

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.213 of 2015

M.S.Yakobudeen

... Plaintiff

Vs

C.Siva Subramanian

... Defendant

Plaint filed and Suit numbered under Order IV(1) of Original Side Rules R/w. Order VII Rule 1 of CPC, praying for judgment and decree as follows:

a. for the Specific Performance of the Sale Agreement, dated 23.01.2014 for the Sale of the Suit Property in favour of the Plaintiff.

b. in the alternative directing the defendant to pay the said sum of Rs.72,89,000/- (Rupees Seventy Two Lakhs Eighty Nine Thousand) on Rs.60,00,000/- together with interest at 24% per annum from 23.01.2014 and 03.05.2014 to till the date of realization.

c. Costs of Suit.

For Plaintiff

: Mr.J.R.K.Bhavanantham

For Defendant

: Set ex-parte on 31.10.2018

JUDGMENT

The suit has been filed for specific performance of the sale agreement dated 23.01.2014 or directing the defendant to return the advance

amount of Rs.60,00,000/-, together with interest at 24% per annum from 23.01.2014 till the date of realization.

2. The plaintiff would aver that the defendant has entered into a sale agreement dated 23.01.2014, registered as Document No.69/2014 on the file of the Sub Registrar, Sowcarpet, thereby the defendant has agreed to sell his suit property for a total sale consideration of Rs.70,00,000/-. It is further stated that the defendant has received a sum of Rs.40,00,000/- from the plaintiff towards advance and the sale transaction has to be completed within a period of one year.

3. The plaintiff would further state that the sale agreement provided an option clause in favour of the defendant, to return the advance amount within a period of one year. But, he has waived his option and received further advance amount of Rs.5,00,000/- on 21.04.2014 and again an amount of Rs.15,00,000/-, was received by way of two cheques on 09.05.2014 and thereby, he had received a total sum of Rs.60,00,000/- from the plaintiff.

4. Mr.J.R.K.Bhavanantham, learned counsel for the plaintiff would state that the plaintiff is ready to settle the balance sale consideration to fulfill his obligation under the agreement, but, the defendant has not come

forward to execute the sale deed. Hence, a lawyer notice dated 08.12.2014 was issued, calling upon the defendant to execute the sale deed, after receipt of the balance amount of Rs.10,00,000/-. According to the learned counsel, the plaintiff has proved his case and he is entitled for a decree as prayed for.

5. The defendant did not choose to contest the suit by filing written statement, hence he was set ex-parte on 31.10.2018.

6. The plaintiff examined himself as PW1 and he marked the Exhibits P1 to P7. The evidence of PW1 and the documents produced by the plaintiff would reveal that the plaintiff has proved the execution of the sale agreement dated 23.01.2014 and also his readiness and willingness to perform his obligation under the agreement. Hence, this Court is of the considered opinion that the plaintiff has proved his case and he is entitled for the decree.

7. For the reasons stated above, the suit is decreed as prayed for with costs. The defendant shall execute the sale deed in favour of the plaintiff after receiving the balance sale consideration, within a period of eight weeks, failing which, the Registry shall execute the sale deed in favour of the plaintiff. The balance sale consideration of Rs.10,00,000/- shall be deposited by the plaintiff within a period of one month.

29.01.2019

Index:Yes/No
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List of the witnesses examined on the side of the plaintiff:

P.W.1 - Mr.M.S.Yakobudeen

List of Exhibits marked on the side of the plaintiff:

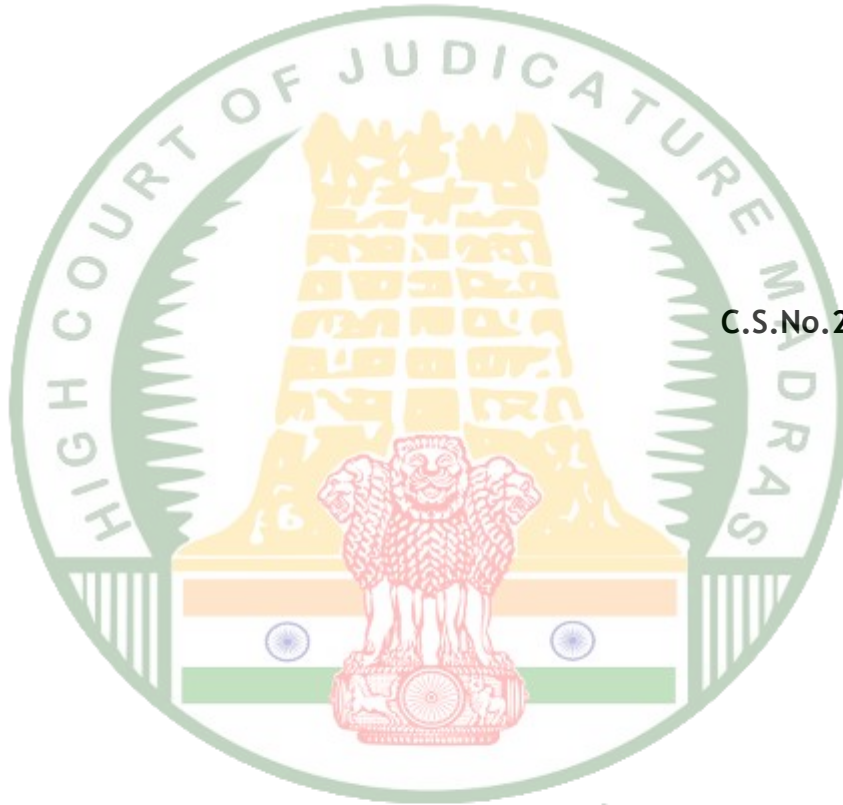
<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.P1	Certified copy of the sale deed dated 26.04.1980. (Doc.No.256/1980 at SRO Sowcarpet, Chennai).
2.	Ex.P2	Certified copy of the registered mortgage discharge receipt dated 21.03.1991 (Doc.No.179/1991 at SRO, Sowcarpet, Chennai).
3.	Ex.P3	Original copy of registered sale agreement dated 23.01.2014 between plaintiff and defendant (Doc.No.69/2014 at SRO, Sowcarpet, Chennai)
4.	Ex.P4	Original unregistered consent letter dated 09.05.2014 executed between plaintiff and the defendant.
5.	Ex.P5	Office copy of the legal notice dated 08.12.2014 sent by plaintiff's lawyer to the defendants
6.	Ex.P6	Original acknowledgement card for receipt of Ex.P5 notice by the defendant.
7.	Ex.P7	Encumbrance Certificate dated 20.08.2018 by Sub Registrar Office, Sowcarpet.

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

K.KALYANASUNDARAM, J.,

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