

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.S.No.890 of 2006

and

A.No.4079 of 2014

P.Balasubrahmanyam

... Plaintiff

Vs

1. A. Sarojini
2. K.A.Radha Krishnan
3. A. Varalakshmi
4. A.Dhanasekar
5. A.Dhayalan
6. K.A.Murali (deceased)
7. A.Chandrasekar
8. K.A.Ramachandran
9. K.A.Ramesh
- 10.M.Sasi

... Defendants

* (Defendants 1 and 10 are L.R.'s of deceased 6th defendant as per Order dated 19.04.2013 passed in Application No.923 of 2013.)

Plaint filed under Order VII Rule 1 of C.P.C. Read with Order IV Rule

1 and 2 of O.S. Rules..

For Plaintiff : Mr.T.Sundar Rajan

For Defendants : Mr.Amar D Pandya
for Defendants 2 and 10

JUDGMENT

This suit has been filed for the following reliefs:

- a) for a specific performance of the Agreement dated 03.02.2006 entered into between the plaintiff and the defendants in respect of the Schedule mentioned property, directing the defendants to comply with all the terms and conditions of the Sale Agreement and execute the Sale Deed in favour of the plaintiff after receiving the balance sale consideration of Rs.60,00,000/- in respect of the Schedule mentioned property and in failure to do so get the Sale deed executed through Court,*
- b) directing the defendants to hand over the vacant possession of the suit property to the plaintiff along with the original title deeds pertaining to the suit property,*

OR

alternatively directing the defendants 1 to 9 to refund the advance amount of Rs.10,00,000/- paid by the plaintiff in pursuance of the Agreement of sale dated 03.02.2006, together with interest at the rate of 24% per annum from 03.02.2006 to till date of repayment in full.

- c) for a permanent injunction restraining the defendants, their men, agents or servants or any person claiming through or under them from in any manner dealing with, damaging, encumbering or alienating the suit property to any persons other than the plaintiff,*
- d) for costs of the suit including counsel fees*

2. When the matter is taken up for hearing, a memo of compromise entered into between the plaintiff and defendants, signed by the parties and duly attested by their respective counsel has been produced before this Court on 15.12.2016.

3. Except defendants 3 and 7, all other defendants are represented by the second defendant, who has been authorised as Power Agent by executing General Power of Attorney deeds dated 17.08.2016 and 02.11.2016 respectively. The plaintiff and the defendants are present before this Court.

4. Learned counsel appearing for the plaintiff as well as the learned counsel appearing for the defendants would submit that the suit may be decreed in terms of the memo of compromise produced before this Court on 15.12.2016. The joint memo of compromise reads as under:

The parties submit as under:

1. The plaintiff entered into a sale agreement dated 03.02.2006 with the defendants 1 to 9 for purchase of the suit schedule property, described in Schedule A hereunder for a sale consideration of Rs.70,00,000/- (Rupees Seventy Lakhs only) and the plaintiff paid a sum of Rs.10,00,000/- (Rupees ten lakhs only) as sale advance to the defendants in pursuance to the said sale

agreement.

2. As the defendants 1 to 9 failed to execute the Sale deed in favour of the plaintiff, the above suit C.S.No.890 of 2006 was filed by the plaintiff for specific performance of the said Sale Agreement dated 03.02.2006 and to direct the defendants to execute the sale deed after receiving the balance sale consideration of Rs.60 lakhs and hand over the vacant possession of the suit property to the plaintiff.

3. It is submitted that the suit property originally belonged to K.Arumuga Mudaliar who purchased the same from Mrs.Krishnaveni Ammal by sale deed dated 09.03.1970, Doc.No.179 of 1970 on the file of the S.R.O. Sowcarpet. The said K.Arumuga Mudaliar passed away on 12.06.2001 leaving behind the defendants 1 to 9 as his legal representatives on whom the suit property devolved. The defendants have not encumbered the suit property and the suit property is free from encumbrances apart from the sale agreement with the plaintiff.

4. Though the extent of suit property described in Schedule A hereunder is 2722 Sq. ft as per document, the actual physical measurement available is only 2600 sq. ft. The defendants 1 to 9 have an equal share in the suit property ($\frac{1}{9}^{\text{th}}$ share each i.e., 288.8 Sq.ft U.D.S. each) and jointly entered into a

Sale Agreement dated 03.02.2006 with the plaintiff and the said agreement is binding on all the defendants.

5. It is submitted that during pendency of the above suit C.S.No.890 of 2006 the 6th defendant Mr.K.A.Murali had passed away and the 1st and 10th defendants, who are the mother and wife of deceased were recorded as his legal representatives.

6. It is submitted that the parties to the suit have negotiated for amicable settlement and all the defendants except defendants 3 and 7 are willing for compromise and agreed to execute a Sale Deed in respect of 50% of the suit schedule property (1300 Sq. ft) for 50% of the sale consideration as specified in the Sale Agreement dated 03.02.2006 i.e. Rs.35,00,000/- less the Advance amount of Rs.10,00,000/- already received by the defendants and the plaintiff has also consented for the same, subject to the fulfillment of the terms and conditions hereunder.

7. It is submitted that the existing superstructure over the suit property is in a dilapidated condition and has to be demolished. The defendants 1,4,5,8 and 9 have agreed to divide the suit property by metes and bounds into two halves and hand over the Southern side property to the Plaintiff which is morefully described in Schedule B hereunder and the remaining half on the

northern side morefully described in the Schedule C hereunder shall be retained by the defendants.

8. It is submitted that the defendants 1,4,5,8 and 9 namely Mrs.A.Sarojini (D-1), Mr.K.A.Dhanasekar (D-4), Mr.K.A.Dhayalan (D-5), Mr.K.A.Ramachandran (D-8) and Mr.K.A.Ramesh (D-9) have executed a General Power of Attorney dated 17.08.2016 in favour of the 2nd defendant K.A.Radhakrishnan authorizing the 2nd defendant to deal with and sell their 5/9th share (1512.2 sq. ft) in the Suit schedule property and the same has been registered as Doc.No.1006 of 0216 in Book I, on the file of the S.R.O. Sowcarpet.

9. Similarly the 10th defendant namely Mrs.Sasi @ Sasikala along with the 1st defendant A. Sarojini have also executed a General Power of Attorney dated 02.11.2016 in favour of the 2nd defendant authorizing the 2nd defendant to deal with and sell her share in the suit schedule property and the same has been registered as Doc.No.1301 of 2016 in Book I, on the file of the S.R.O., Sowcarpet.

THE PARTIES TO THIS COMPROMISE MEMO Covenant as follows :

A) That the entire suit property described in Schedule A hereunder is in possession of the 2nd defendant.

B) That the 2nd defendant shall hand over the entire suit property morefully described in Schedule A hereunder to the plaintiff for purpose of applying for demolition of the existing superstructure and for subdivision of the property.

C) That on such handing over of possession of the Schedule A property, the plaintiff shall at his own costs take necessary steps to demolish the old superstructure over the Schedule A property by obtaining the necessary permits for the same and the plaintiff shall at his own cost apply and obtain the Sub Division Plan from the Corporation of Chennai for dividing the Schedule A property into two equal parts as described in Schedule B and C hereunder.

D) That the defendants 1,2,4,5 and 8 to 10 shall co-operate with the plaintiff and the 2nd defendant as their power agent shall sign all the necessary forms, letters, affidavits, plans, applications that may be required for demolition and sub division of the suit property before the concerned authorities.

E) That after obtaining the Sub Division Sanctioned Plan, within a period of 10 days thereafter, the defendants 1,2,4,5 and 8 to 10 shall convey the Schedule B property (half of the suit property) to the Plaintiff by way of a Registered Sale Deed by receiving the Balance Sale Consideration of Rs.25,00,000/- (Rupees Twenty Five Lakhs only)

F) That the defendants 1,2,4,5 and 8 to 10 shall convey their share in the Suit Schedule property to the Plaintiff in the following manner

1st Deft : entire 1/9th share i.e., 288.8 sq. ft.

2nd Deft : entire 1/9th share i.e. 288.8 sq.ft.

4th Deft : part of 1/9th share i.e.48.3.sq.ft retains240.5 sq.ft. in sch C

5th Deft : entire 1/9th share i.e., 288.8 sq.ft

6th Deft : entire 1/9th share i.e. 288.8 Sq.ft

(LR's D-1 and D10)

8th Deft : part of 1/9th share i.e. 48.3. Sq.ft retains 240.5 Sq. ft. in Sch C

9th Deft : part of 1/9th share i.e. 48.3. Sq.ft retains 240.5 Sq. ft. in Sch C

Total conveyed : 1300 Sq.ft.(Schedule B)

G)That the defendants 3,4,7,8,9 shall have shares as follows in the Schedule C property retained by them.

3rd defendant : 288.8 Sq. ft(entire 1/9th share)

4th defendant : 240.5 Sq.ft (balance share retained)

7th defendant : 288.8 Sq. ft (entire 1/9th share)

8th defendant : 240.5 Sq. ft.(balance share retained)

9th defendant : 240.5 Sq. ft (balance share retained)

H) That the defendants 1,2,4,5 and 8 to 10 undertake to settle the 1/9th share each of the defendants 3 and 7 namely Mrs.A. Varalakshmi and Mr.A.Chandrasekar respectively out of the northern half of the suit property morefully described in Schedule C hereunder.

I) That the defendants 1,2,4,5 and 8 to 10 declare that all the defendants including the defendants 3 and 7 shall not interfere or obstruct the plaintiff while demolishing the existing super structure and while obtaining the Division Plan for the suit property.

J) That the defendants 1,2,4,5 and 8 to 10 undertake that the defendants 3 and 7 shall not hinder or obstruct the division of property as stated above or the demolition of the existing superstructure by the plaintiff and sub division of the Schedule A property into Schedule B and C.

K) That after the Sale Deed is executed in respect of the Schedule B property in favour of the plaintiff, these defendants shall not interfere or hinder the plaintiff in any manner from obtaining the approved plan and making constructions over the Schedule B property and shall not disturb the plaintiff's peaceful possession and enjoyment of the Schedule B property. If any interference or hindrance is caused by the defendants 3 and 7, the defendants 1,2,4, 5 and 8 to 10 shall themselves resolve such disputes with

them and ensure that no damages, obstructions or loss are caused to the plaintiff. In case of any such damages, obstructions or loss caused to the plaintiff these defendants 1,2,4,5 and 8 to 10 shall sufficiently indemnify the plaintiff for the same.

L) That this Compromise Memo has been entered into by the Plaintiff without prejudice to his rights in the above suit C.S.No.890 of 2006 and in case of default in terms of this Compromise Memo, the plaintiff shall be entitled to enforce the Sale Agreement dated 03.02.0206. This Compromise Memo shall not operate as a novation of the contract and the plaintiff shall be entitled to re-open the case and shall be entitled for a decree of specific performance in respect of the entire Schedule A property as prayed for in the plaint.

SCHEDULE A

(Suit property)

All that piece and parcel of land and building at Old Door No.69, New No.24, Krishnappa Naicken Tank Street, Peddunaickenpet, Chennai – 600 079, comprised in O.S.No.5692 and R.S.No.166, C.C.No.744 to an extent of 2722 Sq. ft (as per document) and actually measuring 2600 Sq. ft bounded on North by : R.S.No.165 and house bearing Door No.70

South by : R.S.No.167, house bearing Door No.68

East by : Krishnappa Naicken Tank Street

West by :R.S.No.162 and 163

With linear measurements

East to West on both sides : 65 feet

North to South on both sides : 40 feet

*Within the Sub Registration District of North Chennai and the
Registration District of Sowcarpet.*

5.Accordingly, the suit stands decreed in terms of the memo of compromise produced before this Court on 15.12.2016 and the memo of compromise shall form part of the decree. No costs. Consequently, connected application is closed.

23.12.2016

vsi2

To
The Sub Assistant Registrar,
Original Side,
High Court, Madras.

P.VELMURUGAN, J.

vsi2

C.S.No.890 of 2006
and
A.No.4079 of 2014

23.12.2016
<http://www.judis.nic.in>