

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2016

CORAM

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

C.S.No.136 of 2013

and

O.A.No.126 of 2013

1.Adhimurthy
2.S.R.Kathiresan
3.S.Kasirajan
4.Senthilkumar
5.Murugan

... Plaintiffs

Vs

1.Sugantha
2.Marimalar
3.Joshua

... Defendants

Plaint filed under Order IV Rule 1 of Original Side Rules and
Order VII Rule 1 C.P.C.

For Plaintiffs

: Mr.A.Palaniappan

For Defendants

: No appearance

WEB COPY

JUDGMENT

The plaintiffs have come forward to file a suit seeking a decree for specific performance and for consequential payment of costs.

2.The suit property is an undivided share of an extent of 4070 sq.ft. land being vacant house site out of 6347 sq.ft. being the subject matter of the agreement Ex.P1 situated in Koyambedu Village, Egmore Nungambakkam Taluk, Old Survey No.48/5, New Survey No.48/1, T.S.No.13/3, Plot No.46, Paimash Nos.916, 917, Thiruveedi Amman Koil Street, Koyambedu, Chennai.

3. Ex.P1, a registered agreement of sale has been executed between the plaintiffs and the defendants along with two others for the sale of the total extent of 6347 sq.ft. The total sale consideration was fixed at Rs.1,94,33,000/-. The agreement states that a sum of Rs.87,50,000/- has been received by the parties. The payment is said to have been made both by cash and by way of demand drafts. As the plaintiffs are ready and willing to perform their part of the contract and in view of the refusal of the defendants in coming forward to do so, a communication was sent by the plaintiffs on 17.01.2013, one day prior to the issuance of legal notice by the defendants, stating

that though a sum of Rs.87,50,000/- was said to have been paid, the amount actually paid was only Rs.21 lakhs. Accordingly, the legal notice proceeds to state that the agreement stand terminated. There was further exchange of notices between the plaintiffs and the defendants dated 22.01.2013 and 28.01.2013. Thereafter, the plaintiffs have come forward to file this suit.

4. Though notices were served, the defendants did not appear. Of the five vendors, two vendors have duly executed the sale deeds covering their respective shares. Despite service of notice, there was no representation on behalf of the defendants. Therefore, by order dated 11.09.2013, the defendants were set exparte and the matter was posted before the learned Master. But, even at the time of recording evidence, the defendants did not appear. The plaintiffs were examined and they marked Exs.P1, P2 series and P3 to P5. After recording the evidence of the plaintiffs, the matter was posted before this Court and again, it was posted before the Lok Adalat. Before the Lok Adalat also, the defendants did not appear. The said position continues even now.

5. Despite printing the name of the counsel and the names of

the defendants in the cause list, there is no representation on behalf of the defendants. This Court is also satisfied with the service of notice on the defendants.

6.Learned counsel for the plaintiffs submits that there is no dispute on the execution of Ex.P1, which is the registered document. Therefore, a presumption would arise. Even in the legal notice followed by reply notice, the defendants have only stated about the non-payment of the amount, as indicated under Ex.P1. The other co-owners have duly executed the sale deeds. The plaintiffs are always ready and willing to perform their part of contract and hence the suit will have to be decreed.

7.As rightly submitted by the learned counsel for the plaintiffs, the execution of the agreement dated 20.11.2012 is not in dispute. The said registered document was not put into challenge even through the legal notices of the defendants. Applying the rigour of Sections 91 and 92 of the Indian Evidence Act and after going through the relevant records coupled with the further fact that the other two co-owners have executed the sale deeds in favour of the plaintiffs, this Court is of the view that the suit is liable to be decreed. Accordingly, the suit stands decreed as prayed for. No costs.

Consequently, connected application is closed.

01.08.2016

Index:Yes/No
mmi

To

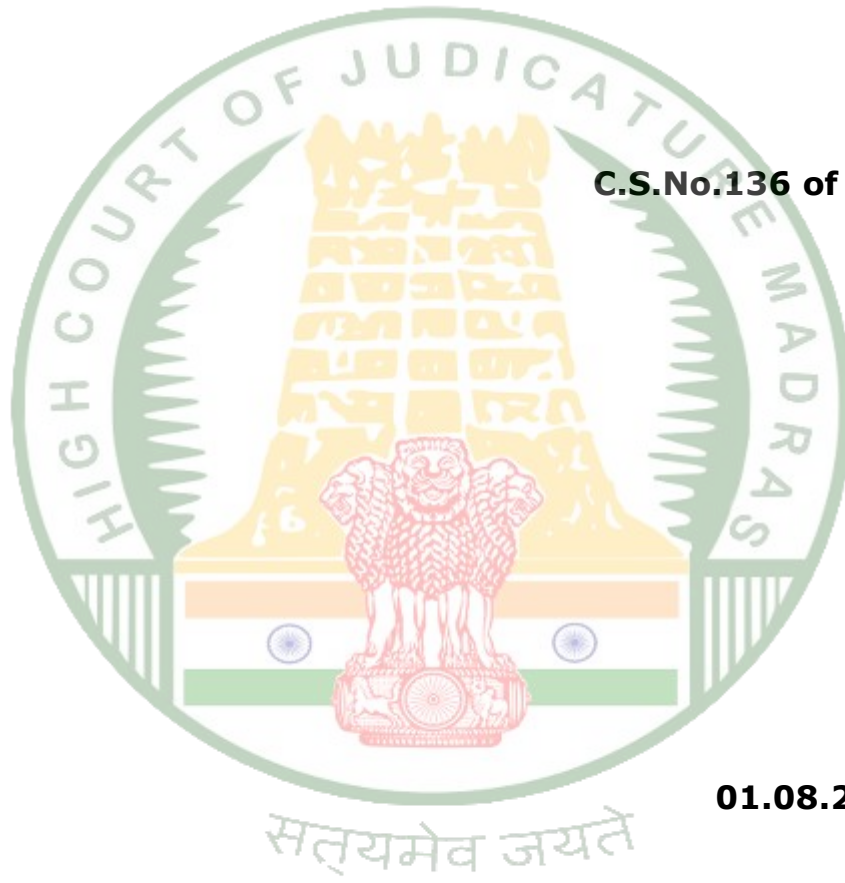
The Sub Assistant Registrar,
Original Side,
High Court, Madras.



WEB COPY

M.M.SUNDRESH,J

mmi



C.S.No.136 of 2013

01.08.2016

WEB COPY