

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 07.12.2016

Judgment pronounced on : 14.12.2016

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.206 of 2013

D.Senthil Kumar

.. Plaintiff

Versus

D.Rajendran

..Defendant

The plaint is filed and numbered as Civil Suit under Order IV Rule 1 of the O.S. Rules r/w Order VII, Rule 1 of CPC, praying for a judgment and decree:

- a) to direct the defendant to execute the sale deed with respect to suit schedule property as per the written agreement dated 12/05/2012, after receiving the balance sale consideration of Rs.12,00,000/- within the time specified by this Hon'ble Court and in failure of the defendant permit the plaintiff to deposit the balance sale consideration of Rs.12,00,000/- before this Hon'ble Court and to appoint an officer of this Court to execute sale deed in favour of the plaintiff;
- b) to pay the cost of the suit.

For Plaintiff : Mr.T.Easwaradhas

For Defendant : Set Ex-parte

JUDGMENT

The suit is for specific performance directing the defendant to execute the sale deed based on the agreement dated 12.05.2012.

2. The brief facts of the plaintiff case is as follows:

By an agreement dated 12.05.2012, the defendant has agreed to sell the suit property for a total consideration of Rs.32,00,000/-. On the date of agreement, plaintiff has paid a sum of Rs.20,00,000/- as advance and both parties agreed to perform their obligations as per the terms and conditions within 90 days of the agreement. The plaintiff was always ready and willing to pay the remaining sale consideration i.e., Rs.12,00,000/- but the defendant some how or other, delayed the execution of the sale deed. The time stipulation set out in the agreement expired on 11.08.2012. Even on 10.08.2012, the plaintiff has requested the defendant to execute the sale deed for after receiving a sum of Rs.12,00,000/- but the defendant did not execute the sale deed. Again on 25.12.012, the plaintiff approached the defendant to pay remaining sale consideration, it was also failed. Hence, the suit for specific performance.

3. The defendant remained ex-parte. The plaintiff examined himself as PW1 and marked Exs. P1 to P5. The plaintiff in his Chief

Examination, has stated about the execution of the sale agreement and advance of Rs.20,00,000/- on the date of agreement itself. The plaintiff has further stated that he has requested the defendant to execute the sale deed on various dates and he was also ready to pay the balance sale consideration, but the defendant has avoided the execution of sale deed. Ex.P1 is the certified copy of the settlement deed; Ex.P2 is the release deed in favour the defendant, which shows that other co-owners released their right in favour of the defendant and he became absolute owner of the property; Ex.P3 is the sale agreement dated 12.05.2012, wherein the defendant has in fact agreed to sell the property for a sum of Rs.32,00,000/- and received a sum of Rs.20,00,000/- on the date of agreement itself. It is agreed to complete the sale transaction within 90 days from the date of agreement itself. PW1 in his evidence has stated that he was always ready and willing to perform his part of contract by paying the remaining sale consideration, whereas, defendant only delayed the sale transaction. The evidence of PW1 remains unchallenged. Therefore, the same can be taken as a deemed admission of the defendant. Ex.P4 is the legal notice sent by the plaintiff on on 30.01.2013 and Ex.P5 is the returned cover, which shows that the above legal notice was not claimed by the defendant.

4. At any event, the evidence of PW1 clearly proves the

agreement between the parties and the nature of advance amount paid by the plaintiff. Moreover, it shows that he has always been ready and willing to perform his part from the very inception of the agreement. In view of the unchallenged evidence and documents, this Court is of the view that the plaintiff is entitled to decree of specific performance in respect of the agreement dated 12.05.2012. Accordingly, the defendant is directed to execute the sale deed, after receiving the balance sale consideration of a sum of Rs.12,00,000/-. The plaintiff shall deposit the balance sale consideration of Rs.12,00,000/- within two weeks from the date of this judgment. The defendant shall execute the sale agreement within two months from the date this judgment, failing which the execution shall be done as per law.

Accordingly, the suit is decreed with costs.

14.12.2016

pvs

N.Sathish Kumar, J.,
pvs

Pre-delivery judgment in
C.S.No.206 of 2013

14.12.2016