

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.05.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.153 of 2014

K.Dayanand

.. Plaintiff

Versus

K.Hemavathi

.. Defendant

The plaint is filed and numbered as Civil Suit under Order IV Rule 1 of High Court Original Side Rules read with Order VII Rule 1 of CPC, praying for a judgment and decree:

- a) for the decree of specific performance directing the defendant to register the sale deed in favour of the plaintiff in respect of the suit property.
- b) in the event of refusing to execute and register the sale deed by the defendant or remaining exparte this Court may be pleased to execute the sale deed in favour of the plaintiff at the cost of the plaintiff.
- c) granting permanent injunction restraining the defendant, her men and agents or subordinates further not to disturb the peaceful possession and enjoyment of suit property morefully described in the schedule of property.
- d) the cost of this suit.

For Plaintiff	: M/s.S.Janarthanan
For Defendant	: No Appearance

JUDGMENT

The suit has been filed for the following reliefs:

- a) for the decree of specific performance directing the defendant to register the sale deed in favour of the plaintiff in respect of the suit property;
- b) in the event of refusing to execute and register the sale deed by the defendant or remaining ex-parte this Court may be pleased to execute the sale deed in favour of the plaintiff at the cost of the plaintiff;
- c) granting permanent injunction restraining the defendant, her men and agents or subordinates further not to disturb the peaceful possession and enjoyment of suit property, morefully described in the schedule of property and
- d) the costs of this suit.

2. It is the case of the plaintiff that the defendant is the absolute owner of the suit property by virtue of sale deed registered as Document No.5605 of 2005 on the file of the Sub-Registrar, Sriperumbudur. The defendant who was in possession and enjoyment of the property, had approached the plaintiff for the sale of the suit property. After negotiations, an agreement of sale was entered into between them on 03.01.2010, in and by which, the plaintiff has agreed to purchase the property for sale consideration of Rs.26,00,000/- and on the date of

agreement, an advance amount of Rs.25,00,000/- was paid to the defendant and she had also handed over the original documents and possession of the suit property to the plaintiff, wherefrom, the plaintiff has been in possession and enjoyment of the suit property.

3. The plaintiff would further state that he approached the defendant to register the sale deed in his favour after paying the balance sale consideration. But the defendant has evaded the registration of the sale deed and started demanding additional consideration for registration of the suit property. Thereafter, the plaintiff issued a notice to the defendant on 08.12.2012 to perform her portion of obligation under the agreement, but defendant has not received notice, which returned as "no such addressee". It is further stated that the defendant may alienate the suit property or create any encumbrance over the same. Hence, the present suit.

4. The defendant did not choose to contest the suit by filing written statement, hence she was set ex-parte.

5. On an analysis of the pleadings, the following issues arise for consideration in the suit:

1. Whether the agreement of sale dated 03.01.2010 is genuine.
2. Whether the plaintiff has proved his readiness and willingness to

perform his obligations under the agreement.

3. Whether the plaintiff is entitled for decree of specific performance and permanent injunction.
4. Whether the plaintiff is entitled for costs.

6. Mr.S.Janarthanan, learned counsel for the plaintiff would submit that the defendant is the owner of the suit property and on 03.01.2010, she agreed to sell the same for a sum of Rs.26,00,000/- and received Rs.25,00,000/- towards advance, but the defendant did not come forward to perform her obligation. It is further submitted that the plaintiff examined himself as P.W.1, reiterated the averments made in the plaint and filed the following documents, viz., Exs.P1 to P4.

- a) Ex.P1 is the original sale deed dated 08.07.2005 standing in the name of the defendant.
- b) Ex.P2 is the sale agreement dated 03.01.2010 entered into between the plaintiff and the defendant.
- c) Ex.P3 is the office copy of the legal notice dated 08.12.2012 issued to the defendant.
- d) Ex.P4 is the returned postal cover of the legal notice sent to the defendant.

7. Issues 1 to 4 are taken up for consideration. In the plaint, it is averred that the defendant is the owner of the suit property and on 03.01.2010, she agreed to sell the same for a sum of Rs.26,00,000/- under Ex.P2 and received Rs.25,00,000/- towards advance and also handed over

the original document Ex.P1. Since the defendant did not come forward to perform her obligation, the plaintiff issued a notice Ex.P3, dated 08.12.2012. The postal return cover is marked as Ex.P4. On the date of agreement, the plaintiff had paid almost the entire sale consideration and Ex.P3 would prove that from the date of agreement, the plaintiff was ready and willing to perform his obligation under the agreement, and hence, the plaintiff is entitled to succeed in the suit.

8. From the above oral and documentary evidence and pleadings, it is seen that the plaintiff has proved his claim for the reliefs prayed for in the suit. Hence, all the issues are answered in favour of the plaintiff. Accordingly, the suit is decreed as prayed for, with costs. The plaintiff shall deposit the remaining sale consideration of Rs.1,00,000/- (Rupees one lakh only) to the credit of the suit before this Court, within a period of two months from the date of the decree. On such deposit, the defendant is directed to execute the sale deed in favour of the plaintiff in respect of the suit property within one month, failing which the Registry is directed to execute the sale deed in favour of the plaintiff. Consequently, connected applications are closed.

09.05.2017

Index: Yes/No
Internet:Yes/No

pvs

K.KALYANASUNDARAM, J.,

pvs

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