

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.09.2012

CORAM

THE HONOURABLE MR. **JUSTICE V.PERIYA KARUPPIAH**

Civil Suit No.1033 of 2007

Mohamed Saleem ... Plaintiff

Vs.

T.S.M.Haja Mohedeen ... Defendant

The suit has been filed under Order VII Rule 1 C.P.C.
read with Order IV Rule 1 of O.S.Rules.

For Plaintiff : Mr.A.R.Suresh

For defendant : No appearance.

J U D G M E N T

The suit has been filed by the plaintiff seeking a direction directing the defendant to execute a sale deed in favour of the plaintiff by conveying half of the undivided share in house and ground premises bearing new door No.42 and 44, Old No.24 and 25, Madley Road, T.Nagar, Chennai - 17 comprised in Pymash No.77/2, R.S.No.158/4, T.S.No.5661 measuring an extent of 2 grounds and 1482 sq.ft (6282 sq.ft) morefully described in the schedule hereunder within

the time to be specified by this Hon'ble Court after receipt of the balance sale consideration of Rs.50,00,000/-, in default of compliance of the said direction by the defendant within the specified time, the Hon'ble Court shall execute the deed of sale by and through an officer of this Hon'ble Court deputed therefor or in the alternative, after depositing the balance sale consideration of Rs.50,00,000/- by the plaintiff on and to direct the defendant to pay the sum of Rs.20,00,000/- to the plaintiff with interest thereon at 18% per annum from 21.08.2004 till the date of realisation.

2. The case of the plaintiff as stated in the plaint would be as follows:

The suit property was originally belonged to the mother of plaintiff and defendant, viz., Mrs.Zairunnisa Begum, who executed a settlement deed dated 20.03.2003 settling the suit property in favour of the plaintiff and the defendant jointly. After the settlement deed, plaintiff and defendant became the owners of each half undivided share in the schedule mentioned property. On 21.08.2004, the defendant entered into a sale agreement with the plaintiff to sell his half undivided share in the schedule mentioned property for a sum of Rs.70,00,000/- (Rupees

seventy lakhs only) and on the same day, the defendant received the sale advance of Rs.20,00,000/- (Rupees twenty lakhs only) by cash from the plaintiff and agreed to receive the balance sale consideration of Rs.50,00,000/- (Rupees fifty lakhs only) within a period of six months from the date of sale agreement and the defendant undertook to execute and register the sale deed in favour of the plaintiff. The plaintiff was always ready and willing to pay the balance sale consideration of Rs.50,00,000/-. But the defendant was always evading endlessly to receive the balance sale consideration and to execute the sale deed in favour of the plaintiff. Hence, the plaintiff issued a lawyer notice on 05.10.2007. But the said legal notice was returned with an endorsement 'refused'. Hence the plaintiff has filed this suit for specific performance.

3.The objections raised by the defendant as stated in the written statement would be as follows:-

(a) The averments made in the plaint with regard to the execution of the settlement deed dated 20.03.2003 and the ownership of the suit property is substantially true. At no point of time, the defendant entered into an agreement with the plaintiff to sell his undivided half

share in the suit property and as such the question of receiving any advance amount does not arise. The defendant is not aware about the notice dated 05.10.2007 alleged to have been sent to him. The defendant did not deliberately refuse any notice addressed to him. The alleged agreement dated 21.08.2004 has been fabricated by the plaintiff. The plaintiff was having custody of all the original title deeds pertaining to all the properties of the family and also taking care of all the agricultural lands of the defendant in Boothamangalam and adjoining villages. For leasing out the agricultural lands and for evicting the tenants / encroachers, the plaintiff used to obtain signatures from the defendant in blank stamp papers and also in plain papers. The defendant has signed several such blank papers believing the plaintiff as he happened to be his younger brother and was taking care of the lands. But taking advantage of the innocence of the defendant and the fact that there was some difference of opinion between the defendant and his wife and children who were staying separately, the plaintiff unfairly misused the blank stamp papers signed by him. The plaintiff also swindled large amounts of money from the bank account of the defendant by forging the signature in the cheque leaves and the defendant is taking separate action against the plaintiff

for swindling funds from his bank accounts.

(b) Talks of partitioning the suit property and other properties were going between the plaintiff and the defendant and a petition was also pending before the local jamath viz., Mohideen Andavar Pallivasal Managing Committee, Boodamangalam. There were exchange of notices between the plaintiff and the defendant and even in the said notices, there was no mention about the alleged sale agreement dated 21.08.2004. On 06.03.2007, a resolution was passed by the Mohideen Andavar Pallivasal Managing Committee, Boodamangalam, about the issues pending among the family with regard to division of properties, wherein a mode of division was suggested about partitioning the suit property between the plaintiff and the defendant. The plaintiff has suppressed all these facts and approached the Court with unclean hands and as such, he is not entitled to any relief at all. Out of love and affection for his sister Mrs.T.S.M.Ansar Begum, the defendant had settled 628 sq.ft undivided share out of his half undivided half share in the suit property by a registered deed of settlement dated 14.02.2008. There is no cause of action for the suit. The suit is liable to be dismissed with exemplary costs.

4.On the above pleadings, the following issues have

been framed for trial:-

1. Whether the suit agreement for sale dated 21.08.2004 is true and valid or whether the same is a fabricated one ?

2. Whether the plaintiff paid a sum of Rs.20,00,000/- as advance on the date of agreement ?

3. Whether the plaintiff was always ready and willing and continues to be ready and willing to perform his part of the obligations under the suit agreement for sale ?

4 Whether the plaintiff is entitled to the relief of specific performance ?

5. Whether the plaintiff is entitled to the alternative relief of refund of advance amount with interest at the rate of 18% p.a from 21.08.2004 ?

6. To what other relief or reliefs, the plaintiff is entitled ?

5. Thereafter, the case was posted before the learned Additional Master No. II. The plaintiff examined himself as P.W.1 and marked Exs.P1 to P4 to substantiate his case as

stated in the plaint. The evidence of plaintiff is completed. But the defendant did not appear through counsel to cross examine PW.1. The learned counsel for the defendant had also reported no instructions before the learned Additional Master. Therefore, the learned Additional Master No.II placed the matter before the Court.

6. Heard, Mr.A.R.Suresh, learned counsel for the plaintiff. No appearance for the defendant.

7. The suit has been filed by the plaintiff for the following relief:

"(a) directing the defendant to execute a sale deed in favour of the plaintiff by conveying half of the undivided share in house and ground premises bearing new door No.42 and 44, Old No.24 and 25, Madley Road, T.Nagar, Chennai - 17 comprised in Pymash No.77/2, R.S.No.158/4, T.S.No.5661 measuring an extent of 2 grounds and 1482 sq.ft (6282 sq.ft) morefully described in the schedule hereunder within the time to be specified by this Hon'ble Court after receipt of the balance sale consideration of Rs.50,00,000/- in default of compliance

of the said direction by the defendant within specified time, the Hon'ble Court shall execute the deed of sale by and through an officer of this Hon'ble Court deputed therefor or in the alternative, after depositing the balance sale consideration of Rs.50,00,000/- by the plaintiff on and to direct the defendant to pay the sum of Rs.20,00,000/- to the plaintiff with interest thereon at 18% per annum from 21.08.2004 till the date of realisation."

8. **Issue Nos. 1 to 5:**

It is the case of the plaintiff that the suit property was originally belonged to the mother of plaintiff and defendant, viz., Mrs.Zairunnisa Begum, who executed a settlement deed dated 20.03.2003 settling the suit property jointly in favour of the plaintiff and the defendant. After the settlement deed, plaintiff and defendant became the owners of each half of undivided share in the schedule mentioned property. On 21.08.2004, the defendant entered into a sale agreement with the plaintiff to sell his undivided half share in the schedule mentioned property for a sum of Rs.70,00,000/- (Rupees seventy lakhs only) and on

the same day, the defendant received the sale advance of Rs.20,00,000/- (Rupees twenty lakhs only) by cash from the plaintiff and agreed to receive the balance sale consideration of Rs.50,00,000/- (Rupees fifty lakhs only) within a period of six months from the date of sale agreement and the defendant undertook to execute and register the sale deed in favour of the plaintiff. The plaintiff was always ready and willing to pay the balance sale consideration of Rs.50,00,000/-. But the defendant was always evading endlessly to receive the balance sale consideration and to execute the sale deed in favour of the plaintiff. Hence, the plaintiff issued a lawyer notice on 05.10.2007. But the said legal notice was returned with an endorsement 'refused'. Hence the plaintiff has filed this suit for specific performance.

9. Even though the defendant entered appearance through his counsel and filed written statement, there was no appearance on behalf of the defendant before this Court. The learned counsel for the defendant had also reported no instructions before the learned Additional Master. The defendant was set *ex parte* by the Court. The evidence recorded is treated as *ex parte* evidence of the plaintiff. In the evidence, the plaintiff has produced the settlement

deed executed by the mother in favour of the plaintiff and the defendant as Ex.P1. The agreement of sale entered into between the plaintiff and the defendant is produced as Ex.A2. In the said agreement, it is categorically agreed by the defendant to enter into an agreement of sale to sell the undivided half share belonging to the defendant in favour of the plaintiff for a total consideration of Rs.70,00,000/- (Rupees seventy lakhs only) and out of which, a sum of Rs.20,00,000/- (Rupees twenty lakhs only) was already paid to him. The agreement would also disclose that within six months time, the plaintiff has to pay the said sum of Rs.50,00,000/- (Rupees fifty lakhs only) at the time of execution of the sale deed before the Sub-Registrar and the defendant would also execute the sale deed. The plaintiff had sent the lawyer's notice in Ex.P3 to the defendant demanding for execution of sale deed after receiving the balance sale consideration of Rs.50,00,000/- (Rupees fifty lakhs only) from the plaintiff. The said notice was returned by the defendant as 'refused'. The returned cover is produced as Ex.P4. The plaintiff had spoken in his evidence through the proof affidavit that he was always ready and willing to perform his part of contract and he is also ready to deposit the sum of Rs.50,00,000/- (Rupees fifty lakhs only) into the Court for

the due execution of sale deed. This would prove that the plaintiff is always ready and willing to perform his part of contract to get the sale deed executed from the defendant, after paying the balance sale consideration, and get the same registered at his costs. In the said circumstances, I could see that the defendant alone is defaulter and therefore, it has become necessary for this Court to accept the case of the plaintiff. Accordingly, the plaint averments have been found proved. Since the main relief sought for by the plaintiff for the grant of specific performance has been ordered, there is no necessity for ordering the alternative relief of refund of money paid by the plaintiff. Therefore, all the issues, except issue No.5, are decided in favour of the plaintiff.

10. **Issue No.6:-**

As the issues 1 to 4 are decided in favour of the plaintiff, the suit is decreed in respect of main reliefs as prayed for. Time for depositing the remaining balance sale consideration of Rs.50,00,000/- (Rupees fifty lakhs only) into Court is one week from today i.e., on or before 13.09.2012. On such deposit of the money into the Court, the defendant is directed to execute the sale deed in favour of the plaintiff within one month from the date of such deposit and in default, the Court itself would execute

the sale deed through its authorised officer in favour of the plaintiff in respect of the suit property. Considering the relationship of parties, there is no order as to costs.

Sd/-V.P.K.J
06.09.2012

//Certified to be a true copy//
Dated this the day of 2012.

R.s/10.09.2012 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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