

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)
MONDAY, THE 11ST DAY OF SEPTEMBER 2017
THE HON'BLE MRS. JUSTICE C.V.KARTHIKEYAN
A.No.4265 of 2017
in
C.S.No.359 of 2006

1.M.Santhanam,
S/o.T.Muthulingam,
No.502/3, Pantheon Road,
Egmore, Chennai-600 008.

2.Bama Santhanam,
W/o.T.Muthulingam,
No.502/3, Pantheon Road,
Egmore, Chennai-600 008.

...Applicants/Plaintiffs

-Vs-

1.Vijaya Kumari,
W/o.Late Gnanasekar,
No.163, Old Door No.64 (Part),
Konnur High Road,
Ayanavaram,
Chennai-600 023.

2.Kassim Mustafa,
S/o.V.A.M.Ahmed Buhari,
Suite 168, Gold Centre Building,
P.O.Box No.5043, Deira,
Dubai, U.A.E.,

3.Nafees Ahmed,
S/o.V.A.M.Ahmed Buhari,
Quinten Matsijslei 31
2018 Antwerp Belgium.

...Respondents/Defendants

A.NO.4265 OF 2017:

This Application praying that this Hon'ble Court be pleased to permit the Applicants to file the additional documents as per the list detailed hereto and take the same on file.

This application coming on this day before this court for hearing, the court made the following order:

This application has been filed by the plaintiffs in the suit, seeking permission to produce the additional documents. Originally, the suit has been filed against the first defendant alone. Subsequently, 2nd and 3rd defendants had been impleaded as per Order dated 24.11.2011 in Application No.5077 of 2010. The suit has been filed seeking specific performance of an agreement of Sale dated 01.12.2005 and for consequential relief.

2. It is also to be mentioned that the additional prayer had been impleaded that deed of sale dated 26.04.2006, executed on 19.06.2006 is null and void. Along with the plaint, the plaintiff has filed three documents namely, Agreement for Sale between the plaintiff and first defendant dated 01.12.2005, a copy of the letter issued by the plaintiff and the defendant dated 15.04.2006 and a copy of Encumbrance Certificate dated 25.04.2006. Subsequently, issues had been framed on the basis of the pleadings of the parties.

3. The first plaintiff M.Santhanam has been examined as PW1, he was also cross examined on behalf of the first defendant and on behalf of the second and third defendants. The proof affidavit of PW1 was dated 10.08.2016 and copy of the same was presented on 23.09.2016. Thereafter, PW1 was cross examined on 25.10.2016,

03.01.2017, 05.01.2017, 19.01.2017 and 06.04.2017.

4. This application has been filed as stated above seeking permission to file additional documents. The additional documents now sought to be filed are an agreement of sale dated 03.09.1990, General Power of Attorney, dated 03.09.1990, Deed of Sale, dated 16.04.2004, Settlement Deed, dt.03.05.2004, Deed of Sale, dated 17.05.2004, Patta, Chitta and Village Adangal, dated 20.01.2015 and 22.01.2015 and order of Special Tahsildar granting payment of compensation dated 27.02.2015 and Cheque issued by the Sub-Treasury, Sriperumbudur dated 12.03.2015. The plaintiff who has sought to file the documents has to establish readings and willingness to pay the balance sale consideration with respect to the agreement of sale. In this connection, it must also be mentioned that in the agreement of sale dated 01.12.2003, which is subject matter of this suit. The plaintiff and the first defendant had agreed for a total sale consideration of 30 lakhs. It had been stated that, on the date of the agreement of, a sum of Rs.1,00,000/- was paid to the defendant. Thereafter, on 24.02.2006, after more than 2 years, a sum of Rs.20,000/- was paid. A further sum of Rs.5000/-was paid on 25.02.2006, which was acknowledged by the Driver Jagadeesan, of the 1st defendant. It has also been stated that the plaintiff had paid a sum of Rs.1,58,739/- towards the first defendant's arrears of taxes. It was claimed that they have paid a sum of

Rs.16,283/- to the Chennai Metropolitan Water Supply and Sewerage Board on behalf of the defendant and a further sum of Rs.49,371/- in cash to the first defendant. The first defendant had acknowledged a total payment of Rs.3,50,000/- on the reverse of the Agreement dated 1.12.2005 on 9.3.2006.

5. Accordingly the applicant, the documents are now sought to be filed to establish readiness and willingness on the part of the applicant /plaintiff to purchase the property and more particularly, to show availability of funds.

6. A counter affidavit has been filed by the second and third respondents. It has been stated that they have purchased the property from the 1st defendant, under the registered the Sale deed, dated 26.04.2006. They have further stated that they came to know the existing liability to the Indian Overseas Bank to a sum of Rs.9,00,000/-. It has been stated that the agreement of sale contains forged signatures of the first defendant. It has been stated that the application has been filed after cross examination of PW1. Consequently, this application should be dismissed.

7. It is seen from a perusal of the documents that the agreement had been entered into between the second plaintiff and the first defendant. However, PW1, the 1st plaintiff has let in evidence. In the affidavit filed in the present application, by the 2nd plaintiff it

has been stated that the documents should have been filed while he was in the witness box. It is to be mentioned that the burden of proving the execution of agreement of sale, readiness and willingness, and also that the agreement of sale is enforceable or otherwise lies on the applicant/plaintiff itself. The plaintiffs have filed the suit in the year 2006. After PW1 was cross examined the additional documents were sought to be filed. There is no reason given in the affidavit as to why documents available even prior to the filing of the suit, have not been brought in evidence. It cannot be assumed that availability of funds cannot be a reason to call upon the court to permit them to file the documents at any stage. The PW1 was extensively cross examined. As a matter of fact, during the cross examination by the second and third defendant he has stated as follows:-

"I deny the suggestion that even on the date of agreement and as well as on the date of filing of the suit and on till date I don not have any source of income to purchase the suit schedule property. I have not filed any document to show that I had enough funds as on date of agreement on the date of filing of the suit and as on date to complete the sale as per the agreement. "

8. This fact, which has been elicited during the cross examination, has to be further decided at the time of arguments, on completion of the examination of both

sides. PW1 having chosen not file the document at the initial stage, cannot seek now to file documents. As a matter of fact, the documents were of the year 2005 and there is no reason given in the affidavit as to how the documents are necessary and why there is delay and why they were not produced earlier. Consequently, I find no reason to allow the application, and accordingly this application is dismissed.

sd/-C.V.K.J

11.09.2017

//Certified to be a true copy//

Dated this the th day of 2016.

EM/13.09.2017

COURT OFFICER

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