

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.05.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.298 of 2014

K.R.Selvaraj Kumar

.. Plaintiff

Versus

D.Deivanayagi

.. Defendant

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

- a) for specific performance of the sale agreement dated 12.10.2011 entered between the plaintiff and the defendant and direct the defendant to execute the sale deed in respect of the suit schedule property in the name of the plaintiff by receiving the sum of Rs.2,00,000/- being the balance sale consideration.
- b) for a permanent injunction restraining the defendant or any person or persons claiming through or under the defendant from alienating the suit schedule property in any manner whatsoever.
- c) for an order directing the defendants to pay the cost of the suit.

For Plaintiff	: M/s.T.Dhanasekaran
For Defendant	: No Appearance

JUDGMENT

The suit has been filed for the following reliefs:

- a) for specific performance of the sale agreement dated 12.10.2011 entered between the plaintiff and the defendant and direct the defendant to execute the sale deed in respect of the suit schedule property in the name of the plaintiff by receiving the sum of Rs.2,00,000/- being the balance sale consideration.
- b) for a permanent injunction restraining the defendant or any person or persons claiming through or under the defendant from alienating the suit schedule property in any manner whatsoever.
- c) for an order directing the defendants to pay the costs of the suit.

2. It is the case of the plaintiff that the suit property belongs to the defendant. The defendant approached the plaintiff for selling the property for a sum of Rs.35,00,000/-. The plaintiff agreed to purchase the property and accepted the price. So, on 12.10.2011, the sale agreement was entered into between them, which is marked as Ex.P1. Pursuant to the sale agreement, the plaintiff has paid Rs.20,00,000/- and in turn, the defendant handed over the possession of the property along with the original deeds of documents of title and right to collect the rent to the plaintiff.

3. The plaintiff would further state that on 10.01.2012 and 17.03.2012, the plaintiff has made further payments of Rs.8,00,000/- and 5,00,000/- respectively, which is acknowledged by the defendant on the back of the sale agreement, Ex.P1. The plaintiff had been ready and willing to perform his part of the contract and when he approached the defendant to execute the sale deed, the defendant failed to execute the sale deed. Hence, the plaintiff caused a legal notice on 10.07.2013 under Ex.P2 and the same is received and acknowledged by the defendant under Ex.P3. However, the defendant has neither sent any reply nor cancelled the sale deed. Hence, the suit.

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

5. Taking into consideration the above pleadings, the issue that arises for consideration in this suit is as to whether the plaintiff has made out a case for grant of the reliefs prayed for in this suit.

6. Mr.T.Dhanasekaran, learned counsel for the plaintiff would submit that the plaintiff has always been ready and willing to perform his part of the contract and also paid substantial portion of the sale consideration, but the the defendant has failed to execute the sale deed. 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 P3.

- a) Ex.P1 is the sale agreement dated 12.10.2011 between the petitioner and the defendant.
- b) Ex.P2 is the legal notice sent by his counsel dated 10.07.2013 to the defendant.
- c) Ex.P3 is the proof for delivery of said notice to the defendant.

7. From the above oral and documentary evidence and pleadings, it is clear that the plaintiff has always been ready and willing to perform his part of the contract and also paid substantial portion of the sale consideration. In spite of the same, the defendant has failed to execute the sale deed, which forced the plaintiff to file this suit.

8. Thus, it is seen that the plaintiff has proved his claim of reliefs in the suit. The issue is answered accordingly. The suit is decreed as prayed for with costs. The plaintiff shall deposit the remaining sale consideration of Rs.2 lakhs (Rupees two lakhs only) within a period of two months. 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 application is closed.

08.05.2017

Index: Yes/No
Internet:Yes/No
pvs

K.KALYANASUNDARAM, J.,

pvs

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