

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.856 of 2016

1. T.N.Loganathan
2. L.Janakiraman ... Plaintiffs

Vs

1. K.S.Subbulakshmi
2. K.S.Mohanasundari
3. K.S.Sivasankaran
4. K.S.Ananthakrishnan
5. K.S.Sugumaran
6. K.S.Deepa
7. K.S.Sasikala
8. K.S.Hemavathy
9. The Sub-Registrar,
Periamet SRO,
Periamet, Chennai - 600 003. ... Defendants

Plaint filed under Order IV Rule 1 of O.S. Rules r/w
Order VII Rule 1 of CPC, praying for judgment and decree as
follows:

- i) directing the defendants 1 to 5 to specifically perform the agreement of sale dated 09.07.2015 by receiving the balance sale consideration of Rs.62,14,300/- and execute a sale deed in favour of the plaintiffs on a date to be fixed by this Court in respect of the plaint B-Schedule mentioned property and to do all acts, deeds and things as may be necessary to convey 5/7th share in the A-schedule property by delivering possession of the property, bearing Old Door No.30 part, then Door No.25 part, present Door No.71, Jagannathapuram First Street, Chetpet, Chennai - 600 031 by the defendants 1 to 8 to the A-schedule property hereunder;

- ii) Upon the defendants 1 to 5 refusing to execute the sale deed to the residual extent of 5/7th share of A-schedule property, more particularly set out in the B-schedule hereunder, on the date to be fixed by this Court and direct the Officer of this Court to execute the sale deed in favour of the plaintiffs and complete the registration formalities;
- iii) for permanent injunction restraining the defendants 1 to 5 from in any manner alienating and encumbering their undivided 5/7th share to any third party, excepting the plaintiffs as set out in the B-schedule property;
- iv) for payment of Rs.48,000/- towards mesne property at Rs.2000/- p.m. payable by defendants 1 to 5 to plaintiffs for 2 years, prior to the filing of the suit upto the date of plaint and future mesne profits upto realization as fixed by this Court;
- v) for cost of the suit;

For Plaintiff : M/s.R.Thanjan
 For Defendants : No Appearance. Set exparte on 21.06.218.

JUDGMENT

The plaintiffs have come forward with the suit for specific performance of the agreement dated 09.07.2015 and for the consequential permanent injunction and costs.

2. The plaintiffs would state that the house property bearing new Door No.71 (Old Door No.25 and then 35 part), Jagannathapuram First Street, Chetpet, Chennai - 600 031, morefully, described as A-schedule property, was originally belonged to K.S.Solai. He was in possession and

enjoyment of the property as absolute owner. He died intestate on 31.01.1993 leaving behind the defendants 1 to 8 as his legal heirs.

3. The further case of the plaintiffs is that on 09.07.2015, the defendants 1 to 8 have entered into an agreement of sale to sell the said property for a total sale consideration of Rs.1,02,00,000/- and received a part of sale consideration of Rs.15,00,000/- on the date of agreement. The agreement stipulates 90 days for completion of the sale.

4. According to the plaintiffs, they are always ready and willing to perform their part of contract and on the request of the defendants 1 to 5, 7 and 8, time was extended till 23.09.2015 and thereafter, they refused to come forward to execute the sale deed. Hence, the plaintiffs issued legal notice on 19.09.2015, for which, evasive reply was given on 23.09.2015 by the defendants 3 and 5. Subsequently, the seventh defendant executed a sale deed in favour of the plaintiffs on 05.10.2015 in respect of her 1/7th undivided share, likewise the eight defendant executed a sale deed on 13.11.2015. Since the defendants 1 to 5 did not respond, the present suit.

5. The learned counsel for the plaintiffs would state that the plaintiffs filed an application in A.No.5898 of 2016 seeking permission to deposit the balance sale consideration into the Court and the application was allowed and the balance sale consideration of Rs.62,14,286/- was deposited on 19.04.2018.

6. There was no representation for the defendants and written statement has also not been filed. Hence, the defendants called absent and set ex-parte on 21.06.2018.

7. Since the defendants failed to file written statement, the second plaintiff examined himself PW1 and he marked the Exhibits P1 to P29.

8. The evidence of PW1 and the documents produced by the plaintiffs show that there was an agreement of sale between the plaintiffs and the defendants, dated 09.07.2015 and the plaintiffs have proved the execution of the sale and also their readiness and willingness to perform their part of contract. This Court is of the considered opinion that the plaintiffs have proved their case and they are entitled for the decree. The suit is decreed as prayed for. The defendants 1 to 5 shall execute the sale deed in favour of the plaintiffs after receiving the balance sale consideration, within a period of four months, failing

which, the Officer of the Court shall execute the sale deed in favour of the plaintiffs. No costs.

Sd/-M.K.K.S.J

09/11/2018

//Certified to be true copy//

Dated at Madras this the day of 2019.
JJ 25/06/2019

COURT OFFICER(O.S.)

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