

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2015

CORAM

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Civil Suit No.812 of 2013

and

A.No.978 of 2013

K.R.Selvaraj Kumar

... Plaintiff

Vs.

M.Thulasiammal

... Defendant

The suit has been filed under Order IV Rule 1 O.S.Rules read with Order VII Rule 1 of C.P.C., praying for a judgment and decree against the defendant [a] for specific performance of the Sale agreement dated 14.07.2011 entered between the plaintiff and the defendant and direct the defendant to execute the sale deed in respect of the suit schedule property in the name of the plaintiff by receiving the sum of Rs.3,00,000/- being the balance sale consideration; [b] for a permanent injunction restraining the defendant or any person or persons claiming through or under the defendant from alienating the suit schedule

property in any manner whatsoever and [c] for an order directing the defendant to pay the costs of this suit.

For Plaintiff : Mr.T.Dhanasekaran

For defendant : No appearance
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JUDGMENT

The suit has been filed by the plaintiff seeking for specific performance of the Sale agreement dated 14.07.2011 entered between the plaintiff and the defendant and direct the defendant to execute the sale deed in respect of the suit schedule property in the name of the plaintiff by receiving a sum of Rs.3,00,000/- being the balance sale consideration and for a permanent injunction restraining the defendant or any person or persons claiming through or under the defendant from alienating the suit schedule property in any manner whatsoever and also for an order directing the defendant to pay the costs of this suit.

2. The case of the plaintiff, as stated in the plaint, is as follows:-

The suit property was originally belonged to the defendant. The defendant approached the plaintiff for selling the suit schedule mentioned property for a sum of Rs.35,00,000/- (Rupees thirty five lakhs only). The plaintiff agreed to purchase the property and accepted the price. On 14.07.2011, the defendant entered into a sale agreement with the plaintiff to sell her suit schedule mentioned property for a sum of Rs.35,00,000/- (Rupees thirty five lakhs only) and on the same day, the plaintiff paid the sale consideration of Rs.10,00,000/- (Rupees ten lakhs only) and the defendant handed over the possession of the schedule property, along with the original title deed documents and right to collect the rent to the plaintiff. The defendant also agreed to receive the balance sale consideration within a period of six months from the date of sale agreement and undertook to execute and register the sale deed in favour of the plaintiff. The plaintiff paid part payments of Rs.15,00,000/- (Rupees fifteen lakhs only) and Rs.7,00,000/- (Rupees seven lakhs only) on 01.09.2011 and on 15.10.2011 respectively, totaling

to a sum of Rs.32,00,000/- (Rupees Thirty two lakhs only) towards sale consideration. The defendant received the above said amount of Rs.32,00,000/- towards sale consideration from the plaintiff. The plaintiff was always ready and willing to pay the balance sale consideration of Rs.3,00,000/-. But the defendant was always evading endlessly to receive the balance sale consideration and to execute the sale deed in favour of the plaintiff. Hence, the plaintiff issued a lawyer notice on 10.07.2013 to the defendant demanding to execute the Sale Deed. The defendant has received the said notice, but neither sent reply nor executed the Sale Deed. Thereby the defendant was not ready and not willing to perform her part of the contract. Hence the plaintiff has filed this suit for specific performance.

3. Though summons were already served on the defendant, she has not chosen to enter appearance either in person or through any counsel and she has also not chosen to file her written statement. Hence, the sole defendant was set ex-parte by this Court on 14.11.2014.

4. Thereafter, the case was posted before the learned Additional Master No.II, for recording ex-parte evidence. The plaintiff examined himself as P.W.1 and marked Exs.P1 to P3 to substantiate his case as stated in the plaint.

5. Heard, Mr.T.Dhanasekaran, learned counsel for the plaintiff. The defendant was set ex-parte by this Court on 14.11.2014.

6. It is admitted by the plaintiff that the suit schedule property was originally belonged to the defendant and the defendant entered into a sale agreement with the plaintiff and agreed to sell the property for a sum of Rs.35,00,000/- (Rupees thirty five lakhs only) and received a sum of Rs.10,00,000/- (Rupees ten lakhs only) from the plaintiff at the time of agreement. The said fact was proved by the document Ex.P.1-Agreement for Sale. Further, the part payments made by the plaintiff viz., a sum of Rs.15,00,000/- (Rupees fifteen lakhs only) on 01.09.2011 and a sum of Rs.7,00,000/- (Rupees seven lakhs only) on 15.10.2011 are also proved by

the endorsement made in the Agreement for Sale-Ex.P.1. The total sale consideration of Rs.32,00,000/- (Rupees Thirty two lakhs only) (Rs.10,00,000/- + 15,00,000/- + 7,00,000/- = Rs.32,00,000/-) paid by the plaintiff is also proved by the evidence of P.W.1. The plaintiff, in his evidence, stated that he was always ready and willing to pay the balance sale consideration of Rs.3,00,000/-. But the defendant was always evading endlessly to receive the balance sale consideration and to execute the sale deed in favour of the plaintiff. Hence, the plaintiff issued a lawyer notice dated 10.07.2013 under Ex.P.2 and the said notice was received by the defendant. Even after receipt of the notice, the defendant has not sent any reply or executed any Sale Deed. The plaintiff had spoken in his evidence through the proof affidavit that he was always ready and willing to perform his part of contract and he is also ready to deposit the sum of Rs.3,00,000/- (Rupees three lakhs only) for the due execution of sale deed. Hence, from the above evidence produced on the side of the plaintiff, it is proved that the plaintiff has been always ready and willing to perform his part of contract and paid sale consideration at Rs.32,00,000/- as stated above in three instalments

including advance amount. The remaining sale consideration is Rs.3,00,000/-. Since the plaintiff is always ready and willing to perform his part of the contract, the plaintiff is entitled to decree as prayed for in the plaint.

7. Hence, the suit is decreed as prayed for in the plaint in respect of the reliefs of specific performance and permanent injunction. Time for paying the remaining balance sale consideration of Rs.3,00,000/- (Rupees three lakhs only) to the defendant is one week from the date of receipt of a copy of this judgment. On such receipt of the balance amount of Rs.3,00,000/-, the defendant is directed to execute the sale deed in favour of the plaintiff, within one month from the date of such balance payment. In default of execution of the sale deed by the defendant in favour of the plaintiff, the plaintiff shall approach this Court for necessary relief. Further, the defendant is directed to pay the costs of the suit. The connected Original Application is closed.

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Plaintiff side Exhibits

- Ex. P.1 - Dated 14.07.2011-Original unregistered Agreement for sale
- Ex. P.2 - Dated 10.07.2013-Legal Notice
- Ex. P.3 - Dated 12.07.2013-Delivery receipt for legal notice

Plaintiff side witness:

P.W.1 R.Selvaraj Kumar

Defendant side exhibits:

Nil

Defendant side witness:

Nil

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Index : Yes / No
Internet : Yes / No
Jrl

G.CHOCKALINGAM, J.

Jrl

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