning or otherwise encumbering the suit property.

d) to award costs of this suit.

For Plaintiff : Mr.R.Thiagarajan

For Defendants : Mr.Arun Prasad

JUDGMENT

The learned counsel for the plaintiff has made an endorsement that the suit is settled out of Court and therefore the suit may be dismissed as settled out of Court. The learned counsel for the plaintiff seeks refund of entire Court fee, relying upon the Judgment of this Court in Venkatachalam and others Versus S.VIMALA, J.

arr/ogy

Sengoda Gounder and others reported in 2014 (6) CTC 2016. In the said Judgment, this Court has held that this Court has ample powers to grant full Court fee in case of settlement between the parties.

2. In view of the endorsement made by the learned counsel for the plaintiff, the suit is dismissed as settled out of Court and in view of the Judgment stated supra, Registry is directed to refund the entire Court fee in the name of Mr.R.Thiagarajan, the learned counsel for the plaintiff. No costs. Consequently, connected applications are closed.

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Note : Issue order copy today itself. (30.03.2015)

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