

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.02.2019	Delivered on 15.02.2019
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CORAM:

THE HONOURABLE MR. **JUSTICE R.SUBRAMANIAN****C.S.No.237 of 2014**

1. Mr.K.S.Vijayakumar
S/o. K.R.Shanmugam,
No.66, Padavattaman Koil Street,
Kosapet, Chennai 12.

2. Mrs. K.Geethapriya
W/o. K.S.Vijayakumar
No.66, Padavattaman Koil Street,
Kosapet, Chennai 12.

... Plaintiffs

Deleted as per order dated 09.11.2017
in A.No.6510/2017

Vs

1. Smt. Kanthamma
2. R.Sathi Raju
3. Sathyanarayana Murthy
4. Mrs.Neela

5. Ms.Chamundeswari (deceased)

(Amended as per order dated 26.08.2014 in
Application No.5276 of 2014)

6. Ms.R.Madhumitha
7. R.Vignesh

... Defendants

Prayer : Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, praying for the following judgment and decree:-

- (a) Directing the defendants 1 to 7 to specifically perform the sale as per the agreement dated 14.02.2011 in addition of supplemental agreement of sale dated 29.08.2011 and execute and register the sale deed in respect of the schedule mentioned property in favour of the plaintiffs or their nominee after receiving the balance sale consideration of Rs.1,29,00,000/- in default directing the Registrar of this Hon'ble Court to execute and register the sale deed in respect of the scheduled mentioned property in favour of the plaintiffs, after receiving the balance sale consideration of Rs.1,29,00,000/- and;
- (b) Directing the defendants 1 to 7 to pay the cost of this suit.

For Plaintiffs : Mr.J.Ramesh

For Defendants : Set Ex-parte

J U D G M E N T

Plaintiffs seek specific performance of a Registered Agreement of Sale dated 14.02.2011. According to the plaintiffs, the defendants had agreed to sell the suit property for a total consideration of Rs.2,30,00,000/- and received an advance of Rs.25,00,000/- on the date of the agreement.

2. It is further claimed that the defendants also agreed and assured to clear all the encumbrances including the proceedings pending before the Debt Recovery Appellate Tribunal. It is stated that a Supplemental agreement dated 29.08.2011 was also entered into and the payment details were also set out therein. A registered general Power of Attorney was also executed by the defendants on 20.06.2011 in favour of Mrs.S.Lakshmi, who is the mother of the first plaintiff and mother-in-law of the second plaintiff. According to the plaintiffs, they had paid a total sum of Rs.1,01,00,000/- on various dates, including the advance amount of Rs.25,00,000/-. It is also the further claim of the plaintiffs that a sum of Rs.48,97,524/- was paid by them, as per the order passed in IA No.328 of 2011 in AIR No.224 of 2011 dated 12.08.2011, on the file of the Debt Recovery Tribunal, Chennai. Since the defendants did not come forward to execute the sale deed despite demands, the plaintiffs have come forward with the above suit for specific performance, directing the defendants to execute the sale deed, on receipt of balance consideration of Rs.1,29,00,000/-.

3. Upon notice, the defendants 1 and 2 had entered appearance through their counsel M/s. R.Harishankar and Swaram J.Rajagopalan on 10.06.2014. The same counsel had also entered appearance for

defendants 3, 4 and 7. However, subsequently, by order dated 01.03.2016 made in application No.4684 of 2015, the vakalat of M/s. R.Harishankar and Swaram J.Rajagopalan filed on behalf of defendants 1 and 2 was revoked. Mr.K.Pandurangan had entered appearance for the said defendants on 22.07.2015. The fifth defendant in the suit had died on 20.07.2013 and she being a spinster daughter of the defendants 1 and 2, and Memo was filed to record defendants 1 and 2 as the legal representatives of the 5th defendant. By order dated 21.07.2014, made in Application No.4565 of 2014, the defendants 1 and 2 were recorded as legal representatives of the 5th defendant. By order dated 26.08.2014, made in Application No.5276 of 2014, the plaintiffs were permitted to carry out the amendment incorporating the death of the 5th defendant in the plaint. The said amendment was also carried out in the plaint.

4. Since the defendants did not file written statement, the defendants were set ex-parte on 12.06.2018. The matter was posted before the learned Additional Master for evidence.

5. Before the learned Additional Master, the first plaintiff was examined as P.W.1. In his proof affidavit he had deposed about the facts

set out in the plaint and he also stated that the plaintiffs have been ready and willing to perform their part of the contract and it is the defendants who are evading execution of the sale deed despite the plaintiffs being ready and willing to perform their part of the contract. The Original Registered Agreement of Sale is marked as Ex.P1. The Original Supplemental Agreement of sale dated 29.08.2011 is marked as Ex.P2. The Power of Attorney executed in favour of Mrs. Lakshmi by the defendants is marked as Ex.P3. Ex.P4 is the office copy of legal notice dated 10.02.2014 and Ex.P5 series are the returned covers, Ex.P6 is the Original acknowledgement card evidencing receipt of the notice by the second defendant Sathi Raju.

6. From the uncontroverted evidence of P.W.1, it is seen that the plaintiffs have been ready and willing to perform their part of the contract and the defendants have been evading performance. The fact that the sale agreement was entered into, is not denied by the defendants. Though the second defendant had received the notice on 18.02.2014, has not chosen to send any reply, disputing the agreement.

7. In view of the above evidence on record, I find that the plaintiffs are entitled to a decree for specific performance. Accordingly, the

suit is decreed directing the defendants to specifically perform the sale agreement dated 14.02.2011 and execute a sale deed in favour of the plaintiffs or their nominees and to receive the balance sale consideration of Rs.1,29,00,000/-. The plaintiffs are also entitled to the costs of the suit. The plaintiffs are directed to deposit a balance consideration of Rs.1,29,00,000/- within a period of two months from today.

15.02.2019

jv
Index: Yes/No
Internet: Yes/No
Speaking order/Non Speaking order

List of Witnesses examined on the side of the plaintiffs:

PW1 - K.S.Vijayakumar

List of Witnesses examined on the side of the Defendants: Nil

List of Exhibits marked on the side of the Plaintiffs:

Sl. No.	Exhibits	Date	Description of Documents
1	Ex.P1	14.02.2011	The Original registered agreement of sale
2	Ex.P2	29.08.2011	The Original Supplemental agreement of sale
3	Ex.P3	22.06.2011	The Original general Power of Attorney
4	Ex.P4	14.02.2014	The Office Copy of legal notice
5	Ex.P5		Series (6 Nos.) are the returned covers
6	Ex.P6		The Original Acknowledgement Card

List of Exhibits marked on the side of the Defendants: Nil

15.02.2019

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



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R.SUBRAMANIAN,J.

jv



Pre Delivery Judgment
C.S.No.237 of 2014

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15.02.2019