

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 03rd DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.S. No.701 of 2011

1. Miss.Monicca Shantha Nelson,
D/o.Mr.J.Samuel Nelson,
No.8249, Ranch View,
Dr.A.P.T, 3088, Irving, T.X.75063
United States of America,
rep. by Power of Attorney,
Mr.J.Samuel Nelson,
S/o.Late Mr.John Kripadoss,
New No.39, Old No.20/1, II Street,
Taylor's Estate, Kodambakkam,
Chennai-600 024.

2. Mrs.S.Santha,
W/o.Mr.J.Samuel Nelson,

3. Mr.J.Samuel Nelson,
S/o.Late Mr.John Kripadoss,
2 & 3 are at New No.39,
Old No.20/1, II Street,
Taylor's Estate, Kodambakkam,
Chennai-600 024.

... Plaintiffs

-Versus-

1. Mrs.Rajalakshmi Venugopal,
W/o.Mr.V.Venugopal,

2. Mr.V.Seshadhari,
S/o.Mr.V.Venugopal,
1 & 2 are at Plot No.T6,

III Floor, Suriya Apartments,
 New No.8, Old No.10,
 Central Avenue Road,
 Kodambakkam, Chennai-600 024.
 1 & 2 represented by their
 Power of Attorney Agent,
 Mr.S.Velladurai,
 S/o.S.Subramaniam,
 No.27, I Main Road,
 United India Colony,
 Kodambakkam, Chennai-600 024.

3. Mr.S.Velladurai,
 S/o.S.Subramaniam,
 No.27, I Main Road,
 United India Colony,
 Kodambakkam, Chennai-600 024.

4. Noah Constructions,
 A Proprietary Concern,
 rep. by its Sole Proprietor,
 G.Manoharan Joseph,
 No.7, 100 feet road,
 Rajeswari Nagar Extension,
 Selaiyur, Chennai-600 073.

... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree against the defendants:

a) for a mandatory injunction directing the 3rd defendant to receive the balance sale consideration of Rs.43,80,000/- and issue letter of confirmation for the receipt of total consideration for the sale of the property in favour of the plaintiffs as per agreement dated 01.09.2010 to the 4th defendant and on receipt of such letter direct the 4th defendant to hand over possession of the plaint C schedule property to the plaintiffs and in default permit the

plaintiffs to deposit the balance sale consideration of Rs.43,80,000/- before this Hon'ble Court and on deposit of the said sum the 4th defendant may be directed to handover the possession of the plaint C schedule property to the plaintiffs;

b) for a permanent injunction against the defendants or their agents, men from in any way dealing with the plaint B and C schedule properties as a consequential relief;

c) award the cost of suit.

This suit along with OSA.No.212 of 2017 having been heard on 05.01.2022 in the presence of Mr.R.N.Amarnadh, advocate for the plaintiffs herein and Mr.V.Raghavachari for M/s.Ma.Gouthaman advocates for the defendants 1 to 3 and Mr.C.D.Johnson, Advocate for the 4th defendant herein and upon reading the pleadings filed herein and other exhibits therein referred to and upon perusing the evidence adduced therein and the order dated 15.06.2017 made in C.S.No.701 of 2011 and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and this Court observing that the agreement among the parties has been validly terminated by the defendants 1 to 3 on account of the default committed by the plaintiffs and the agreement dated 01.09.2010 was not executed to supersede and substitute the agreement dated 29.07.2009 and construction

agreement dated 11.07.2007 is sham and nominal and not intended to be acted upon, and the execution of the sale deed would amount to part performance of the agreement of sale, and the defendants 1 to 3 are not estopped from canceling the sale agreement since the plaintiffs are not ready and willing, and the plaintiffs did not perform their part of obligation under the Sale agreement and they were not ready and willing to perform their part of the obligation, and this Court affirms the findings of the Trial Court that the plaintiffs are not entitled to seek for specific performance and inclined to modify the findings of the Trial Court and mould the relief and grant alternate reliefs to the parties,

it is ordered and decreed as follows:-

That the defendants 1 & 2 herein, shall refund to the plaintiffs herein, a sum of Rs.89,12,667/- (Rupees Eighty Nine Lakhs Twelve Thousand Six Hundred and Sixty Seven only) with further interest at the rate of 9% per annum on the sum of Rs.43,91,995/- (Rupees Forty Three Lakhs Ninety One Thousand Nine Hundred and Ninety Five only) from this date till the date of payment.

2. That the defendants 1 & 2 herein, shall deposit the aforesaid amount within a period of six weeks from the date of receipt of the judgment and the decree of this Court.

3. That on such deposit by the defendants 1 & 2 herein, into this Court, within two weeks therefrom, the plaintiffs herein, shall execute re-conveyance deed, before the appropriate sub-Registrar, re-conveying 675 sq.ft.,undivided share, conveyed to them, vide Ex.P10, sale deed dated 30.08.2010 in respect of the property morefully setout in the B Schedule hereunder, to and in favour of the first and second defendants herein.

4. That the defendants 1 & 2 herein, shall bear the stamp duty and Registration charges of said re-conveyance document.

5. That upon execution of such re-conveyance deed, the plaintiffs herein, shall be forthwith entitled to withdraw the amount deposited by the first and second defendants into the Court with accrued interest, if any.

6. That there shall be no order as to costs of this suit.

7. That the order dated 15.06.2017 made in C.S.No..701 of 2011, be and is hereby modified to the extent mentioned above.

SCHEDULE OF PROPERTY

SCHEDULE - A

All that piece and parcel of land bearing Plot No.24, measuring about 1800 Sq.ft, situated in Old Doo No.12, New Door No.2, III Cross Street, United India Colony, Kodambakka, Chennai 600 024, comprised in

T.S.No.68, Block No.40, Puliyur Village lying with in the Sub Registrar District of Kodambakkam and Registration District of Chennai.

Bounded on the

East by : Plot No.23 and building thereon, T.S.No.67

West by : Property belonging to Ranganathan, T.S.No.68/1

South by : 3rd Cross Street and 40 feet Road,

North by : Property belonging to Ranganathan, T.S.No.68/1

Measuring:-

East to west 30' on both side,

North to South 60' on both sides,

SCHEDULE - B

675 Sq.ft. undivided share of land out of the property described in
Schedule - A.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH
BHANDARI ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 03rd DAY OF FEBRUARY 2022.

Sd./-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies
of the Orders/Judgments/Decrees in this format.

KY

01.04.2022

C.S. No.701 of 2011

DECREE:

DATED: 03.02.2022

THE HON'BLE MR.JUSTICE
T.RAJA
AND
THE HON'BLE MR.JUSTICE
D.BHARATHA CHAKRAVARTHY

FOR APPROVAL: 04.05.2022

APPROVED ON: 04.05.2022