

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.04.2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Suit No.991 of 2010

A.S.Marison

... Plaintiff

-Versus-

1.T.Beena Thomas

2.Thomas Gerald

3.V.Nagarajan

4.Mrs.P.Rathinam

... Defendants

Suit filed under Order IV, Rule 1 of the Madras High Court [Original Side] Rules, 1956 r/w Order VII Rule 1 of the Code of Civil Procedure, 1908 praying to pass a decree directing the 1st defendant to receive the balance sale consideration of Rs.1,00,000/- and to execute and register a sale deed in respect of the suit property in favour of the plaintiff on or before a date to be fixed by this court; in default, direct an Officer of this court to execute and register a sale deed in favour of the plaintiff; for permanent injunction restraining the defendants from alienating, encumbering or dealing with the suit schedule property in any manner whatsoever; and for costs.

For Plaintiff : Mr.K.Bhawatharini

For Defendants : No Appearance

JUDGEMENT

Suit for specific performance of agreement of sale dated 29.10.2009; permanent injunction and for costs.

2. The case of the plaintiff is that the 1st defendant is the absolute owner of the suit property. The 2nd defendant is the husband of the 1st defendant. The defendants 1 and 2 offered to sell the property to the plaintiff for a total sale consideration of Rs.26,00,000/- and the plaintiff accepted the offer. Therefore, an agreement was entered into on 29.10.2009 between the plaintiff and the defendants 1 and 2 for the sale of the property for a total sale consideration of Rs.26,00,000/- and on the date of agreement itself a sum of Rs.24,00,000/- was paid as advance to the defendants 1 and 2 by the plaintiff. Though plaintiff have always been ready and willing throughout perform his part of contract to get the sale deed executed as per the agreement after making payment of the balance sale consideration, the defendants 1 and 2 had been evading to complete the sale transaction without assigning any reason. While so, on 15.08.2010, the defendants 1 and 2 received another sum of Rs.1,00,000/- towards part sale consideration and made an acknowledgment on the

reverse of the agreement of sale itself and thereby the time for performance of contract was mutually extended by another one year. Thereafter, the defendants 1 and 2 executed a power of attorney deed dated 29.10.2009 in favour of the wife of the plaintiff namely Mrs. Annamma Marison and through the power of attorney deed in respect of the suit property. While so, the 1st defendant executed a power of attorney deed in favour of the 3rd defendant in respect to the suit property and the 3rd defendant in turn as the power agent of the 1st defendant, entered into an agreement of sale with the 4th defendant on 03.06.2010 for selling 462 plots including 171 plots which were agreed to be sold to the plaintiff. In the above circumstances, the present suit has been filed.

3. Though the defendants 1 and 2 were served with suit summons on 12.07.2011 and the 4th defendant was served with suit summons on 22.02.2011, they failed to enter appearance either in person or through a counsel and the Suit as against the 3rd defendant was dismissed on 29.10.2011 for not having taken steps by the plaintiff to serve summons upon the 3rd defendant. Despite service of summons, the defendants 1, 2 and 4 did not file their written statements and therefore, on 31.01.2017 they were set ex parte and therefore, this court decided to proceed with further in this matter.

4. In order to prove his case, the plaintiff examined his wife Mrs. Annamma Marrison as P.W.1 and exhibited Exs.P.1 to P.4. P.W.1 has spoken about the agreement of sale dated 29.10.2009 entered into between her husband and the defendants 1 and 2; payment advance of Rs.24,00,000/- made under the agreement of sale by the plaintiff on the date of agreement itself as part sale consideration to the 1st defendant; the deed of power of attorney executed by the 1st defendant in her favour; the further payment of Rs.1,00,000/- made by the plaintiff on 15.08.2010 and the acknowledgment made by the 1st defendant on the reverse of the agreement of sale; and the subsequent transactions among the defendants. Ex.P.1 is the Deed of Power of Attorney dated 15.02.2010 executed by the plaintiff in favour of P.W.1; Ex.P.2 is the sale deed dated 20.04.2007 in favour of the 1st defendant; Ex.P.3 is the original agreement of sale dated 29.10.2009 between the plaintiff and the 1st defendant and Ex.P.4 is a Xerox copy of the agreement of sale dated 30.06.2016 between the 3rd and 4th defendants.

5. I have heard the argument of the plaintiff side exparte.

6. PW1, the wife and the power of attorney of the plaintiff has deposed on behalf of the plaintiff who reiterated the same facts as stated in the plaint. The documentary evidence as stated above and the evidence

on affidavit adduced in the suit fully supported and corroborated the case of the plaintiff as narrated in the plaint. Therefore, the evidence adduced on behalf of the plaintiff is supported and corroborated by the oral as well as documentary evidence. Therefore, this court is of the view that the plaintiff has established the case in his favour. Accordingly, the suit deserves to be decreed ex parte in its entirety with costs.

7. **In the result**, the civil suit is decreed as prayed for with costs. The plaintiff is directed to deposit the balance sale consideration amount within two months from the date of receipt of a copy of this order and the 1st defendant shall execute the sale deed within a period of two months thereafter.

19.04.2018

kmk

सत्यमेव जयते

WEB COPY

Witnesses Examined on the side of the Plaintiff:

P.W.1 - Mrs.Annamma Marison (wife of the plaintiff)

Witnesses examined and on the side of defendants:-

Nil

Documents marked on the side of the Plaintiff:

- Ex.P.1 15.02.2018 Deed of Power of Attorney dated 15.02.2018 in favour
8 of P.W.1 by the plaintiff
- Ex.P.2 20.04.2007 Sale deed in favour of the 1st defendant
- Ex.P.3 29.10.2009 Agreement of sale between the 1st defendant and the
9 plaintiff
- Ex.P.4 30.06.2016 Copy of Agreement of Sale between the 3rd and the
6 4th defendant.

Documents marked on the side of the defendants:-

Nil

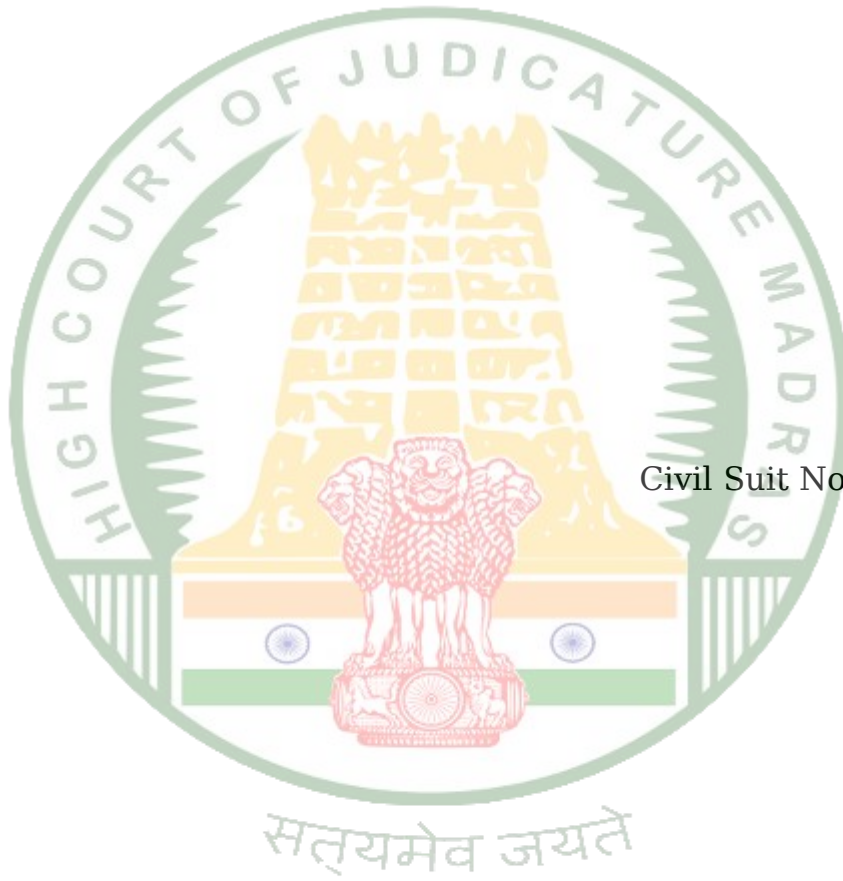
V.B.D.J.

सत्यमेव जयते

WEB COPY

V.BHARATHIDASAN.J.,

kmk



Civil Suit No.991 of 2010

WEB COPY

19.04.2018