

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : .30.01.2017

PROUNOUNCED ON : 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.194 of 2009

M.Prakash Chand

... Plaintiff

Versus

1. Nirmala Sethuraman
2. S.Ravichandran
3. N.Neelankantan (since deceased)
4. Dr.N.Rajagopal
5. Rajalakshmi Gopalakrishnan
6. M/s.Mettupakkam Foundations (P) Ltd.
7. R.Raman
8. H.Parameswaran
9. Hema Parameswaran
- 10.Padmaja Srinivas
- 11.Kandhi Neelagandan *
12. Naresh Neelagandan *

.... Defendants

- * Sl.No.11 and 12 are the legal heirs of 3rd defendant
as per order dated 06.01.2012 in Application No.30 of 2012
in C.S.No.194 of 2009 allowed

For Plaintiff : Ms.K. Aparnadevi

For Defendants : Mr. K.Chandrasekaran for D1 and D2

M/s.V.Balasubramanian & Associates
for D4, D5, D11 and D12
Mr.A.Muthukumaran for D1

Prayer : This Civil Suit is filed under Order VII Rule 1 and 2 of Civil Procedure Code and Order IV Rule 1 of Original Side Rules and Section 12(2) of Specific Relief Act for the following reliefs :-

(a) directing the defendants to execute the sale deed in favour of the plaintiff on receipt of the balance sale consideration of Rs.24,22,500/-, alternatively if this Hon'ble Court feels that the plaintiff is not entitled for specific performance, the defendants may be directed to pay a sum of Rs.1,02,70,500/- as compensation with interest at the rate of 18% per annum from the date of plaint till the date of realisation of the suit;

b) for permanent injunction restraining the defendants, their men, agents, servants, representatives or any one claiming through them not to deal with the property in any manner by way of sale, lease or any mode of conveyance since the defendants have no right over the suit schedule mentioned property and

c) for costs of the suit

JUDGMENT

The suit has been filed for a direction to execute the sale deed in favour of the plaintiff on receipt of the balance sale consideration of Rs.4,22,500/- and in the alternative for compensation of a sum of Rs.1,02,70,500/- together with interest at 18% p.a. from the date of plaint till the date of realisation and for permanent injunction from dealing with the property and for costs.

2. The Plaint :-

a) It has been stated that the suit property at old Door No.43, New No.57, Alamelumangapuram Street, Mylapore, Chennai – 600 004 originally

belonged to Mrs.S.Venkatalakshmi Ammal. She acquired the same by a gift of settlement from her husband S.Narayanan on 22.02.1956 registered as document No.233 of 1956 at Sub Registrar Office, Mylapore. The suit property is a residential house measuring three grounds and 1776/- sq. ft. The first and second defendants are residing in the suit property. A portion has been let out. The defendants 1,2 and 6 are proceeding with construction in the property.

b) It has been stated that to meet their children education, family expenses, business debts, the husband of the first defendant by name Sethuraman and his mother, Venkatalakshmi Ammal and defendants 3, 4 and 5 approached the plaintiff to sell the property for consideration of Rs.6,50,000/-. An agreement of sale was entered into between S.Venkatalakshmi Ammal and the plaintiff and registered as document 766 of 1987 at Sub Registrar Office, Madras Central. The Power of Attorney was executed by S.Venkatalakshmi Ammal on 21.09.1987 and registered as document No.214 of 1987 at Sub Registrar Office, Mylapore. The agent was Goutham Chand, brother of the plaintiff. It had been stated that the relevant clauses to deal with the property had been given.

c) It had been further stated that on 21.09.1987 a sum of Rs.50,000/- had been received by S.Venkatalakshmi Ammal by cheque and the balance amount was agreed to be paid on or before 28.02.1988. The permission of the appropriate authority under Section 230 [A] [1] of the Income Tax Act was necessary and consequently a joint application was made in Form No.34-A and no objection certificate was received. A draft sale deed was also forwarded to the Income Tax department and approved. Subsequent to the agreement of sale, the plaintiff paid Rs.4,00,000/- on 22.05.1988, duly acknowledged by defendants 3,4 and 5, a sum of Rs.70,500/- on 26.03.1992, duly acknowledged by defendants 3, 4 and 5 and another sum of Rs.50,000/- on 20.03.1999 to the learned Senior Counsel on behalf of defendants 3,4 and 5. It had been stated that a sum of Rs.5,70,500/- had been paid and the balance payable is Rs.79,500/-. It had been further stated that the said Venkatalakshmi Ammal executed 3 wills, viz. one dated 14.09.1984, bequeathing the property to the first son of her pre-deceased son Sethuraman, another on 24.06.1987, bequeathing the property to her children and yet another on 07.09.1987, bequeathing the property to defendants 3, 4 and 5. All the wills were the subject matter in probate proceedings in T.O.S.No.27 of 1988 and T.O.S.No.27 of 1991 it was held that the Will dated 14.09.1984 was alone genuine. The defendants 3, 4 and 5 filed O.S.A. Nos.7 and 8 of 1999. However, a

compromise decree was passed on 25.06.2004. The terms of compromise were finally complied only on 17.09.2005. It had been stated that after completion of the suit proceedings, the plaintiff approached the defendants to sell the property of Rs.79,500/- together with interest at the rate of 18% p.a. It had been stated that since there was legal proceedings in the probate of the Will, the plaintiff could not seek specific performance on an earlier date. It had been stated that the defendants are trying to hand over the property to the 6th defendant, who is said to be a builder. Consequently, the suit had been filed for specific performance and in the alternative for compensation and for injunction and costs.

3. Written statement filed by 1st and 2nd defendants :

a) These defendants stated they were not parties to the agreement dated 21.09.1987 and they did not receive any amount from the plaintiff. The plaintiff did not file any document to show payments of amounts to Defendants 3, 4 and 5. The suit has been filed nearly 22 years, after the agreement of sale dated 21.09.1987. It had been stated that the plaintiff was examined as PW3 in T.O.S.No.27 of 1988 and T.O.S.No.27 of 1991 his evidence and the plaint averments are contradictory. It had been stated that the first defendant is the daughter in law and the second

defendant is the grand son of Venkatalakshmi Ammal. It had been sated that these defendants and Sethuraman, husband of the first defendant did not obtain any loan from the plaintiff. The execution of the agreement has been denied. The payment of advance has been denied. It had been stated that Venkatalakshmi Ammal died on 07.04.1988 and the plaintiff did not perform his obligations of performance of the agreement during her life time. It had been stated that in the Judgment in T.O.S.No.27 of 1988 and T.O.S.No.27 of 1991, this Court had stated that the plaintiff, who was examined as PW3 was a most untrustworthy person. In the appeal, a compromise decree was passed. It had been stated that the plaintiff was fully aware of the judgment and decree in the probate and O.S.A. Proceedings. It had been stated that the plaint is barred by the law of limitation. It had been stated that the plaintiff wanted to make unjust enrichment by claim of Rs.87,00,000/- as interest for the alleged principal amount of Rs.5,70,500/-. It had been stated that the 6th defendant had completed the construction of the flats in December 2006, nearly three years before the filing of the suit and the defendants 7, 8, 9 and 10 are in occupation as owners. It had been stated the suit should be dismissed.

4. Written statement filed by 4th and 5th defendants:

It had been stated that the allegations in the plaint are baseless. It had been stated that O.S.A.Nos.7 and 8 of 1999 had ended in a compromise and the first and second defendants paid money to these defendants and consequently the suit against these defendants is not maintainable. It had been stated that the agreement of sale is dated 21.09.1987 and there is a delay in filing the suit. It had been further stated that 3rd parties have purchased the flats and consequently the cause of action does not survive. It was prayed that the suit should be dismissed.

5. Written statement of the 6th defendant :

This defendant stated that the first and second defendants are the absolute owners of this suit property according to the compromise decree in O.S.A.No.7 and 8 of 1999. This defendant was a Promoter and developed the property and completed construction on 31.03.2006. The defendant stated that he is an unnecessary party to the suit.

6. Written statement filed by 11th and 12th defendants :

These defendants stated that they are the legal representatives of the deceased third defendant. It had been stated that the third defendant did not have any right in the property subsequent to the judgment in O.S.A. Nos.7 and 8 of 1999. It had been stated that the suit is barred by the law of limitation. It had been further stated that third parties have purchased the suit property and consequently the suit should be dismissed as against these defendants.

On 25.03.2011, the defendants 7, 8, 9 and 10 were set ex-parte

7. This Court had framed the following issues :-

1. Whether the plaintiff is entitled for specific performance based on the sale agreement dated 21.09.1987 against the defendants 1 to 6 and execute sale deed in favour of the plaintiff for the schedule mentioned property, after receipt of the balance sale consideration of Rs.4,22,500/-? Or otherwise the plaintiff is entitled to get a sum of Rs.1,20,70,500/- as compensation together with interest at the rate of 18% per annum from the date of the plaint till the date of realisation?

2. Whether the proceedings subsequent to entering of sale agreement dated 21.09.1987 will save the limitation to the plaintiff, who instituted the suit against the defendants?

3. Whether the subsequent buyers will get titled in view of pending litigation and whether they are bonafide buyers of the property?

4. Whether subsequent sale deeds executed in favour of the defendants 6 to 10 are valid or not?

5. Whether the plaintiff is entitled for permanent injunction restraining the defendants in dealing with the schedule mentioned property by way of sale or by any mode of conveyance?

6. To what relief the plaintiff is entitled to?

The following additional issues were framed :-

1. Whether the defendants 4, 5, 11 and 12 are the necessary parties?

2. Whether the suit is bad for mis-joinder of parties?

8. Trial

The plaintiff examined himself as PW1 and marked Exhibits P1 to P17.

Among the documents marked by the plaintiff are Ex.P1, which is the original gift deed by S.Narayanan dated 22.02.1956; Ex. P2, the original sale agreement dated 21.09.1987; Ex.P3, the Original General Power of Attorney dated 21.09.1987; Ex.P4, the draft sale deed by S.Venkatalakshmi Ammal; Ex.P5, the original declaration given by Venkatalakshmi Ammal dated 02.12.1987; Ex.P6, No Objection Certificate issued by the Income Tax department dated 16.12.1987 and Ex.P7, the certified copy of the compromise decree in O.S.A.Nos.7 and 8 of 1999, dated 25.06.2004; Ex.P8, the office copy of the legal notice dated 19.12.2005 and Ex.P11, the office copy of legal notice dated 17.07.2006; Ex.P13 the original sale receipt for Rs.4,00,000/-, dated 22.05.1988, Ex.P14 the original letter of acknowledgment dated 31.08.1988; Ex.P15 the Original Confirmation letter dated 13.02.1989; Ex.P16 the original sale receipt for Rs.70,500/- dated 26.03.1992 and Ex.P17 Original Sale consideration receipt for Rs.50,000/- dated 20.03.1999. The defendants marked Ex.D1 during cross examination of PW1, which is the certified copy of deposition of the plaintiff in TOS No.27 of 1988, TOS No.27 of 1991, dated 15.09.1994.

9. Issue No.1

a) The suit has been filed seeking specific performance of the agreement of sale dated 21.09.1987. The suit had been presented on 16.09.2008. The agreement of sale has been filed as Ex.P2. The plaintiff in his Chief examination stated that the family of the defendants are well known to him for a long time and to avail loan facility for their necessities to meet children education, family expenses, business debts, etc., the husband of the first defendant Sethuraman along with his mother S.Venkatalakshmi Ammal and 3rd, 4th and 5th defendants approached him to purchase the suit property. He had further stated that the total consideration was fixed at Rs.6,50,000/-. In Ex.P2, the reasons for the sale as stated by PW1, in his evidence in examination in chief, were not given. On the other hand, it had been stated in Ex.P-2 as follows :-

“Whereas the purchaser carrying in business under the name and style of Shanthi Builders, with a view to develop the said property into multi-storeyed residential flats, so as to provide for them co-ownership flats, approached the vendor through her son and offered to purchase the same and the parties here to desired to have the deliberations reduced to writing.

b) The specific stand of the plaintiff before this Court in his plaint

giving the reason for the agreement of sale to be entered by S.Venkatalakshmi Ammal and reiterated in the proof affidavit that the family of the defendants had necessities including education expenses of the children, family expenses, business debts etc., were not mentioned in Ex.P2. It had been further mentioned in the plaint and by PW1 in his Chief examination that the husband of the first defendant late Sethuraman and his mother of S.Venkatalakshmi Ammal and his other brothers and sisters namely 3,4,5 defendants jointly approached the plaintiff and asked him to purchase the property since they were in financial difficulties, as mentioned above. The contradictions between the pleadings, the evidence and the documentary evidence as given in Ex.P2 are reflected at the earliest stage of analysis of the case itself. It is also seen from a perusal of Ex.P2, the agreement of sale that it had been entered into between S.Venkatalakshmi Ammal wife of S.Narayanan and the plaintiff herein. The defendants particularly, the 1st and 2nd defendants have challenged the agreement of sale. They have specifically stated that the consideration as mentioned in the agreement of sale had not passed. The agreement of sale had been witnessed by two persons namely A.Sekar, 11, Rosary Church Road, Madras – 4 and V.S. Rajagopal, 98/4, Bazar Road, Mylapore. The plaintiff did not examine both the witness. It is also seen that the agreement of sale was prepared by J. Naresh Kumar, an Advocate at 11, Rosary Church

Road, Santhome, Chennai, who was also not examined as a witness. There is also no record to show that the plaintiff had issued summons to the said witnesses to be examined on his behalf. The non-examination of these witness is crucial since, even the reasons for which the agreement of sale was entered are shrouded with doubts as contradictory reasons are given in the pleadings, oral and documentary evidence. During cross examination by the learned counsel for the Defendants 1 and 2, PW1, the plaintiff admitted

“even according to me no payment had been made to first and second defendants”.

c) It is the specific stand of the plaintiff that after the death of Venkatalakshmi Ammal, three wills, surfaced and the three wills were the subject matter of the dispute in T.O.S.No.27 of 1988 and T.O.S.No.27 of 1991, before this Court. The evidence of PW1 in the said probate proceedings has been filed as Ex.D1 during his cross examination. In the said evidence, he gave the following reasons for the agreement of sale, Ex.P2 :-

“I am a real estate owner and land promoter. I know the building 57, Alamelumangapuram. Mrs.Venkatalakshmi Ammal was the owner of that building. I came to know her in July 1987. I came to know her through one Mr.P.P.Narayanan. Mr.P.P.Narayanan was a

family friend of my brother and he came to us and informed that this property is for sale and as we are in the business of land promotion.

d) Even in this evidence he has not stated that late Venkatalakshmi Ammal and her sons wanted to sell the property to meet educational expenses, family expenses, business debts. It is seen that the plaintiff has come forward with contradictory versions with respect to the execution of Ex.P2 in his examination in Chief in the probate proceedings which was on 15.09.1994. In Ex.D1, he further stated as follows in Chief Examination :-

“Apart from the advance of Rs.50,000/- no other amount has been paid till date”.

e) However, in the present case, a contradictory stand has been taken, completely contradictory to his statement on oath in evidence in T.O.S.No.27 of 1988 and T.O.S.No.27 of 1991, that from the date of agreement, namely 21.09.1987 till his examination on 15.09.1994, no further amount has been paid. In his additional proof affidavit in the present case, the plaintiff produced Exs.P13, P15 and P16 which are the original sale receipt. It is seen that all the above receipts had been presented before this Court as having been paid towards the agreement of sale, Ex.P2, which was

dated 21.08.1987. On the other hand in his evidence on oath evidence, dated 15.09.1994 in T.O.S.No.27 of 1988 and T.O.S.No.27 of 1991, the plaintiff stated that he had not paid any amount till the date of his examination namely 15.09.1994 towards the sale consideration. It is thus crystal clear that the plaintiff has not come to Court with truth as his asset.

f) It is further seen that the plaintiff has not come forward to also give clear and precise reasons for entering into the agreement of sale and had also given contradictory statements with respect to the advance amounts paid by him. There are two contradictory versions available on record. The first one is Ex.D1, dated 15.09.1994, which is the examination in Chief of the plaintiff in T.O.S.No.27 of 1988 and T.O.S.No.27 of 1999, wherein he has stated that he has not paid any further advance amount between the date of the agreement and 15.09.1994. The second one is in the additional proof affidavit filed in Court, dated 02.01.2014, wherein he has stated that through Ex.P13, dated 22.05.1988, Ex.P14, dated 31.08.1988, Ex.P.15, dated 13.02.1989 and Ex.P16, dated 26.03.1992, he had made further payments till 15.09.1994. It is obvious that only one statement can be true. In this regard, during his cross examination in the present case, he had admitted during the cross examination on behalf of D4, D5 and D11 and D12 as follows :-

“It is correct to state that in Ex.P13 below the second signature the description is made as Group Captain and whereas Ex.P14, the Group Captain is not mentioned. It is correct to state that in Ex.P13, below the third signature it is signed as N.Rajalakshmi, whereas in Ex.P14, the third signature is signed as Rajalakshmi Gopalakrishnan.”

“It is correct to state that in Ex.P15 also, the word Group Captain is mentioned and third signature is signed as N.Rajalakshmi which is similar to Ex.P13 and in first page of Ex.P15, one signature is erased.”

“ In Ex.P17 below the signature of Neelakandan the word Group Captain is missing. Rajalakshmi signed as N.Rajalakshmi”.

g) It is thus seen that PW1 himself has admitted that in Ex.P13, P14, P15, and also in P17, there are differences in signatures and nomenclatures.

h) All these admission lead to a very strong suspicion in the mind of this Court with respect to the reliability of the agreement of sale Ex.P2.

i) Even if the case of plaintiff is to be accepted, it is seen that Ex.P16, which is the original sale receipt for Rs.70,500/- is dated 26.03.1992 and Ex.P17, which is the original sale consideration receipt for Rs.50,000/- is dated 20.03.1999. There is a gap of nearly seven years. Even on that ground, the plaintiff has to be non suited on the ground of bar under limitation. After Ex.P17, which is dated 20.03.1999, the suit, as stated above has been filed only in 2008. The reason given by PW1 is that probate proceedings and original side appeals were pending with respect to the title of the property. I reject this explanation. The agreement was entered into by the plaintiff with Venkatalakshmi Ammal. Insofar as the plaintiff is concerned all her legal heirs are the persons, who would be bound by the agreement of sale. The devolvement of the property by a Will only narrows down the list of legal heirs. That is an issue among the legal heirs. Insofar as the plaintiff is concerned, if he seeks to press for performance of an agreement, he should have proceeded against all the legal heirs. He cannot take advantage of proceedings in which he was not a party. I hold the suit is hopelessly barred by law of limitation.

j) The learned counsel for the plaintiff relied on a judgment reported in 2015 (5) SCC 518 wherein, it is stated that in a suit for recovery

of money, only when the amount is ascertained, the period of limitation begins.

k) Here the suit is not based on claim of money. It is based on an agreement of sale. The plaintiff should seek performance within the period of limitation and if the agreement holder had died, he must proceed against all the legal heirs. It is for them to contest or admit to the agreement. The plaintiff cannot hide behind a legally unacceptable reason to escape bar under the law of limitation.

l) It is also on record that the 6th defendant developer had completed the constructions as early as 30.03.2006. He had put up flats in the said building. However, in the schedule to the plaint, the plaintiff had not disclosed this fact. He had given the schedule as follows :

All the piece and parcel of ground and premises, Old No.43,
New No.57, Alamelumangapuram Street, Mylapore, Chennai –
600 004, situate within the Registration Sub-District of Mylapore
and having the following boundaries :

*North by : Plot No.10 in Door No.56,
Alamelumangapuram Street,*

*South by : Plot No.9, Door No.58,
Alamelumangapuram Street,*

East by : R.S.No.3550 and

West by : Road.

*Comprised in R.S.No.3554/7 measuring 3 grounds and
1776 sq. ft., or thereabouts will all structures, fittings,
motor pumpsets and trees, etc.*

m) He had not disclosed that the 6th defendant had actually constructed flats and purchasers were actually in possession. The schedule given in the plaint was not the description of the property at the time of filing suit. On this ground also the suit has to fail. In the result, I hold the first issue against the plaintiff. With respect to the alternative prayer of compensation, the plaintiff has based his case on Ex.P13, 14, 15, 16 & 17. These receipts are rejected on the basis of the evidence of the plaintiff himself. He has also admitted that the signatures differs in each of the receipts. I hold that even with respect to the alternative prayer the suit has to fail, I therefore hold issue No.1 against the plaintiff.

10. Issue No.2

a) This relates to judicial proceedings, subsequent to the

agreement of sale. These proceedings were among the legal heirs of late S.Venkatalakshmi Ammal. The plaintiff should have filed the suit to enforce the agreement against all the legal heirs. He should have filed the case within three years from the date of agreement of sale, Ex.P2 which is dated 21.09.1987

b) The suit had been filed in 2008. The legal processes relating to execution and genuineness of the Wills can never and does not affect the plaintiff's right at all. He should have filed this suit within three years from the date of agreement. He has failed to do. I, hold the suit is barred by law of limitation as against the plaintiff. The pendency of judicial proceedings will not come to the rescue of the plaintiff.

11. Issues No.3 and 4

The subsequent purchasers had purchased flats even prior to the date of the institution of the suit. The plaintiff has not disclosed the correct schedule of the property. They are bonafide purchasers. The plaintiff is only an agreement holder. He has no concluded contract in his name. He has come to Court much after the time prescribed by the law of limitation. Consequently, I hold that the subsequent purchasers will get full

and absolute title and the sale in their names are valid. These issues are answered accordingly.

12. Issue No.5

As seen from the pleadings the suit property had been developed and sold even as early as 2006, much prior to the filing of the suit. Consequently, the plaintiff is not entitled for any injunction against the defendants.

13. Additional Issue No.1

The defendants 4,5, 11 and 12 have no manner right or title over the property. In the compromise decree, their title had passed on to defendants 1 and 2, on receipt of the amounts mentioned in the compromise decree. Consequently, they are not necessary parties to the suit and I, hold defendants 4,5, 11 and 12 are not necessary parties. The plaintiff should have instituted the suit against all the legal heirs of Venkatalakshmi Ammal within three years from the date of agreement including all the legal heirs

after the probate proceedings, knowing that defendants 4,5, 11 and 12 have

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no right over the property, leads to an inference of indirect coercion on the part of the plaintiff. This issue is answered accordingly.

14. In the result, I hold that the suit is hopelessly barred by the law of limitation and consequently, the suit is dismissed. The parties to bear their respective costs.

24.02.2017

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Judgment in
C.S.No.194 of 2009

24.02.2017

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