



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13 / 07 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.52 OF 2002

Amitav Mukherji

.. Plaintiff

Versus

1.M/s.Lakshana Holdings Pvt. Limited

Rep. By its Director

Mr.U.R. Lakshminarasemhan

Room No.8, Chinni Complex,

Second Floor,

No.118, Govindappa Naicken Street,

Chennai - 600 001.

2.M/s.Venkataraman & Co.,

Rep. By its Partner Mr.S.Raamassubramanian

No.52, Dr.Rangachari Road,

Mylapore,

Chennai - 600 004.

(Amended as per order in Application

No.3472 of 2002 dated 04.09.2002)

.. Defendants

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 CPC praying for a judgment and decree against the defendant for the following:

a) Directing the defendant to execute the sale deed in respect of the suit property in favour of the plaintiff in pursuance of the Agreement of Sale dated 05.02.2001 on receipt of balance of sale consideration and also to produce the necessary clearance from the appropriate authority and failing which direct the officer of this Court to execute the sale deed in favour of the plaintiff on



behalf of the defendant (or) in the alternative direct the defendant herein to pay the plaintiff Rs.24,85,000/- as refund of advance together with interest at 24% per annum from 05.02.2001, the date of agreement of sale till date of decree and thereafter at the same rate till the date of realisation.

b) Permanent injunction restraining the defendant, its agents, servants or anybody claiming through it from in any manner dealing with the suit property, namely, sale, mortgage or in any manner creating encumbrance over the suit property.

c) Direct the defendant to pay the plaintiff the costs of the suit.

For Plaintiff	:	Mr.M.Ravindran Senior Counsel for Mr.Krishna Ravindran
For Defendant-1	:	No appearance
For Defendant-2	:	Mr.K.Harishankar

J U D G M E N T

The suit is filed by the plaintiff against the defendants for the following reliefs:

a) to direct the defendants to execute the sale deed in respect of the suit property in favour of the plaintiff in pursuance of the Agreement of Sale dated 05.02.2001 on receipt of balance of sale consideration and also to produce the necessary clearance from the appropriate authority and failing which, direct the officer of this



Court to execute the sale deed in favour of the plaintiff on behalf of the defendants (or) in the alternative, direct the defendants herein to pay the plaintiff Rs.24,85,000/- as refund of advance, together with interest at 24% per annum from 05.02.2001, the date of agreement of sale till date of decree and thereafter, at the same rate till the date of realisation.

b) to grant permanent injunction restraining the defendants, their agents, servants or anybody claiming through them from in any manner dealing with the suit property, namely, sale, mortgage or in any manner creating encumbrance over the suit property.

c) to direct the defendants to pay costs of the suit to the plaintiff.

2. The case of the plaintiff is that the suit property belong to the first defendant. The first defendant approached the plaintiff for sale of the suit property and the plaintiff also had mutually agreed for the same. It is stated that the sale consideration was fixed at Rs.38,00,000/- (Rupees Thirty Eight Lakhs Only). Pursuant to



the same, on 29.09.2000, the plaintiff is said to have paid a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as advance, towards sale of the property and the sale would be completed within one month. The plaintiff further stated that the said sale agreement was later reduced to writing on 05.02.2001 and the first defendant had taken the said agreement in duplicate for the purpose of forwarding the same to the appropriate authority for clearance, as the sale consideration exceeded Rs.25,00,000/- (Rupees Twenty Five Lakhs Only). The plaintiff also has stated that a sum of Rs.24,85,000/- (Rupees Twenty Four Lakhs Eighty Five Thousand Only) was paid to the first defendant by various demand drafts, pay orders and cheques etc. Having parted with more than 2/3rd of the amount, the plaintiff requested the first defendant to put the plaintiff in possession of the suit property, which is a flat in the second floor at Door No.73, Sir Thyagaraya Road, T.Nagar, Chennai - 17. Accordingly, it is stated that the plaintiff was also put in peaceful possession and enjoyment of the suit property. Though the plaintiff claimed that he was ready and willing to perform his part of contract, the first defendant kept postponing the registration on the pretext that the clearance from the appropriate authority was awaited.



WEB COPY

3. While so, the first defendant had sent a notice to one V.Jayalakshmi, who was the promoter of the Flat on 15.10.2001 alleging that the said V.Jayalakshmi had not put the first defendant in possession of the property. As the power agent of the plaintiff is the son of the said V.Jayalakshmi, the plaintiff was informed about the false allegations and the sudden change in the attitude of the first defendant. Therefore, the plaintiff issued a lawyer's notice on 02.11.2001 calling upon the first defendant to perform his part of contract. The first defendant also sent a reply notice on 19.11.2001 alleged to have made false allegations including denying the payments made by the plaintiff. The said reply was also suitably responded by the plaintiff by sending a rejoinder on 16.01.2002. The plaintiff had further alleged that the first defendant was negotiating with third parties for sale of the suit property. Hence, the plaintiff has filed the suit for specific performance of the agreement of sale dated 05.02.2001 or in the alternative, directing the first defendant to pay the plaintiff a sum of Rs.24,85,000/- as refund of advance, with interest at the rate of 24% per annum.



WEB COPY

4. Pending the suit, the second defendant was impleaded as per order dated 04.09.2002 passed in Application No.3472 of 2002. The second defendant had alleged in the application for impleadment that as early as on 12.04.1999, the first defendant had mortgaged the suit property by deposit of title deeds for securing the liability of Rs.15,93,290.99. The entire title deeds of the suit property was with the second defendant since then, as the first defendant could not discharge the liability, and therefore, proposed to sell the suit property to the second defendant for a consideration of Rs.24,50,000-/. Accordingly, the first defendant executed the sale deed in favour of the second defendant on 10.01.2002 and the same was registered as Document No.40 of 2002. It is also stated that the second defendant has been in possession of the property from the date of purchase.

5. Though the plaintiff was aware that the property has been sold by the first defendant in favour of the second respondent as early as on 2002, excepting amending the cause title, the plaintiff has not asked for any relief against the second defendant.



WEB COPY

6. The first defendant had filed written statement denying all the allegations made in the plaint and alleging that it is an abuse of process of law. According to the first defendant, there was no agreement between the plaintiff and the first defendant, much less a written agreement dated 05.02.2001. It was also denied that the plaintiff was put in possession of the suit property, just before the agreement for sale. The first defendant had further stated that he had insisted the plaintiff to pay the balance sum and complete the transaction vide his letters dated 08.12.2000, 19.03.2001, 16.04.2001 and 03.05.2001. In spite of receipt of these letters, according to the first defendant, the plaintiff did not respond to the same. The first defendant also denied the existence of the power of attorney, as the same is not a genuine one. The first defendant had further stated in the written statement that they owed a sum of Rs.15,93,290/- to the second defendant. As the plaintiff did not come forward to complete the transaction, the first defendant was constrained to make a distressed sale to the second defendant. As the first defendant was forced to sell it to the second defendant, he could not get good market price for the property. Stating



second defendant on 10.01.2002. Hence, the second defendant claims to be the bona fide purchaser for value, without notice of any alleged agreement between the plaintiff and the first defendant. The second defendant further alleged that the plaintiff taking advantage of the fact that the power of attorney of the plaintiff is the son of the promoter V.Jayalakshmi had concocted several documents for the purpose of claiming possession of the suit property. As no relief has been asked against the second defendant, the second defendant prayed for dismissal of the suit, contending that no relief would be granted to the plaintiff against him.

8. On the above pleadings, the following issues were framed by this Court on 18.12.2013:

"1.Whether the sale agreement has been executed by the plaintiff and the first defendant for the sale of the suit schedule property and such agreement between the parties is true and valid?

2.Whether the plaintiff is always ready and willing to



complete the transaction as agreed between the plaintiff and the 1st defendant?

3. Whether the 2nd defendant is the bonafide purchaser without notice for value?

4. Whether the plaintiff is entitled to the relief sought for?

5. What are the other reliefs that the plaintiff is entitled to?"

9. The plaintiff examined himself as P.W.1 and marked the following documents Exs.P1 to P12 as documentary evidence, in order to prove the suit claim:-

Sl.N o.	Exhib its	Description of documents	Date
1	P-1	Power of Attorney executed by the Plaintiff to V.Shailesh Raj	04.10.2000
2	P-2	Receipt issued by the 1 st defendant to the plaintiff	29.09.2000
3	P-3	Receipt issued by the 1 st defendant to the plaintiff	13.10.2000
4	P-4	Receipt issued by the 1 st defendant to the plaintiff	16.10.2000



Sl.N o.	Exhib its	Description of documents	Date
5	P-5	Receipt issued by the 1 st defendant to the plaintiff	09.11.2000
6	P-6	Receipt issued by the 1 st defendant to the plaintiff	19.12.2000
7	P-7	Receipt issued by the 1 st defendant to the plaintiff	23.01.2001
8	P-8	Notice send by the plaintiff to the 1 st defendant's advocate with acknowledgment care	02.11.2001
9	P-9	Reply notice by the 1 st defendant to the plaintiff	19.11.2001
10	P-10	Reply notice by the plaintiff to the 1 st defendant with postal receipt	16.01.2002
11	P-11	Notice issued by the 1 st defendant to V.Jayalakshmi & Sons	15.10.2001
12	P-12	Reply send by V.Jayalakshmi to the 1 st defendant's advocate with acknowledgment card	02.11.2001

10. The second defendant examined himself as D.W.1 and marked the following documents as Exs.D1 and D2 as documentary evidence.

Sl.N o.	Exhib its	Description of documents	Date
1	D-1	Sale deed executed by the 1 st defendant in favour of the 2 nd defendant	10.01.2002
2	D-2	Encumbrance certificate (Original)	30.05.2001



WEB COPY

11. Heard the learned counsel for the plaintiff and the learned counsel for the second defendant. Though the first defendant had filed written statement and appeared through counsel before the learned Master, later, the first defendant chose not to prosecute. Hence, the evidence of the first defendant was closed and only the second defendant had participated in the trial. Even when the matter was taken up, the first defendant was not represented either in person or through counsel.

ISSUE NO.1 :-

12. The plaintiff has placed his reliance on the agreement dated 05.02.2001. Though the plaintiff has specifically pleaded that a sum of Rs.24,85,000/- was paid against the total sale consideration of Rs.38,00,000/-, the plaintiff has not produced the said agreement before this Court. The reason for non production of the agreement is that the same was taken by the first defendant to be produced before the appropriate authority and it was never returned to him. The payments were made by the plaintiff in five different transactions and the receipts were marked as



Exs.P2, P3, P4, P5, P6 and P7. The said exhibits viz., Exs.P2 to P7 are receipts issued by the Director of the first defendant.

13. The learned counsel for the plaintiff had issued notice under Ex.P8, dated 02.11.2001. The said notice specifically mentions about the payment of Rs.24,85,000/- towards part sale consideration out of Rs.38,00,000/-. The said notice further states that the plaintiff was put in possession of the property in part performance of the contract. The plaintiff also had expressed his willingness to perform his part of contract by paying the balance sale consideration. It also further stated that the clearance from the Income Tax Department was yet to be obtained by the first defendant. In response to the same, the first defendant had sent a reply under Ex.P9 dated 19.11.2001, denying all the averments set out in Ex.P8, including the receipt of Rs.25,00,000/- towards sale consideration. A rejoinder was sent by the plaintiff under Ex.P10 calling upon the first defendant to execute the sale deed in favour of the plaintiff. Notice issued by the first defendant to one V.Jayalakshmi & Sons., who was the promoter of the suit property was marked as Ex.P11 during the cross examination



of P.W.1. The allegation of the first defendant was that the said promoter V.Jayalakshmi had not handed over vacant possession of the premises to the first defendant. Ex.P11 notice was replied by the first defendant as per Ex.P12 dated 02.11.2001.

14. So far as the sale agreement is concerned, admittedly, the same has not been filed before this Court. Though the plaintiff has produced receipts for payment of substantial amount towards sale consideration to the first defendant, there is no such agreement as alleged. In the absence of even the copy of the agreement being marked, the question of validity of the agreement cannot be gone into. However, the receipt of a sum of Rs.24,85,000/- being paid to the first defendant, by the plaintiff is substantiated by the plaintiff by marking Exs.P2 to P7. A perusal of Exs.P2 to P7 would go to show that the said receipts are issued by the first defendant signed as the Director of the first defendant's company. The said receipts specifically describes the amount received towards sale proceedings of the property bearing Door No.73, Sir Thyagaraya Road, T.Nagar, Chennai - 17. Ex.P3 is a receipt which mentions that it is a token advance towards sale of Pondy Bazaar



15. The first defendant though had denied the same in the notice, in the written statement, in para 5, has specifically stated as follows:



WEB COPY

transaction is completed within the stipulated and reiterated time the advance amount shall be forfeited. In spite of receipt of these letters the Plaintiff has not at all come forward to pay the balance sale consideration. Therefore, the allegation of giving evasive reply and willingness to pay the balance sale consideration are all unsustainable."

16. From the admission made by the first defendant in the written statement, it is clear that the said amounts have been received by the first defendant only towards sale consideration. From the above, the plaintiff has proved that he had paid a sum of Rs.24,85,000/- to the first defendant, towards the purchase of the suit property. However, the sole argument alleged in the plaint has not been produced and proved in a manner known to law. Hence, this issue is decided against the plaintiff.

**ISSUE NO.2 :-**

WEB COPY

17. From the perusal of the receipts under Exs.P2 to P7, it is clear that the first payment was made on 27.09.2000 and the last payment was made on 23.01.2001. Even presuming for a moment that the agreement as alleged by the plaintiff is true, the date of the same is said to be 05.02.2001 and the time fixed for the purpose of completion of the transaction is one month. While so, the notice under Ex.P8 was issued for the first time by the plaintiff only on 02.11.2001. There is no reason assigned by the plaintiff for waiting to issue Ex.P8 from 23.01.2001, when the last of the payment was made.

18. Even according to the plaintiff, it is only one month from the alleged date of agreement, the plaintiff should have been ready and willing to perform his part of the contract, by paying the balance of the sale consideration within the said period or there should be an extension of time by contract of the parties for the performance of the contract. Though the plaintiff had parted with more than 2/3rd of the sale amount, there is no reason given in the notice or in the plaint for issuing Ex.P8 - notice, only in November 2001. Therefore, it could be safely



concluded that the plaintiff was not always ready and willing to complete the transaction, even as agreed by him.

Hence, issue no.2 is answered in the negative.

ISSUE NO.3 :-

19. The learned counsel for the second defendant contended that the second defendant, who is the subsequent purchaser and was impleaded during the pendency of the suit, on his own, was a *bona fide* purchaser without notice. He also placed reliance on Order VII Rule 14(1) of the Code of Civil Procedure contending that when a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed along with the plaint. Further, when a plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint. Any document, which is not presented along with the plaint, shall not be received in evidence without the leave of the Court as provided in the proviso.



20. In this case, though the plaintiff relied on the alleged agreement dated 05.02.2001 entered into between the plaintiff and the first defendant for the sale of the suit property, the same has not been filed before the Court and it has not seen the light of the day. As there is no such agreement, the plaint should be rejected in *limine*. As held in issue no.2, he will presuming that the alleged agreement was true and the plaintiff had not taken any steps to enforce the same. According to the second defendant, the payments referred to in para 4 of the plaint, do not relate to the suit transaction. The second defendant also raised several doubts about the receipts produced by the plaintiff for the payment of the sale consideration. As there is no privity of contract between the plaintiff and the second defendant, he has got no *locus standi* to question the same. Besides, the first defendant himself has admitted that he had received sale consideration and alleged that the plaintiff was never ready and willing to perform his part of contract. So, when impliedly the receipt of the money was admitted by the first defendant, the second defendant has no say over the same. The second defendant has purchased the property without notice about the alleged agreement.



21. The suit was filed on 25.01.2002, whereas the sale by the first defendant in favour of the second defendant was on 10.01.2002 as per Ex.D1. As the plaintiff has not sought for any relief against the second defendant, a decree cannot be granted against the second defendant. It was also not alleged by the plaintiff that the second defendant was not a bona fide purchaser or he had knowledge of the agreement. Hence, it has to be presumed that the second defendant is a bona fide purchaser without notice.

22. Though initially the plaintiff had obtained an order of injunction from this Court, subsequently, it was vacated and the second defendant had been in possession of the property. The second defendant had purchased the property few days prior to the filing of the suit. So, in the strict sense, the second defendant cannot be termed as pendente lite purchaser. Furthermore, the plaintiff also has not asked for either setting aside the sale or for declaration that the sale by the first defendant in favour of the second defendant is not binding on him. Therefore, this Court holds that the second defendant is a bona fide purchaser and **issue no.3 finds favour with the second defendant.**

**ISSUE NO.4 :-**

WEB COPY

23. With respect to the reliefs that the plaintiff is entitled to are concerned, as discussed earlier, the plaintiff seems to have parted with some money as advance towards the sale consideration. It is also admitted in the written statement made by the first defendant that certain amounts have been received by him. Subsequently, the second defendant has purchased the property, but prior to the institution of the suit. Admittedly, the plaintiff has not sought for any relief against the second defendant. That being so, even presuming for a moment, a decree for specific performance can be granted in the absence of the such prayer, the same cannot be granted against the second defendant in the present suit. The best person to speak about the transactions is the first defendant, who, though has filed the written statement, had not appeared before this Court to substantiate his contentions. Hence, the plaintiff who has established payment of a sum of Rs.24,85,000/- to the first defendant is entitled for the refund of the same from the first defendant alone.



WEB COPY

24. Accordingly, the suit for specific performance is dismissed. However, the suit is decreed with respect to the alternative relief of refund of advance sale consideration together with interest at 24% per annum from 05.02.2001, the date of agreement of sale till date of realisation, from the first defendant. With respect to the second defendant, the suit is dismissed in all respects.

25. In the result, the suit is partly decreed. No costs.

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 - Mr.V.Shailesh Raj

Sl.N o.	Exhib its	Description of documents	Date
1	P-1	Power of Attorney executed by the Plaintiff to V.Shailesh Raj	04.10.2000
2	P-2	Receipt issued by the 1 st defendant to the plaintiff	29.09.2000
3	P-3	Receipt issued by the 1 st defendant to the plaintiff	13.10.2000
4	P-4	Receipt issued by the 1 st defendant to the plaintiff	16.10.2000
5	P-5	Receipt issued by the 1 st defendant to the plaintiff	09.11.2000
6	P-6	Receipt issued by the 1 st defendant to the plaintiff	19.12.2000
7	P-7	Receipt issued by the 1 st defendant to the plaintiff	23.01.2001



Sl.N o.	Exhib its	Description of documents	Date
8	P-8	Notice send by the plaintiff to the 1 st defendant's advocate with acknowledgment care	02.11.2001
9	P-9	Reply notice by the 1 st defendant to the plaintiff	19.11.2001
10	P-10	Reply notice by the plaintiff to the 1 st defendant with postal receipt	16.01.2002
11	P-11	Notice issued by the 1 st defendant to V.Jayalakshmi & Sons	15.10.2001
12	P-12	Reply send by V.Jayalakshmi to the 1 st defendant's advocate with acknowledgment card	02.11.2001

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE DEFENDANTS

D.W.1 - Mr.S.Raamassubramanian

Sl.N o.	Exhib its	Description of documents	Date
1	D-1	Sale deed executed by the 1 st defendant in favour of the 2 nd defendant	10.01.2002
2	D-2	Encumbrance certificate (Original)	30.05.2001

Sd/.P.S.N.J

13.07.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/24.10.2016

COURT OFFICER

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