

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.02.2016**

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

C.S.No.491 of 2013

Mr.G.Mahandran

... Plaintiff

Versus

Mr.S.Sridharan

... Defendant

Plaint filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC praying to pass a judgment and decree against the defendant ordering specific performance of the agreement dated 09.03.2012, filed as suit documents herewith by directing the defendant to execute a sale deed conveying absolute by the schedule mentioned immovable property to the plaintiff herein on stamp papers to be deposited by the plaintiff and present the same for registration in accordance with law before a certain date on this Hon'ble High Court may fix, on the plaintiff depositing Rs.1,50,000/- in this Hon'ble High Court as and when so directed and if the defendant failed to execute the Sale Deed, direct the Officer of this Hon'ble High Court to execute and register the Sale Deed on behalf of the defendant; to pass an order of permanent injunction restraining the defendant his men, agents, legal representatives, from not to alienating or encumbrances the suit schedule mentioned property till the disposal of the suit and directing the defendant to pay the cost of this

suit to the plaintiff.

For Plaintiff : Mr.B.A.Anantha Krishnan

For Defendant : Set exparte

JUDGMENT

The averment in the plaint are as follows:

The defendant is the absolute owner of S.No.61 part limit LIT II, Plot No.4005, admeasuring to an extent of 1000 sq. ft., Tamil Nadu Housing Board, and he purchased the property out of his own funds from one Mr.Ashvini Mandal, S/o.Tilochand by means of registered sale deed bearing document No.8263 of 2011 dated 12.10.2011, registered on the file of Sub Registrar Tiruvotttiur, Chennai. It is further averred by the plaintiff that the defendant has entered into an agreement of sale on 09.03.2012 agreeing to sell the suit property for a sum of Rs.32,50,000/- and the plaintiff has paid a sum of Rs.1,00,000/- as token advance on 25.12.2011, by way of cheque bearing No.477800 drawn on Indian Bank, Broadway Branch, Chennai and further, paid a sum of Rs.14,00,000/- on 09.03.2012, as part of sale consideration in terms of clause 3 of the above said sale agreement. It is further stated by the plaintiff that the defendant has also issued

a receipt for having received the part of sale consideration of Rs.16,00,000/- on 16.08.2012 and in all, a sum of Rs.31,00,000/- has already been paid to the defendant. As per clause 4 of the agreement of sale, on receipt of the balance sale consideration, the defendant shall execute the sale deed either in favour of the plaintiff or in favour of nominees named by him and time for completion of the performance of obligation under the above said agreement as per the clause 6 is 11 months from the date of execution of sale deed.

2. It is a specific case of the plaintiff that as per clause 4 of the agreement of sale, the defendant did not come forward to execute the sale deed in his favour, though the plaintiff was ready and willing to pay the balance sale consideration of Rs.1,50,000/- and in this regard, has issued a legal notice on 05.04.2013 to the defendant and in spite of receipt of the same, the defendant did not come forward to perform his part of obligation under the agreement of sale and hence, came forward to file the suit for specific performance and other consequential relief. Though the defendant was served as early as on 25.02.2014, he did not enter appearance and also not filed written statement. Hence, it was listed before the Court under the

caption "For undefended Board". The defendant was called absent and set exparte on 11.08.2014.

3. The matter was directed to be listed before the learned Additional Master-III for recording evidence. P.W.1 has filed the proof affidavit dated 02.08.2014, in lieu of chief examination and marked Exhibits P1 to P6.

4. This Court, upon perusal of the pleadings, framed the following issues:

1. Whether the agreement of sale deed dated 09.03.2012 entered into between the defendant and the plaintiff is true and valid?

2. Whether the plaintiff was always ready and willing to perform his part of obligation under the agreement of sale deed dated 09.03.2012.

3. Whether the defendant complied with the terms of the agreement of sale deed dated 09.03.2012?

4. Whether the plaintiff has entitled to get a judgment and decree as prayed for?

5. To what other relief, the plaintiff is entitled?

5. The learned counsel appearing for the plaintiff has drawn the attention of this Court to the proof affidavit filed in lieu of chief examination as well as Exs.P-1 to P-

6 and would submit that under the agreement of sale dated 09.03.2012, marked as Ex.P-2, the sale consideration in respect of the suit property was fixed as Rs.32,50,000/- and towards token advance, the plaintiff initially paid a sum of Rs.1,00,000/- by way of cheque and thereafter, he paid the sum of Rs.14,00,000/-. Under Ex.P-3, the defendant has acknowledged that he has received totally a sum of Rs.31,00,000/- as part of sale consideration. Though the major portion of the sale consideration has been paid, except the balance sale consideration of Rs.1,50,000/-, the defendant did not come forward to perform his part of obligation under Ex.P.2-agreement of sale deed and in this regard, a legal notice dated 05.04.2013 was issued and in spite of receipt of the same under Ex.P-6, the defendant did not come forward to perform his part of obligation mandated under Ex.P-2 and hence, the plaintiff came forward to file the present suit and prays for decreeing of the suit with costs.

6. This Court has carefully considered the submissions made by the learned counsel appearing for the plaintiff and also perused the pleadings, oral and documentary evidence.

Issue No.1

7. Under Ex.P5 dated 12.10.2011, the defendant has

purchased the Suit property from one Mr.Ashvini Mandal. Thereafter, an agreement of sale came into being under Ex.P.2, between the defendant and the plaintiff, wherein, the sale consideration was fixed for a sum of Rs.32,50,000/-. Though with regard to non-performance of obligation on the part of the defendant, the plaintiff has sent a legal notice dated 05.04.2013, marked as Ex.P4, which was also acknowledged by him under Ex.P-6, the defendant did not come forward to send any reply and also not chosen to perform his part of obligation and in the absence of any denial on the part of the defendant with regard to the truth, genuine and validity of Ex.P2, this Court is of the view that issue No.1 is to be answered in affirmative in favour of the plaintiff.

8. Accordingly, Issue No.1 is answered in affirmative in favour of the plaintiff.

Issue No.2

9. As already pointed out, this Court by answering issue No.1 pointed out that under Ex.P3, the total sale consideration was fixed at Rs.32,50,000/- and the plaintiff has paid major part of sale consideration of Rs.31,00,000/- and also sent a legal notice in this regard under Ex.P4, calling upon the defendant to receive the balance sum of

Rs.1,50,000/- and execute the sale deed in his favour and though it was acknowledged by him under Ex.P6, the plaintiff has failed to perform his part of obligation. Therefore, this Court is of the opinion that the plaintiff was always ready and willing to perform his part of obligation.

10. Hence, the issue No.2 is answered in favour of the plaintiff.

Issue No.3

11. As already pointed out, the plaintiff has paid the major portion of the sale consideration and in spite of receipt of the notice under Ex.P4, the plaintiff neither sent a reply nor entered appearance and contested the suit on merits. Therefore, the defendant has failed to perform his part of obligation under Ex.P2.

12. Hence, the issue No.3 is answered in favour of the plaintiff.

Issue No.4

13. In view of the findings given by this Court in respect of issue Nos.1 to 3, the plaintiff is entitled to succeed the decree and Issue No.4 is answered in affirmative in favour of the plaintiff.

Issue No.5

14. The plaintiff is entitled to get a judgment and decree as prayed for.

15. In the result, there shall be a judgment and decree directing the plaintiff to pay the balance sale consideration of Rs.1,50,000/- within a period of one month from the date of receipt of a judgment and decree, to the defendant. The defendant on receipt of the balance sale consideration of Rs.1,50,000/-, shall execute a sale deed in favour of the plaintiff, within a period of 15 days thereafter.

16. In the event of failure on the part of the defendant to execute the sale consideration or his refusal to receive the balance sale consideration and perform his part of obligation, it is open to the plaintiff to deposit the balance sale consideration of Rs.1,50,000/- to the credit of the suit and on such deposit, the Assistant Registrar of Original Side of this Court shall execute a sale deed in his favour. The plaintiff is also entitled to the cost of the suit.

List of Witnesses:

PW1 : Mr.G.Mahandran

List of Exhibits:

<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
Ex.P1	Original receipt issued by the defendant to the plaintiff	25.12.2011
Ex.P2	Original sale agreement entered into between plaintiff and the defendant	09.03.2012
Ex.P3	Original receipt issued by the defendant to the plaintiff	16.08.2012
Ex.P4	Copy of legal notice issued by the plaintiff's counsel to the defendant	05.04.2013
Ex.P5	Certified copy of the sale deed	12.10.2011
Ex.P6	Postal acknowledgment card	24.01.1994

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16.02.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/10.01.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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