

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	05.12.2019
Judgment pronounced on	26.02.2020

CORAM

THE HON'BLE MR. JUSTICE SETHILKUMAR RAMAMOORTHY

C.S. No.706 of 2016

P.Saminathan

... Plaintiff

VS

Mrs.Ananthakumari

... Defendant

Prayer: The Civil Suit is filed under Order IV Rule 1 and Order XXIV of Original Side Rules r/w order VII Rule 1 of C.P.C. to direct the Defendant to execute a Sale Deed in favour of the Plaintiff or his nominee conveying the property bearing Door No. previously 182, Old Door No.198, New No.6, Venkatachala Mudali Street, Royapettah, Chennai -14 morefully described in the suit schedule mentioned property within the time to be specified by this Court subject to delivering the vacant possession of the premises as per the terms and conditions of the sale agreement dated 14.11.2011 after receiving the balance sale consideration, if any from the

Plaintiff and in default of compliance of the said direction by the Defendant within the specified time, the execution of the Deed or Deeds of Sale by this Court or by through an officer of this Court to be deputed therefore; (ii) to direct the Defendant to pay a sum of Rs.25,00,000/- to the Plaintiff towards mental agony and damages; (iii) to grant permanent injunction restraining the Defendant, his men, agent, servant or authorized person or persons or anybody else claiming or under or through her or them from in any manner from selling, charging, dealing with or otherwise encumbering the schedule property bearing Door No. previously 182, Old Door No.198, New No.6, Venkatachala Mudali Street, comprised in R.s.No.684, Block No.12 of Mylapore Division, Royapettah, Chennai -14 and to direct the Defendant to pay the costs.

For Plaintiff : Mr.M.Chidambaram
For Defendant : M/s.S.Vasavi Sridevi

J U D G M E N T

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The suit is filed for specific performance of the Agreement for Sale dated 14.12.2011 (the Sale Agreement) and for payment of a sum of Rs.25,00,000/- towards damages to the Plaintiff for mental agony and also for a permanent injunction restraining the Defendant, his men, agents, servants or authorized persons or anyone claiming through her from selling, charging, dealing with or otherwise encumbering the suit

schedule property.

2. The case of the Plaintiff is that the suit schedule property is the self acquired and absolute property of the Defendant. The suit property was purchased by the Defendant on 09.11.2000 under registered Sale Deed bearing document No.2569 of 2000 (Ex.P-1) on the file of the Sub Registrar Office, at Mylapore, Chennai-4. The Defendant offered to sell and transfer the suit schedule property to the Plaintiff for a sale consideration of Rs.1,00,00,000/-(Rupees one crore only) and the Plaintiff agreed to purchase the suit property for the said sale consideration. Consequently, the Sale Agreement was executed on 14.12.2011 (Ex.P-3) and the Plaintiff paid a sum of Rs.25,00,000/- as advance. The Sale Agreement specified that a cheque for Rs.15,00,000 bearing Cheque No.07892 dated 14.12.2011 was handed over by the purchaser, which would be presented for payment by the seller immediately upon obtaining vacant possession of the shops. The receipt of the advance was acknowledged by the Defendant on the same date and the time for payment of the balance sale consideration of Rs.60,00,000 was fixed as three months from the date of the Sale Agreement, in clause 3, and, as per clause 4, at one month after the date of hand over of vacant possession or a grace period as mutually agreed by both parties. The Plaintiff subsequently paid a sum of Rs.15,00,000/- to the Defendant by

cash on 02.04.2012. After paying the advance of Rs.40,00,000/-, the Plaintiff demanded that vacant possession be given but the Defendant did not comply with this demand. However, at the request of the Defendant, a further sum of Rs.20,00,000/- was paid on 22.09.2013 and the Defendant expressly agreed to provide vacant possession within 15-20 days. These payments and the receipt thereof by the seller were acknowledged by making endorsements to that effect on the Sale Agreement. However, the Defendant did not provide vacant possession or take any steps to execute the sale deed in favour of the Plaintiff. The Plaintiff called upon the Defendant to do so by letter dated 09.12.2013 (Ex.P-4), which was received by the Defendant on 10.12.2013 (Ex.P-5). By Advocate's Notice dated 02.12.2013 (Ex.P-6), which was pre-dated and posted on 16.12.2013, the Defendant did not comply with the obligation to provide vacant possession and instead called upon the Plaintiff to pay the balance sale consideration within 15 days and informed the Plaintiff that the Sale Agreement would be deemed to be cancelled in the event of default. This was replied to by the Plaintiff through his counsel on 20.12.2013 (Ex.P-7), wherein it was stated that subject to providing vacant possession, the Defendant should indicate a date for the execution and registration of the sale deed. Eventually, the Plaintiff was constrained to file the suit.

3. The case of the Defendant is that the Plaintiff agreed to pay the entire sale consideration on or before the end of March 2012, as per clause 4 of the Sale Agreement, but delayed paying the balance sale consideration on account of not having sufficient funds. In fact, the cheque issued by the Plaintiff on 14.12.2011 for a sum of Rs.15,00,000/- was returned on account of insufficient funds. In total, the Plaintiff paid only a sum of Rs.60,00,000/- as against the total sale consideration of Rs.1,00,00,000/-. According to the Defendant, the Defendant complied with the terms of the Sale Agreement by vacating all the tenants from the suit schedule property within one month from the date of the Sale Agreement. As a result, the Defendant is incurring loss of rental income of Rs.1,00,000/- per month. In spite of requesting the Plaintiff to pay the balance sale consideration, the Plaintiff could not do so on account of not having sufficient funds. The Defendant further contended that the Plaintiff was not ready and willing to fulfil the commitments under the Sale Agreement and that, therefore, the Plaintiff is not entitled to specific performance. In addition, the Defendant contended that it had incurred an aggregate monetary loss of Rs.90,00,000/- by way of loss of rental income from the property. The Defendant also stated that the suit is barred by limitation because the time for performance was three months from 02.04.2012 whereas the suit was filed on 11.07.2016. Hence, she prayed for dismissal of the suit.

4. Upon consideration of the pleadings, the Court framed the following issues:

- (i) Whether the Plaintiff is always ready and willing to perform his part of contract as per agreement dated 14.02.2011?
- (ii) Whether the Plaintiff is entitled for the relief of specific performance as prayed for?
- (iii) Whether the suit is barred by limitation?
- (iv) To what relief the parties are entitled?

The Plaintiff adduced evidence by examining himself as P.W.1 and a total of 13 documents were exhibited through P.W.1 as Ex.P1 to Ex.P13. Thereafter, P.W.1 was cross-examined on 15.11.2018 and 22.11.2018. A third party to the suit, namely, S.Janarthanam, who was one of the witnesses to the Sale Agreement, Ex.P-3, was examined as P.W.2. The said P.W.2 was also cross-examined by the learned counsel for the Defendant on 07.01.2019. The Defendant adduced evidence by examining the Defendant's son, R.Sundaravadhanam, as D.W.1. Three documents were exhibited through D.W.1 as Ex.D1 to Ex.D3. D.W.1 was cross-examined by the learned counsel for the Plaintiff on 11.07.2019.

5. I heard the learned counsel for the Plaintiff and the learned

counsel for the Defendant.

6. The learned counsel for the Plaintiff submitted that the total sale consideration under the Sale Agreement was a sum of Rs.1,00,00,000/-. Out of the said sum of Rs.1,00,00,000/-, a sum of Rs.25,00,000/- was paid on the date of execution of the Sale Agreement. Subsequently, a sum of Rs.15,00,000/- was paid on 02.04.2012 and a further sum of Rs.20,00,000/- on 22.09.2013. By advertng to Clause 3 of the Sale Agreement, the learned counsel pointed out that the balance sale consideration of Rs.60,00,000/- was required to be paid after vacant possession of the suit schedule property is given and within three months from the date of the Sale Agreement. However, the Defendant could not vacate the tenants and, in fact, one of the tenants filed a suit to prevent ejectment from the suit schedule property and the judgment and decree dated 03.02.2018 in the said suit, O.S.No.7571 of 2012, was marked as Ex.P14. The learned counsel also pointed out that RCOP No.165 of 2013 was filed by one of the tenants and by decree dated 19.09.2018, the tenant obtained restoration of electricity supply. This document was marked as Ex.P13. On the above basis, the learned counsel contended that it is the admitted position that vacant possession was not given to the Plaintiff. He also referred to the notice dated 09.12.2013 from the Plaintiff to the Defendant whereby the Defendant was called upon to

specify the date for the execution and registration of the sale deed in favour of the Plaintiff. Despite receiving the said letter on 10.12.2013, the Defendant did not reply until the issuance of the letter dated 02.12.2013(Ex.P6), which was actually posted on 16.12.2013. In any case, the learned counsel submitted that the suit was filed on 28.03.2016 and is, therefore, within the period of limitation when reckoned from the date of refusal in December 2013.

7. Thus, the learned counsel for the Plaintiff concluded his submissions by contending that the Plaintiff paid a sum of Rs.60,00,000/- out of the total sale consideration of Rs.1,00,00,000/- but the Defendant failed to fulfil her commitment under the Sale Agreement by vacating the tenants and providing vacant possession. Consequently, the Plaintiff is entitled to specific performance, damages and a permanent injunction.

8. On the contrary, the learned counsel for the Defendant submitted that the Sale Agreement was executed on 14.12.2011. As per the Sale Agreement, the balance sale consideration was required to be paid within three months. Even the extension was for a period of three months from 02.04.2012 when the Defendant received the additional sum of Rs.15,00,000/- by cash. By not paying the sale consideration, the Plaintiff had forfeited the right to specific performance under the Sale

Agreement. According to the learned counsel, such non-payment was on account of not having the financial capability and that no evidence was adduced with regard to the financial capability of the Plaintiff. Consequently, he submitted that the Plaintiff failed to prove readiness and willingness as required by Section 16(c) of the Specific Relief Act. As regards the obligation to provide vacant possession, the learned counsel for the Defendant submitted that except for one portion, the defendant had vacated the tenants from other portions. For all these reasons, he submitted that the Plaintiff is not entitled to specific performance. In support of his submissions, the learned referred to and relied upon the judgments of the Supreme Court in **N.P. Thirugnanam(dead) through Lrs v. Dr.R. Jagan Mohan Rao (Thirugnanam)(1995) 5 SCC 115**, wherein the Supreme Court held that readiness and willingness of the plaintiff is a condition precedent to the grant of specific performance and **Saradamani Kandappan v. S.Rajalakshmi (2011) 12 SCC 18**, wherein it was held that time would be of the essence of an agreement for sale of an immovable property if so stipulated therein.

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9. I considered the oral and written submissions of the learned counsel for the respective parties and examined the records carefully.

10. As set out above, this Court framed four issues that are

set out in para 4 supra. Out of the said four issues, I propose to first deal with Issue No.3 relating to limitation.

11. Issue No.3:

In this case, the Sale Agreement is admittedly dated 14.12.2011. On perusal of the Sale Agreement (Ex.P3), Clause 2 thereof envisages that a sum of Rs.40,00,000/- lakhs would be paid as advance to the Defendant as per details and terms set out therein. Clause 3 of the Sale Agreement is as under:

"3.The balance payment of Rs.60,00,000/- (Rupees Sixty lakhs only) will be paid by the PURCHASER to the SELLER at the time of absolute and after vacant position of the schedule property within three months from the date of the Sale Agreement and thus completing the Sale transaction."

In addition, while receiving a sum of Rs.15,00,000/- on 02.04.2012, the parties recorded that "it is hereby mutually agreed to extend further period of three months of this Sale Agreement dated 14.12.2012." Similarly, while receiving the sum of Rs.20,00,000/- on 22.09.2013, the Defendant stated as under:

"It also committed to show the vacant portion to the purchaser in 15 – 20 days."

From the above, it is clear that the Defendant agreed to provide vacant possession to the Plaintiff within 15 to 20 days from 22.09.2013. Thus, the cause of action did not commence at least until the expiry of the period of 20 days from 22.09.2013. Even if reckoned from 12.10.2013, the limitation period would expire on 11.10.2016. On perusal of the plaint, I find that it was presented on 28.03.2016. Thus, the Plaint was presented within three years from the date for performance as specified in the endorsement on the Sale Agreement. Hence, I conclude that the suit is not barred by limitation.

12. I now propose to deal with Issue Nos.1, 2 and 4 in a consolidated manner because they are inter connected:

Issue Nos.1, 2 and 4:

The Sale Agreement evidences the receipt of a sum of Rs.25,00,000/-. It also records that a cheque dated 14.12.2011 for a sum of Rs.15,00,000 was handed over on the date of the Sale Agreement. It is recorded that the said cheque would be presented immediately on vacation of shops. By a separate endorsement, overleaf page 2, it is recorded that a sum of Rs.15,00,000/- was received in cash towards advance payment on 02.04.2012. It is further recorded therein that the time for performance is extended by three months. The said extension would therefore run up to 02.07.2012. The other endorsement is

contained overleaf page 3 of the Sale Agreement. This endorsement records that a sum of Rs.20,00,000/- was received on 22.09.2013 partly in cash and partly by cheque. As stated earlier, the Defendant endorsed that "it also committed to show the vacant portion to the purchaser in 15 – 20 days." Thus, it is clear that the Defendant agreed to extend the time for performance on more than one occasion. Secondly, the Defendant also agreed to provide and show vacant portion to the purchaser in 15 to 20 days from 22.09.2013. Thirdly, Clause 5 of the Sale Agreement stipulates that the purchaser/Plaintiff would pay interest at 12% per annum on delayed payments. In this regard, it is also the settled position that time is not of the essence of an agreement for sale of immovable property unless the presumption, in that regard, is rebutted by an express term to the contrary. Upon examining the Sale Agreement, I find that Clause 4 thereof provides as under:

"4.The parties herein covenant to complete the Sale transaction and to execute the Absolute Sale Deed/General Power of Attorney before the end of March 2012 OR one month after hand over of the vacant possession OR grace period may be extended by mutually agreed by the Seller and Purchaser."

Clause 4 clearly provides that the sale deed would be executed before the end of March 2012 or one month after hand over of vacant possession or

after a mutually agreed grace period. From the above, I conclude that time is not of the essence of the Sale Agreement.

13. The Plaintiff adduced evidence through one of the witnesses to the Sale Agreement, S.Janardhanam, who filed a proof affidavit and was examined as P.W.2. He stated therein that he is a land broker. He also stated, in relevant part, as under in paragraph 5 of the proof affidavit:

"....As on date, the tenants are occupying the suit property. For my knowledge, the tenant never vacated the portions which are let out to them by the defendant. One tenant is doing Meat Stall and another tenant is doing Milk Vending business. Apart from that there are two tenants are residing in the inner portion of the suit property."

I find that P.W.2 was not cross-examined on the above statements. In addition, the judgment and decree dated 03.02.2018 in O.S.No.7571 of 2012, which is a suit filed by one of the tenants, was marked as Ex.P-14 during the cross-examination of D.W.1 and the order dated 19.09.2018 in R.C.O.P.No.165 of 2013 was also marked during the cross-examination of D.W.1 as Ex.P-13. Moreover, in spite of making an endorsement on the Sale Agreement on 22.09.2013 that vacant possession would be provided

in 15-20 days, I do not find a communication from the Defendant to the effect that vacant possession was obtained; indeed, as detailed above, there is evidence to the contrary. In light of the evidence, it is clear that the Defendant did not fulfil her commitment under the Sale Agreement by providing vacant possession. When the above evidence is analysed in the context of the Sale Agreement, I find that the Plaintiff paid 60% of the total sale consideration in spite of not being provided vacant possession as agreed to by the Defendant.

14. This leads to the question whether the Plaintiff established readiness and willingness. As held by the Supreme Court in **J.P. Builders v. A.Ramadas Rao (2011) 1 SCC 429**, readiness and willingness should be determined from the entirety of the facts and circumstances and cannot be put in a straight-jacket. In **Thirugnanam**, the defendant was not in breach of a prior obligation to provide vacant possession. In this case, out of a total sale consideration of Rs.1 crore, a sum of Rs.60,00,000 was admittedly paid by the Plaintiff and received by the Defendant. The balance sale consideration is payable, as per the Sale Agreement, upon being provided vacant possession. Thus, the order of performance of the reciprocal obligations, as per Section 52 of the Indian Contract Act, 1872, is clear and the obligation of the Defendant to provide vacant possession precedes the obligation of the Plaintiff to pay the

balance sale consideration. Hence, the readiness and willingness of the Plaintiff should be decided by keeping in mind this contractual and factual context. As stated above, the Plaintiff was required to pay the balance sale consideration of Rs.60 lakhs, as per the Sale Agreement, after vacant possession is obtained, whereas Rs.60 lakhs was paid prior to the Defendant obtaining vacant possession. Although no documentary evidence was produced with regard to the financial capability to pay the balance sale consideration of Rs.40,00,000, there is oral evidence to that effect. The delay in filing the suit was also explained in the proof affidavit of P.W.1 by stating that the Defendant agreed to provide vacant possession. On considering the facts and circumstances holistically, I conclude that the Plaintiff has established his readiness and willingness to perform the Sale Agreement. On the contrary, the Defendant has failed to perform her commitment by providing vacant possession. Therefore, I conclude that the Plaintiff is entitled to specific performance. In light of this conclusion, the Plaintiff is also entitled to injunctive relief so as to preclude the creation of third party interest. Consequently, the Defendant shall exercise best endeavours to obtain and provide vacant possession to the Plaintiff of the suit schedule property within 80 days from the date of receipt of a copy of the decree. If the Defendant is unable to do so, the Defendant shall inform the Plaintiff by the 81st day. Upon receipt of such communication, the Plaintiff shall have the option of electing part

performance, as per Section 12 of the Specific Relief Act, i.e. without full vacant possession and, in such event, the Plaintiff shall communicate the willingness to accept part performance within 7 days of the receipt of the communication from the Defendant that vacant possession could not be obtained. In such event, the sale deed shall be executed within 90 days from the date of decree. On the other hand, if the Plaintiff refuses to accept part performance, the Plaintiff should seek appropriate legal remedies and the order of injunction would cease to operate once the advance paid by the Plaintiff is refunded with reasonable interest.

15. With regard to the claim for damages, I find that the Plaintiff has not adduced any evidence to prove the claim for damages. Consequently, the claim for damages is rejected.

16. In the result, the suit is decreed as follows:

(i) As per terms specified in paragraph 14 above, the Defendant shall execute a sale deed in favour of the Plaintiff or his nominee for conveying the property bearing Old Door No.182, New Door No.198, Venkatachala Mudali Street, Royapettah, Chennai – 600 014, more fully described in the schedule of the plaint, in accordance with the terms of the Sale Agreement, within a period of 90 days from the date of

receipt of a copy of the decree subject to the payment of the balance sale consideration of Rs.40,00,000/- by the Plaintiff.

(ii) The Defendant, her men, agents, servants and all others claiming through or under her are restrained by an order of injunction from selling, charging, dealing with or otherwise encumbering the suit schedule property albeit subject to the condition specified in paragraph 14.

(iii) The claim for a sum of Rs.25,00,000 as damages is dismissed.

(iv) The Defendant shall pay the costs of the suit to the Plaintiff.

26.02.2020

Plaintiff's witnesses:

1.Mr.P.Saminathan : P.W.1

2.Mr.S.Janardhanam : P.W.2

Defendant's witness:

1.Mr.R.Sundaravadhanam - D.W.1

Plaintiff's exhibits:

- | | | |
|-----------|------------|--|
| 1.Ex.P1 | 09.11.2000 | Photocopy of the Sale Deed registered in favour of R.Ananthakumari |
| 2.Ex.P2 | 16.11.2011 | Photocopy of extract(patta)issued in the name of R.Ananthakumari |
| 3.Ex.P3 | 14.12.2011 | Original Sale agreement between Ananthakumari and P.Saminathan |
| 4.Ex.P4 | 09.12.2013 | Photocopy of letter dated 09.12.2013 from Plaintiff to Defendant |
| 5.Ex.P5 | 10.12.2013 | Original acknowledgment card |
| 6.Ex.P6 | 02.12.2013 | Original reply notice from the defendant counsel |
| 7.Ex.P7 | 20.12.2013 | Copy of Reply notice from Plaintiff counsel |
| 8.Ex.P8 | 31.12.2013 | Original Acknowledgement card |
| 9.Ex.P9 | 18.11.2011 | Original Encumbrance Certificate |
| 10.Ex.P10 | 19.07.2012 | Original Encumbrance Certificate |
| 11.Ex.P11 | 22.12.2014 | Original Encumbrance Certificate |
| 12.Ex.P12 | 21.02.2016 | Online Encumbrance Certificate |
| 13.Ex.P13 | 19.09.2018 | Decree in RCOP.No.165 of 2013(Marked through D.W.1) |
| 14.Ex.P14 | 03.02.2018 | Judgment in O.S.No.7571 of 2012(Marked through D.W.1) |

Defendant's exhibits:

- | | | |
|---------|------------|--|
| 1.Ex.D1 | 30.01.2019 | Original Authorisation Letter |
| 2.Ex.D2 | - | Computer printout Account Summary of TNEB Electrical Connection No.01137085518 |
| 3.Ex.D3 | 14.02.2011 | Original Cheque bearing No.075892 |

26.02.2020

Speaking order

Index: Yes

Internet: Yes

SENTHILKUMAR RAMAMOORTHY, J.

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Pre Delivery Judgment in

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