

IN THE HIGH COURT OF JUDICATURE AT MADRASDATED : **23.04.2018**

CORAM

THE HON'BLE MR.JUSTICE **P.KALAIYARASAN****C.S.No.1059 of 1990**

Tamil Nadu Central Excise and Customs Employees
Cooperative House Building Society Ltd.,
121, Nungambakkam High Road,
Madras 600 034.
Rep. by its Special Officer

.. Plaintiff

Vs

Sri Rajendran

.. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC, 1908 CPC, seeking for a judgment and decree against the defendant :

(a) directing the defendant to specifically perform the Agreement dated 25.11.1987 and subsequent Memo of Compromise dated 16.12.1997 and do all acts necessary to put the plaintiff in full possession of the property by execution of the sale deed.

(b) in default of compliance of the prayer sought for in (a), direct the execution of the sale deed through Court.

(c) to ward cost of the proceedings.

For Plaintiff : Mr.T.P.Sankaran
for Mr.S.Dhayaleswaran

For Defendant : Mr.V.Manohar

JUDGMENT

This Civil Suit for specific performance has been originally filed seeking direction to the defendant to perform the agreement, dated 29.11.1987 and in default of compliance, seeking direction for execution of the sale deed through Court. During the pendency of the suit, memo of compromise dated 16.02.1997 was filed and therefore the plaint was amended as per the order of this Court and as per the amended plaint, the plaintiff seeks direction to the defendant to perform the agreement, dated 29.11.1987 and subsequent memo of compromise, dated 16.02.1997 and in default of compliance for execution of sale deed through Court.

2. The averments made in the amended plaint are as follows :

(i) The plaintiff's society and the defendant entered into an agreement of sale for sale of land in S.No.233 to the extent of 0.06 acres and S.F.No.234/3 of the extent of 0.58 acres totally an extent of 0.64 acres in Ramavaram village on 25.11.1987 for a consideration of Rs.3,400/- per cent. The plaintiff paid a sum of Rs.1,000/- as advance. The above land is the acquisition notified land.

(ii) The defendant executed power of attorney on 26.11.1987 so as to enable the plaintiff society to represent before the various forums

on behalf of the defendant to get the land denotified from the acquisition. As suggested the defendant also gave consent letter to withdraw the writ petition filed against the Government with respect to acquisition of land. The Government passed order on 03.01.1989 and issued a draft withdrawal from denotifying the land from acquisition with condition that the land is to be given to the plaintiff society. The defendant also agreed to receive the advance and extend the time. The parties never intended the time to be the essence of contract. The plaintiff issued lawyer's notice, dated 12.02.1990 and a belated reply was issued by the defendant on 12.03.1990. Since the defendant is not interested in honoring the agreement, the plaintiff has filed the suit. During the pendency of the suit, the defendant herein and other defendants in another suit in C.S.No.783 of 1991 and the plaintiff decided to settle all the disputes relating to C.S.No.783 of 1991 and this Suit. After mutual discussions and deliberations, the rate of the land and the extent of the land were modified and refixed. A memorandum of compromise, dated 16.02.1997 was entered into by the plaintiff and the defendant.

(iii) The agreed sale price per cent as per the memo of compromise is Rs.12,000/- and the extent of the land agreed to be

sold is 3.37 acres. As far as the lands which were the subject matter of C.S.No.783 of 1991 filed by the plaintiff against M/s. New Rathna Brick Industries and others are concerned, it was originally greed to sell 13.50 acres. However both the plaintiff herein and the defendant therein, viz., New Rathna Brick Industries including Rajendran, the defendant herein agreed to reduce the extent of the land and accordingly the extent of the land to be conveyed was 2.35 acres. The plaintiff agreed for reduction of the extent in respect of the subject matter of the land in C.S.No.783 of 1991 as the defendant herein agreed to increase the extent of the land which is the subject matter of this suit and convey the same.

(iv) As per the memo of compromise dated 16.02.1997 in this suit, the defendant herein agreed to sell the increased extent of land, i.e., 3.37 acres as owner and certain lands as power of attorney of partners of M/s. New Rathna Brick Industries as mentioned in the compromise memo instead of the suit land measuring 0.64 acres. The memo of compromise was filed before the VIII Assistant City Civil Court where the suit was pending at that time. When the compromise was to be recorded, the defendant and his brothers took time and made a claim for more money. However, the compromise memo filed before this Court in C.S.No.783 of 1991 in respect of 2.33 acres was recorded

and compromise decree was passed by this Court.

(v) Since the defendant did not act according to the memo of compromise in this suit, the plaintiff was compelled to take out application for amendment in I.A.No.20111 of 2001 to include the other lands, which are agreed to be sold to the plaintiff by the defendant as per the memo of compromise dated 16.02.1997. The said amendment application was allowed on 08.02.2002 by the VIII Assistant City Civil Court. Acting on the memo of compromise, the defendant on 16.02.1997 received Rs.15 lakhs on 16.02.1997 and Rs.5 lakhs on 25.02.1997. The balance amount has to be paid at the time of registration of the sale deed by the plaintiff. The defendant refused to receive the balance sale consideration and execute the sale deed. The plaintiff took pay order for Rs.20,44,000/- and sent the same through post. However, the said cover was returned undelivered. The plaintiffs have already been ready and willing to perform the sale agreement and only the defendant failed and neglected to act. The plaintiff is entitled to the discretionary relief of the specific performance as per the agreement as prayed for.

3. The averments made in the written statement and additional written statement of the defendant are as follows :

(i) The suit of the plaintiff for specific performance of an agreement, dated 29.11.1987 is false, fraudulent and wholly unsustainable in law. The defendant, his father late A.S.A.Rathnasamy Nadar and his two brothers R.Arumainayagam and R.Balachandran are partners of a partnership firm, M/s. New Rathina Brick Industries. The suit firm acquired immovable properties in Ramapuram village. Some of the properties of the partnership firm were notified by the Land Acquisition Act by the Government and the acquisition also is challenged in the High Court.

(ii) The agreement itself is vitiated for want of intention of the parties as to its enforceability in the Court of law. M/s. New Rathina Brick Industries is a partnership firm consisting of 4 partners of which the defendant is one. The agreement was not executed with any authority express or implied of the non-executing partners. As per Clause 1(b) of the agreement, the Vendee shall pay an advance calculated at the rate of 20% of the total consideration on or before 15.01.1988 and if they fail to pay this amount within the period, this agreement shall stand cancelled. This entitles the automatic cancellation of the agreement.

(iii) On promulgation of the notification under Section 6 of the Land Acquisition Act, the property vests with the Government. Hence on 25.11.1987, the defendant had no title to transact. The writ proceedings are still pending and not withdrawn as alleged by the plaintiff. The defendant's amount was duly returned un-encashed to the plaintiff. The defendant admits the execution of the agreement to the sale, dated 25.11.1987 and the power of attorney dated 26.11.1987.

(iv) The plaint has been amended only with a view to give fresh lease of life to the claim which has already been barred by limitation. The cause of action, extent of the property and the value of the property differ. The plaintiff should value the compromise dated 16.02.1997 and pay Court fee separately. The properties covered in the compromise dated 16.02.1997 which owned by M/s. New Rathna Bricks Industries, partnership firm consists of 4 partners. The partnership firm purchased 9.86 cents of land at Ramapuram village in 1978 and 1979 under different sale deeds. The agreement of sale was entered into with the plaintiff by the defendant and Grace Mary for the lands belonging to the partnership firm, Rajendran and Grace Mary. The IRS Officers of the society compelled the defendant to sign the

second compromise with a hope that they can get consent and permission from other partners. The other partners clearly refused to ratify the second compromise memo. Therefore the suit is to be dismissed.

4. After hearing both sides, issues already framed in this suit were recasted and the recasted issues are as follows :

"1. Whether the plaintiff is entitled to a decree of specific performance of a Memorandum of Compromise dated 16.02.1997 which has substituted the original agreement for sale dated 25.11.1987 ?

2. Whether the plaintiff was and is ready and willing to perform all its obligations under the Memorandum of Compromise dated 16.02.1997 which has substituted the original agreement for sale dated 25.11.1987 ?

3. Whether the plaintiff has discharged all its obligations under the Memorandum of Compromise dated 16.20.1997 which has substituted the original agreement for sale dated 25.11.1987 ?

4. Whether the entire property which is subject matter of the Memorandum of Compromise dated 16.02.1997 which has substituted the

original agreement for sale dated 25.11.1987

are properties of a partnership firm ?

5. Whether the suit is barred by limitation ?

6. To what other relief are the parties entitled to ?

7. Who is entitled to costs of the suit ?"

5. The Special Officer of the plaintiff society was examined as P.W.1 and Ex.P.1 to Ex.P.43 were marked. The defendant himself was examined as D.W.1 and Ex.D.1 to Ex.D.34 were marked.

6. **Issue No.4 :**

There is no dispute as to the execution of the original agreement for sale dated 25.11.1987 and the execution of the memo of compromise dated 16.02.1997 during the pendency of the suit. Though the suit has been originally filed for specific performance with respect to 64 cents of land, the plaint was amended as per the order of this Court seeking direction to the defendant to perform as per the memorandum of compromise dated 16.02.1997 and the suit property has also been amended pursuant to the compromise memo.

7. The real crux of the case is whether the defendant is to be directed to perform his part as per the memo of compromise dated 16.02.1997 and the same is to be discussed later in other issues.

8. The main contention of the defendant is that the properties were purchased for the partnership firm by name M/s. Rathna Brick Industries having 4 partners and in the original agreement, dated 25.11.1987 and also in the memo of compromise dated 16.02.1997, the defendant alone signed and the same will not bind other partners. Having given up the property in the original agreement, other properties mentioned in the memo of compromise dated 16.02.1997 have been agreed to be sold. Therefore it is to be analysed whether the properties mentioned in the memo of compromise dated 16.02.1997 belong to the defendant or to the partnership firm. Ex.P.39 to Ex.P.41 are the relevant sale deeds for the properties mentioned in the memo of compromise. On perusal of these documents, only Item No.2 in the memo of compromise, viz., S.No.212 was purchased by the defendant as Managing partner of the partnership firm as per Ex.P.40. Except the above property, other properties have been purchased in the name of the defendant in his individual capacity under Ex.P.39 and Ex.P.41. Therefore excepting S.No.212, measuring 1 acre, the other properties mentioned in the memo of compromise, dated 16.02.1997 belong to the defendant and he has got authority to execute the sale deed as per memo of compromise. This Court answers the issue accordingly.

9. Issue Nos.2 and 3 :

The relevant case under the Memorandum of Compromise, dated 16.02.1997 are extracted as below :

"1. That the defendant agree to sell the lands comprised in Survey Number and the extent set out against them.

S.No.	Survey Number	Extent
1.	215/1	1.02
2.	212	1.00
3.	234/2	1.08
4.	234/3	0.22
5.	234/4	0.05
		3.37

2. That the remaining lands which are the subject matter of the agreement dated 25.11.1987 are not enforceable and the plaintiff give up their claim pursuant to the said agreements in respect of those properties by the virtue of this compromise.

3. That the price for one acre of land is 12 lakhs. The amounts shall be paid by the plaintiffs society as indicated hereunder :

Date	Amount
16.02.1997	Rs.15,00,000/-
25.02.1997	Rs.5,00,000/-

The balance of amounts shall be paid at the time of execution of the sale deed by the plaintiff and time is the essence of the Compromise.

4. That the plaintiff should pay the balance amount within 30.04.1997 and the defendants shall execute the sale deed on payment of the money.

5. That the properties which is the subject matter of the purchase is shown Green in color and the plan is appended to the memo of compromise."

10. The defendant examined as D.W.1 in his cross-examination dated 18.07.2012, admits that he received the schedule of payment as stipulated under Ex.P.37, the memo of compromise. Even the balance amount was sent by the plaintiff by obtaining the pay order. But the cover has been returned which has been marked as Ex.P.43. Therefore the plaintiff has discharged all its obligations under the memorandum of compromise, dated 16.02.1997. The plaintiff filed the memo of compromise into the Court and only the defendant took time. The defendant though received the amount as stipulated in the memo of

compromise and acted upon, he has not come forward to record the compromise. This led the defendant to file amendment petition and proceeded with the suit. Therefore, this Court holds that the plaintiff has performed all its obligations and discharged all its obligations under the memorandum of compromise, dated 16.02.1997. These two issues are answered in favour of the plaintiff.

11. Issue Nos. 1 and 5 :

This suit has been filed for specific performance on the basis of the original agreement, dated 25.11.1987. Another suit in C.S.No.783 of 1991 was also pending between the plaintiff and M/s. Rathna Brick Industries, a partnership firm wherein the defendant herein is one of the partners. To settle the disputes between the parties, after elaborate discussion, two memos of compromise was entered into on 16.02.1997, one between the plaintiff society and the partners of M/s. Rathna Brick Industries in C.S.No.783 of 1991 and another between the plaintiff and the defendant herein for this suit. The copy of the memo of compromise filed in C.S.No.783 of 1991 and the compromise decree passed thereon have been marked as Ex.D.10 and Ex.P.27. The meemo of compromise pertaining to this suit is marked as Ex.P.37. From cursory perusal of the above documents, it is

clear that the parties after deliberation came for a compromise and entered into two memorandum of compromise not only enhancing the rate but also reducing the extent of the land.

12. The land originally mentioned in agreement, dated 25.11.1987 has been given up and the land mentioned in the memorandum of compromise dated 16.02.1997, Ex.P.37 was agreed to be sold to the plaintiff by the defendant. The memo of compromise is admittedly executed between the plaintiff and the defendant herein. The memorandum of compromise has also been acted upon by receiving the amount from the plaintiff. Order 23 Rule 3 of CPC, 1908 deals with compromise of suit. The requirement under the amended rule is that the compromise should be in writing and signed by the parties and it relates to the parties to the suit, whether or not the subject matter of the compromise is the same as the subject matter of the suit. This Court holds that the memorandum of compromise is genuine and lawful and has also been acted upon. Therefore having accepted the terms and executed the memo of compromise, the plaintiff cannot take a plea of limitation.

13. As already discussed in Issue No.4, except Item No.2, namely S.No.212, measuring 1 acre in Ramapuram village, other plaint schedule properties belong to the defendant and the plaintiff is entitled to a decree of specific performance of memorandum of compromise dated 16.02.1997 with respect to all properties excepting the above mentioned Item No.2 of the plaint schedule property. These issues are answered accordingly.

14. Issue Nos.6 and 7 :

For the aforesaid reasons, this Suit is partly decreed with respect to the plaint schedule properties, excepting Item No.2, viz., S.No.212 as prayed for. The plaintiff is entitled to the costs of the suit.

In the result, this Civil Suit is partly decreed as prayed for with costs in respect of the plaint schedule properties, excepting Item No.2, viz., S.No.212. With respect to Item No.2, the suit is dismissed.

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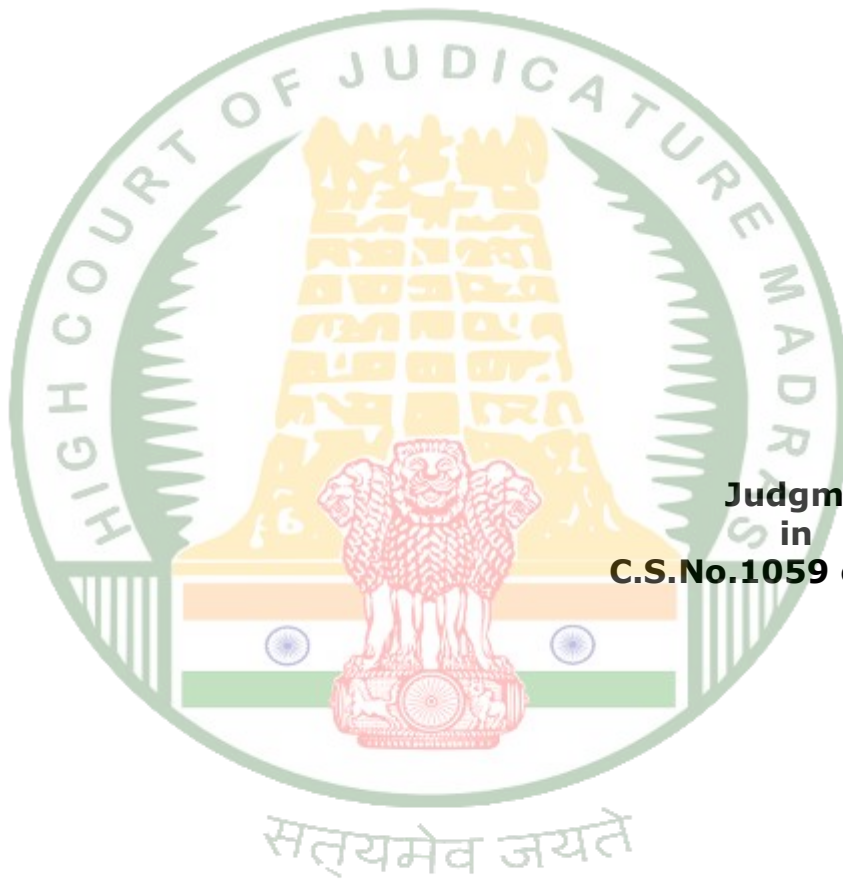
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P.KALAIYARASAN, J

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**Judgment
in
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