

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2015

CORAM

THE HONOURABLE **Mrs. JUSTICE. S.VIMALA**

Civil Suit No.352 of 2013

M/s. Vijayshanthi Builders Limited,
Rep. By its Managing Director,
Mr. Suresh Kumar Jain,
No.20/43 Kasturi Ranga Road,
Alwarpet, Chennai - 600 018 ... Plaintiff

Vs.

1. Mrs. Usha Kapoor
2. Mrs. Sangeetha Varma
3. Mrs. Sujatha Praveen
4. Mrs. Kavitha Arora,
5. Mr. Ajay Kapoor
6. Mr. Vijay Kapoor ... Defendants

Civil Suit filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, to pass a judgment and decree:

(a) to specific performance of the agreement for sale, dated 07.07.2004, entered into between the plaintiff and R.M.Lakshman Doss in so far as Schedule - B mentioned property by the defendants, by directing them to execute necessary sale deed(s) in respect of Schedule-B mentioned property in favour of the plaintiff;

(b) upon failure thereof by the defendants, directing the Registrar of this Court or any other Officer of this Court to execute necessary sale deed(s) in respect of Schedule-B mentioned property in favour of the plaintiff;

(c) directing the defendants to pay the costs of the suit.

SCHEDULE - B

All that piece and parcel of land in Plot-A
admeasuring extent of 5,540 sq.ft., forming part

of the larger extent of Schedule-A mentioned property, and bounded on the:

North by:R.S.No.61, 497/5 and 497/6;

South by:Plot-B, forming part of Schedule-A mentioned property;

East by :Halls Road and

West by :Partly by lands in Plot-B
(forming part of Schedule-A mentioned property) and partly by lands in R.S.Nos.516/7 and 516/8.

For Plaintiff :Mr. R.Parthasarathy

For Defendants :Set Exparte

J U D G M E N T

This Suit has been filed by the plaintiff seeking specific performance of the sale agreement, dated 07.07.2004, entered into between the plaintiff and the deceased R.M.Lakshman Doss (hereinafter will be referred to as "the deceased"), who is represented by D-1 to D-6.

1.1. The first defendant is the wife of the deceased- R.M.Lakshman Doss and defendants 2 to 6 are the sons and daughters of the deceased.

2. The plaintiff is a leading property developer in the State of Tamil Nadu. The deceased wanted the plaintiff to purchase his property, measuring an extent of 11 grounds and 20 sq.ft., in respect of the property comprised in

S.No.497/2 and situated at Door No.50/36, Halls Road, Egmore, Chennai. A Memorandum of Agreement (Ex.P-3) was entered into between the plaintiff and the deceased on 02.04.2004. As per this Memorandum, certain tenants should be vacated by the deceased and majority of them had to be vacated by the plaintiff. A sum of Rs.2,00,001/- was paid by the plaintiff to the deceased as token advance. The plaintiff undertook to pay a further advance of Rs.1,50,00,000/- to the deceased within one week from the date on which, the dispute between the deceased and his five sisters stood settled and to enter into a detailed agreement of sale thereafter.

2.1. On 07.07.2004, a detailed agreement to sell was entered into between the plaintiff and the deceased as per Ex.P-4 under which the total sale consideration agreed was Rs.4,40,33,000/-.

2.2. In pursuance of the agreement, the plaintiff paid a sum of Rs.1,00,00,000/- through cheque, dated 30.11.2002, and the final balance of Rs.1,85,33,000/- through cheque, dated 31.03.2005. The cheques were duly encashed by the deceased. Thus, as on 31.03.2005, entire sale consideration stood paid.

2.3. The deceased executed and registered two registered Power of Attorneys, in favour of the plaintiff to execute sale agreement / sale deeds in favour of third

2.4. The plaintiff applied for sub-division of property into three plots. An extent of 2,350 sq.ft., in the occupation of Auxillium School was sub-divided as a separate plot. An extent of 5,540 sq.ft., which was in the occupation of tenants, which is shown as B-schedule property, was given a separate sub-division number. An extent of 21,161 sq.ft., of vacant land was given a separate sub-division.

2.5. Towards vacating the tenants, the plaintiff filed Eviction Petition before the Rent Controller and got six tenants vacated and the order of eviction passed in seven RCOPs have been filed as Ex.P-10.

3. The deceased died on 29.03.2008 (Ex.P-14-death certificate) leaving behind the legal heirs, namely, defendants 1 to 6. As the defendants refused to execute the sale deed as per the agreement, dated 07.07.2004, the suit came to be filed seeking specific relief in respect of B-schedule property.

4. Despite service of notice twice through this Court, the defendants did not appear and contest the proceedings.

5. Under such circumstances, the issue to be considered is, whether the plaintiff is entitled to the relief of specific performance in respect of B-schedule property.

6. On behalf of the plaintiff, P.W.1 has been examined and Exs.P-1 to P-17 have been marked. The evidence of P.W.1 remains unchallenged. For the suit notice issued

under Ex.P-16, the defendants have not chosen to send any reply. The conduct of the defendants in keeping continuous silence would go to show that the defendants have no case to plead.

7. However, the grant of relief of specific performance is discretionary. As per Section 20 of the Specific Relief Act, the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary, but sound and reasonable guided by the judicial principles and capable of correction by a Court of appeal.

8. The Common law permitted a party to a contract to fracture it at his pleasure and thereafter to pay compensation without being responsible for the default committed. But, equity did not approve of this conduct. Equity wanted the conscience of the offending party to realize the consequences of the fracture of the contract made. In other words, it was realized that the relief of compensation, which is a party is entitled to under the common law, was found unsuitable and inadequate in many cases. Hence, by invoking equity, the Courts granted the exact positive remedy, namely, the specific performance / relief, as the just and equitable remedy.

9. The Specific Relief Act, 1963, provides for two types of reliefs, namely, Specific Relief (Sections 5 to 35) and Preventive Relief (Sections 36 to 42).

9.1. So far as this case is concerned, the plaintiff seeks for specific performance, seeking specific enforcement of the sale agreement, dated 07.07.2004.

9.2. The right and title of the deceased to execute the sale deed has been outlined in the Memorandum of Understanding (Ex.P-3) and in the Sale Agreement (Ex.P-4). The father of the deceased had bequeathed his property, by way of a Will, in favour of the deceased and thus the deceased had got title to the suit property.

9.3. The entire sale consideration has been paid by the plaintiff. As per the agreement, the plaintiff has taken all legal steps to get the tenants evicted. In fact, the plaintiff has chosen to pay money for quickly evicting the tenants. What is expected to be performed on the part of the plaintiff has been performed even before the filing of the suit.

10. When it is shown that the plaintiff has been always ready and willing to perform his part of the contract and has performed it accordingly, there is no reason as to why the relief of specific performance should not be granted.

10.1. It is pointed out by the learned counsel for the plaintiff that the defendants demanding difference in value of the sale price between the date of agreement and the

date of demand, is refusing to execute the sale deed. The conduct of the defendants is blameworthy.

10.2. It is the duty of the defendants to honour the commitment made by the deceased. Therefore, there is no justification on the part of the defendants in refusing to execute the sale deed in accordance with the agreement, without any reasonable and justifiable cause. This is all the more essential, when the plaintiff has already paid the entire sale consideration and performed his part of the contract. Therefore, the suit has to be decreed.

11. In the result, this Civil Suit is decreed with costs. Time for execution of the sale deed is three months from the date of receipt of a copy of this order.

sd/.S.V.J
17.02.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/08.09.2015 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies
of the Order/Judgment Decree in this format.