

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.01.2017

Pronounced on : 10.01.2017

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.223 of 2011

G.K.Sudhakarran

.. Plaintiff

vs.

1. Mrs.S.Girija

2. Mr.V.K.Sukumaran

.. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) for specific performance of the Agreement of Sale dated 05.06.2007 entered into between Plaintiff and Defendants on receiving the balance of Sale Consideration of Rs.45,00,000/- execute the Sale Deed and Register the Sale Deed on the date fixed by the Hon'ble Court in favour of the Plaintiff thereby enable the plaintiff to pay the balance amount of rs.45,00,000/-to the defendants and put the plaintiff in vacant possession of the suit schedule mentioned property by the defendants jointly.

(ii) On failure of executing the Sale Deed by the 1st Defendant, plaintiff prays this Hon'ble Court to execute the sale deed to the Plaintiff and put the Plaintiff in vacant possession of the suit schedule mentioned property with a direction to deposit the balance consideration of Rs.45,00,000/- into the Court for the credit of the suit.

b) to direct the defendants alternatively jointly and severally to pay the advance amount of Rs.15,00,000/- together with interest at 24% p.a. from the date of payment till the date of realization;

c) costs of the suit;

For Plaintiff : Mr.B.Eswaran
for Swamy Associates

For defendants : No appearance

J U D G M E N T

The suit is filed for specific performance of the agreement dated 05.06.2007 or in the alternative for refund of the advance amount of Rs.15,00,000/- together with interest at the rate of 24% per annum from the date of payment till the date of realization.

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

The first defendant by an agreement dated 05.06.2007 agreed to sell the suit property for a total sale consideration of a sum of Rs.60,00,000/-. The second defendant, who is the husband of the first defendant stood as a confirming party. On the date of the agreement, a sum of Rs.15,00,000/- was paid. Thereafter, the defendants were postponing the execution of the sale deed, even though the plaintiff has indicated his readiness and willingness to perform his part of the contract. In the month of April 2010, the plaintiff approached the defendants to execute the sale deed by offering the balance sale consideration. Though the defendants assured the plaintiff that they would execute the sale deed in the first week of May 2010, they have not come forward to register the sale deed. Therefore, the plaintiff issued a legal notice on 06.05.2010 calling upon the defendants to execute the sale deed within 7 days. The defendant has sent a reply with false allegations. Hence, the suit.

3. The defendants have not filed written statement and none appeared for the defendants. Therefore, the defendants were set *ex parte*

by this Court on 17.9.2014.

4. On the side of the plaintiff, plaintiff examined himself as P.W.1 and Ex.P.1 to Ex.P.4 were marked.

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	05.06.2007	Agreement of Sale between the plaintiff and the defendants
2.	P-2	06.05.2010	Copy of the notice sent by the plaintiff to the defendants
3.	P-3	--	Postal acknowledgment
4.	P-4	13.03.2013	Reply notice sent by the defendants to the plaintiff

Witnesses examined on the side of the plaintiffss:

P.W.1. - G.K.Sudhakarran

5. Heard the learned counsel for the plaintiff and perused the records.

6. P.W.1, in his evidence has spoken about the so called agreement

Ex.P.1. and alleged delay caused by the defendants in not executing the sale deed in favour of the plaintiff. When carefully perused the written agreement dated 05.06.2007, it shows that an advance of Rs.15,00,000/- has been paid on the date of the agreement. As per the agreement of sale, the total sale consideration agreed between the parties is Rs.60,00,000/- and the time for completion of the sale is three years from the date of the agreement for sale. The plaintiff has sent legal notice dated 06.05.2010 expressing his readiness and willingness to perform his part of the contract.

7. It is to be noted that in the agreement for sale, a period of three years has been specifically agreed for completion of the sale. If a person seeks equitable relief of specific performance, he must establish his readiness and willingness to perform his part of the contract from the date of the agreement till end. Even though, the defendant remained exparte, the conduct of the plaintiff assumes significance in this case. Absolutely, there is no evidence to show that the plaintiff is ready and willing to perform his part of the contract from the beginning. No efforts, whatsoever, was made by the plaintiff, even to verify the title deeds, nature of the property, etc. Therefore, merely sending a legal notice after expiry of three years,

readiness and willingness on the part of the plaintiff cannot be inferred. The manner in which the agreement was written and the style in which it was written without putting any obligation on either side, clearly indicate that it is not intended for the sale of the property.

8. The plaint pleadings clearly indicate that the plaintiff is already aware of the existence of the sale agreement in favour of some other third party. The above facts clearly indicate that the plaintiff is not at all ready and willing to perform his part of the contract from the very beginning. No efforts were taken by the plaintiff to pay remaining sale consideration within the period of three years. Further, there is no evidence available on record to establish that the plaintiff has source to pay the remaining sale consideration of Rs.45,00,000/-. In the absence of readiness and willingness on the part of the plaintiff to perform his part of the contract, this Court is of the view that the plaintiff is not entitled for the specific performance of the agreement, dated 05.06.2007. However, the execution of the agreement and receipt of Rs.15,00,000/- is not disputed. Hence, the plaintiff is entitled to the alternative relief of return of the advance amount of Rs.15,00,000/-.

9. In the result, the suit for specific performance is dismissed. However, the suit is decreed for the alternative relief of return of the advance amount of Rs.15,00,000/- along with interest at the rate of 6% per annum from the date of payment till the date of realization. There is no Order as to cost.

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Index : Yes
Internet: Yes

N.SATHISH KUMAR, J

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