

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

C.S.No.291 of 2012

1.S.Mukanchand Bothra (deceased)
2.M.Karishma Bothra
3.M.Gagan Bothra
4.M.Sandeep Bothra
(Plaintiffs 2 to 4 are brought on record
as LR's of deceased sole plaintiff as per
order dated 18.12.2019 in A.No.5757 of 2019
and time extended as per order dated
07.01.2020) .. Plaintiffs

Vs.

1.G.Jayachitra
2.Muniappan
3.Pakrisamy
4.Nagarajan
सत्यमेव जयते.. Defendants

This Civil Suit is preferred under Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Order IV Rule 1 of Original Side Rules of the High Court seeking to pass a judgment and decree against defendant (a) for directing defendants 1 to 4 to execute the sale deed in favour of the plaintiff on receiving the balance of sale consideration of

Rs.3 lakhs (Rupees three lakhs only) and in default thereof to execute a sale deed in favour of the plaintiff through the Registrar of the High Court, Madras, (b) for directing defendants 2 to 4 to pay the cost of the suit and (c) grant such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice. (Amended as per order dated 31.10.2018 in A.No.4708 of 2018).

For Plaintiffs : Mr.M.Gagan Bothra
Party-in-person

JUDGMENT

There are four plaintiffs and four defendants in instant suit.

2 Instant suit is one seeking specific performance of an agreement of sale executed in November of 2005 in non judicial stamp paper dated 2nd of November, 2005. To be noted, this 'Agreement of Sale' is the fulcrum of suit on hand and this agreement of sale is between S.Mukanchand Bothra (originally lone plaintiff at the time of institution of suit) and first defendant. Pending suit, sole plaintiff died and date of demise is 17.04.2019. Plaintiffs 2 to 4 being one daughter and two sons

of S.Mukanchand Bothra were brought on record by order of this court dated 18.12.2019 made in A.No.5757 of 2019. Plaintiff No.3 Mr.Gagan Bothra thereafter has obtained permission from Hon'ble Committee for Party-in-person to appear party-in-person and necessary Powers of Attorney have also been produced for third plaintiff to represent the suit on behalf of plaintiffs 2 and 4.

3 The trajectory which this suit has taken is captured in order dated 07.09.2018 made by Hon'ble Predecessor Judge followed by orders made by this Court between 18.12.2019 and 21.02.2020.

4 Today, plaintiff No.3 Mr.Gagan Bothra is before this court. The matter is listed today before this Court under the caption 'EXPARTE EVIDENCE'.

5 Third plaintiff wanted to depose as lone witness on behalf of plaintiff and his request was acceded to. Third plaintiff filed proof affidavit and deposed as P.W.1. 19 Exhibits, namely Exs.P.1 to P.19 were marked on behalf of plaintiffs. Proof affidavit of P.W.1 reads as follows :

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Ordinary Original Civil Jurisdiction)

C.S.No. 291 of 2012

1) S. Muktanand Bothra [Deceased]
S/o. Late Sri Chand Bothra
43/44, Vennappan Street,
Sowcarpet, Chennai-600 079.

2) M. Krishna Bothra
D/o. Late Sri S. Muktanand Bothra

3) M. Gagan Bothra
S/o. Late Sri S. Muktanand Bothra

4) M. Saadeen Bothra
S/o. Late Sri S. Muktanand Bothra
Allot No. 46, Vennappan Street
Sowcarpet, Chennai - 79

Plaintiffs 2 to 4 are brought on record as L.R's of the
deceased sole plaintiff as per order dt: 18-12-2019 made
in A.No. 5257 of 2019 and extended vide order dt: 07-01-2020) ...Plaintiffs

-Vs-

1) Tmt.H. Sathya
W/o Mr V. Ganesh
No.9, Thyroval Lake, Marudamparam,
Chennai-600 034.

2) Murugan
3) Prakrany
4) Sathya
@ to 4 at Old No.51, New No.158
Ponnaleri Village,
Near Mahabalipuram, Chengipet Taluk. ...Defendants

DEPOSITION OF EVIDENCE BY AFFIDAVIT BY THE 3rd PLAINTIFF
M. GAGAN BOTHRA

I, M. Gagan Bothra, aged about 25 years, son of Late Sri S. Muktanand Bothra,
the 3rd plaintiff herein at No. 46, Vennappan Street, Bothra's Chandra Complex,
Sowcarpet, Chennai - 79, do hereby solemnly affirm and depose as follows:-

I say that I am the 3rd plaintiff in the above suit and representing the other plaintiff's
as well who are none other than my brother and sister and I am personally well aware of
the facts and circumstances of the case. I am accompanying my late father in his day
to day business activities and entitled to depose evidence by way of an affidavit.

1) I say that the 1st defendant is the sole and absolute owner of the land situate at
No.158, Ponnaleri, Near Mahabalipuram, Measuring 11.90 acres in two half portions
measuring 5.94 acres and 5.96 acres. I say that the 1st Defendant was planning to sell the

property and coming to know of the same my father (sole plaintiff Late Shri S. Mukandchand Bothra) offered to purchase the total 11.90 acres of the land for a consideration of Rs.85 Lakhs. The 1st Defendant agreed to sell the property for the said considerations and both the parties entered into an agreement of sale dated 3.11.2005. I respectfully say that an agreement of sale was typed in Rs.40 stamp paper dated 2.11.2005. The two sets of agreement of sale had been typed - signed and executed one copy was taken by my late father and one was taken by the 1st defendant. I say that my father paid a sum of Rs.5 Lakhs as advance sale consideration by way of cheque drawn on Oera Bank in favour of the 1st defendant. The agreement was duly signed by both the parties. I say that my father was always ready and willing to pay the balance sale consideration of Rs.80 Lakhs within 30 days from the date of Agreement.

2. I say that as per the condition of the agreement my late father had taken a demand draft for Rs.70 lakhs dated 02.12.05 and a draft sale deed for the due execution by the 1st defendant together with balance sale consideration in cash as per the agreement. I say that the draft sale deed was written in favour of my father's nominee Mr.Chaitanya Jain. I say that the 1st defendant refused to receive the balance sale consideration by way of demand draft and requested my late father to give it cash. Further the 1st defendant had stated that she would execute the sale deed only in my father's name and not in the name of his nominee.

3. I say that my father met the 1st defendant for completion of the sale transaction as per the wishes of the 1st defendant. I say that my father (Shri S. Mukandchand Bothra) paid a sum of Rs.73 Lakhs (Rupees Seventy Three Lakhs only) on 19-12-2005 and the 1st defendant issued a receipt for the same. It was agreed by the 1st defendant that she will adjust a sum of Rs.4 Lakhs from and out of the sale consideration. Since one of the terms of the sale agreement was that the 1st defendant shall well maintain the Garden barbed wire portion and pillars and see that no damage was caused to the same. However, on account of the heavy rain the garden was damaged and the 1st defendant agreed to give reduction of Rs.4 Lakhs as lumpsum for the damage occurred in the property. I say that my father was always ready and willing to pay the balance consideration and take sale deed either in his name or in the name of his nominee.

4. I say that the deceased 1st defendant were on their way to the Sub-Registrar office and on the very same day and ever before crossing city limits the 1st defendant had requested my late father to stop his car and stated that she had severe stomach pain and that she had the return back to the house so saying my father and the 1st defendant went back to the 1st defendant's house and the Plaintiff was made to wait. The 1st defendant came out approximately at 3:30 PM and stated that registration would be done

tomorrow and hence my father has no cause to worry as she has executed a receipt in favor of my late father (1st plaintiff).

5. I say that there were exchanges of correspondence prior to the filing of the present suit. It will be seen from the correspondence that the 1st defendant had not only committed breach of contract but had also gone to the extent of denying the rights of my late father under the agreement. It is needless to state that having received almost the entire sale consideration the defendant has nothing to lose by denying payment and committing breach of contract. I say that details have been set out in the notification to the 1st defendant and the same may be treated as part of the plaint.

6. I say that the 1st defendant by her action and her correspondence had committed breach of agreement. Hence my late father was left with no option except to file the present suit for specific performance for enforcing the agreement of sale. The present suit is confined only for enforcement of the Agreement of Sale by way of specific performance.

7. I say that the 1st defendant, having received the sum of Rs.82 lakhs (Rupees Eighty two lakhs only) out of the total consideration of Rs.85 Lakhs, is trying to play fraud and to back by dubious methods. I say that the 1st defendant is trying to wriggle out of the situation. She is estopped by her own conduct. She cannot refuse to execute the sale deed. Hence we the plaintiff's are entitled to specific relief both in law and on facts.

8. I say that our late father came to know that the 1st defendant has sold the properties to the following persons:-

a) Munappan vide Doc No.1105

b) Palanisamy vide doc.No.1106

c) Nagarajan vide Doc No.1107 all dated 2.3.2006 on the file of sub registrar office Mahabalipuram who are arrayed as defendants 2 to 4.

9. I say that the defendants 2 to 4 are well aware of the agreement between the my late father and the 1st defendant as my late father has published his stake in the property widely in the following dailies and the dispute between him and the 1st defendant had been flashed in the following dailies:

i) Dinamalar dated 17.01.2006

ii) Maasamalar dated 17.1.2006

iii) Maalai Chudhar dated 17.1.2006

iv) Indian Express dated 17.1.2006

v) Dina Mani dated 18.1.2006.

I say that since the 1st defendant had taken an evasive stand my father had given a complaint to central crime branch Chennai which was taken in reference No.88 DCCH/70/2006. I respectfully say that the defendant 2 to 4 are not bonafide purchasers and they have purchased the above said properties knowing fully well that the

above said properties are subject matter of agreement of sale. Therefore we pray that this Hon'ble court may be pleased to direct the defendants 1 to 4 to execute the sale deed in favour of the plaintiffs 2 to 4 on receiving the balance of sale consideration of Rs.3 lakhs (Rupees Three Lakhs only) and in default thereof to execute a sale deed in favour of the plaintiffs 2 to 4 through the registrar of the Hon'ble High Court, Madras.

10. I say that I am herewith marking the following documents to establish our case and pray this Hon'ble court to mark the same as follows:-

LIST OF EXHIBITS

Ex.P-1.	November 2005	Agreement of Sale	Original
Ex.P-2	01.12.2005	Letter to defendant with postal receipt	Original
Ex.P-2a		Returned cover.	
Ex.P-3	02.12.2005	Draft sale deed in name of mishri estates.	Xerox copy
Ex.P-4	02.12.2005	Demand draft in name of 1 st defendant taken out by plaintiff's nominee.	Xerox Copy
Ex.P-5	26.05.2005	Copy of promissory note in name of plaintiff for Rs.3,00,000/- by 1 st defendant.	Xerox Copy
Ex.P-6	26.05.2005	Copy of promissory note of Rs.5,00,000/- by 1 st defendant to the Plaintiff.	Xerox Copy
Ex.P-7	02.12.2005	Copy of Telegram	Original
Ex.P-8	14.12.2005	Receipt given by defendant	Original
Ex.P-9	December 2005	Sale deed unsigned	Original
Ex.P-10	13.01.2006	Lawyer's notice from Defendant's Counsel	Original
Ex.P-11	15.02.2006	Reply notice from Plaintiff's counsel	Xerox Copy
Ex.P-12	23.02.2006	Rejoinder notice from defendant's counsel	Xerox Copy
Ex.P-13	12.01.2006	Publication in Dina Thanthi	Original
Ex.P-14	15.01.2006	Publication in MaalaiMalar	Original
Ex.P-15	15.01.2006	Publication in Indira express	Original
Ex.P-16	22.01.2006	Publication in Dina thanthi	Original
Ex.P-17	17.05.2007	Encumbrance Certificate	Original

Solemnly affirmed and declared
On this 22 day of Jan 2008
and he signed his name
in my presence

ADVOCATE - MADRAS

Ms. 2057/18
No. 21, Indira gate,
2nd floor, ch. 84.

6 To be noted, proof affidavit refers to 17 documents and the same were marked as Exs.P.1 to P.17. Ex.P.18 and Ex.P.19 are Powers of Attorney dated 17.12.2019 executed by plaintiff Nos.4 and 2 respectively in favour of plaintiff No.3 for representing the suit as party-in-person.

7 The proof affidavit, which is the examination in chief, is cogent, coherent, besides being in tune and tandem with the pleadings in the main suit. Defendants have not come before this Court to challenge the deposition or documents marked through P.W.1.

8 As already mentioned, Ex.P.1 is the fulcrum of instant suit. As mentioned supra, it has been executed in November of 2005 in non judicial stamp paper dated 2nd of November 2005. Adverting to the contents of Ex.P.1, P.W.1 deposes that transaction actually took place on 03.11.2005 as a cheque has been given by late first plaintiff to first defendant on the said date. On this basis, it is submitted that Ex.P.1 is dated 03.11.2005.

9 Two other documents which are absolutely critical are Exs.P.8 and P.12. Ex.P.8 is a receipt dated 19.12.2005 given by first defendant. Scanned copy of the same reads as follows :



10 Ex.P.8 is clearly tell-tale qua this lis. In Ex.P.12, which is dated 23.02.2006, first defendant in the rejoinder through counsel has admitted the transaction.

11 What is of relevance is total sale consideration is Rs.85 lakhs and from the unrebutted and unchallenged deposition of P.W.1 as well as pleadings, which are supported by Exs.P.1 to P.19, it comes to

light that Rs.82 lakhs have been paid. P.W.1 submits that he is ready to deposit balance Rs.3 lakhs forthwith.

12 With regard to defendants 2 to 4, it is the specific case of plaintiffs that alienation of suit property in their favour has been made only with the intention of defeating the rights of plaintiffs, as plaintiffs have caused publication in various Tamil dailies which are Exs.P.14 to 16, namely Daily Thanthi, Maalai Murasu, besides a English Daily Indian Express. (To be noted, Ex.P.13 pertains to some other news article and therefore, the same alone is ignored). On coming to know about such alienation, plaintiffs obtained encumbrance certificate (qua suit property) dated 17.05.2007 which has been marked as Ex.P.17.

13 From the averments in the plaint and the unchallenged narrative / deposition of P.W.1, viewed in juxtaposition with Exhibits, namely, Exs.P.1 to P.12 and P.14 to P.19, this court is left with the considered view that plaintiffs have been ready and willing to perform their part of contract qua Ex.P.1 and defendants have been playing duck and drakes or in other words, getting evasive. First defendant has been playing duck and drakes inter-alia by roping in defendants 2 to 4 as alienees.

14 Therefore, the ingredients of section 16(c) of 'The Specific Relief Act, 1963' (hereinafter 'said Act' for brevity) stands satisfied.

15 Specific relief is a discretionary equitable jurisdiction. This Court has carefully applied its mind to pleadings, depositions, exhibits and more particularly the trajectory which the suit has taken. A reading of these determinants in sum totality leaves this Court with the considered view that this is a fit case for exercising equitable discretionary jurisdiction in specific performance domain in favour of plaintiffs inter-alia as plaintiffs have paid Rs.82 lakhs out of total sale consideration of Rs.85 lakhs. To be noted, as already alluded to supra, plaintiffs are ready to deposit Rs.3,00,000/- forthwith.

16 To be noted, this court has come to the conclusion as this is a fit case for exercise of discretionary jurisdiction in a specific performance suit as first defendant after receiving lion's share of the agreed sale consideration (to be noted, almost entire sale consideration) and after giving Ex.P.8 and admitting the transaction in Ex.P.12 rejoinder notice through counsel, has not even come forward before this Court to contest the suit. Therefore, plaintiffs who have parted with a huge sum of money more than one and half decades ago (to be noted, money value

was very different one and half decades ago, i.e., in 2005) are entitled to the relief as prayed for.

17 It is also a fit case to decree the suit with costs owing to the trajectory which this suit has taken, particularly taking into account the fact that plaintiffs had to cause paper publication for effecting service.

18 This suit is decreed as prayed for with costs, subject to following two conditions :

(a) Plaintiffs shall deposit Rs.3,00,000/- (Rupees three lakhs only) to the credit of the suit within one week from the date of receipt of copy of this judgment/deGREE.

(b) Defendants are given a window of one month from the date of deposit to execute the sale deed in favour of plaintiffs, failing which sale deed will be executed through Registrar of this Court.

WEB COPY

24.02.2020

Speaking order / Non speaking order

Index : Yes/No

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