



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 12th DAY OF AUGUST, 2021

THE HON'BLE MR. JUSTICE N.SESHASAYEE

C.S.No.271 of 2012

and

A.No.1980 of 2013

Mr.AL.Arumugam,
S/o Mr.S.Alagappan,
No.4/49, 1st Street,
State Bank Colony,
Saligramam,
Chennai – 600 093.

... Plaintiff/Applicant

Vs

1.Mrs.R.Sudha,
W/o Mr.K.Kishore Kumar,
No.23, Subba Reddy Street,
C-5, Bharadhidasan Kudil,
West Mambalam,
Chennai – 600 033.

2.Mrs.R.Deepa,
W/o Mr.E.Aravind,
No.23, Subba Reddy Street,
C-5, Bharadhidasan Kudil,
West Mambalam,
Chennai – 600 033.

3.Mrs.R.Sathya,
W/o Paul Emanuel,
No.23, Subba Reddy Street,
C-5, Bharadhidasan Kudil,
West Mambalam,
Chennai – 600 033.



4. Mrs. R. Dhanalakshmi,
W/o Late D. Rajendran,
No. 23, Subba Reddy Street,
C-5, Bharadhidasan Kudil,
West Mambalam,
Chennai – 600 033.

... Defendants/Respondents

Civil Suit praying that this Hon'ble Court be pleased to pass a Decree and Judgment in favour of the plaintiff against the defendants.

i) Directing the defendants to execute and Register the sale deed in accordance with the agreement of sale dated 16.06.2011 in favour of the plaintiffs in respect of the suit property more fully described in the schedule of the plaint by accepting the balance sale consideration of Rs. 1,53,00,000/- (Rupees One Crore Fifty Three Lakhs Only) and putting the plaintiff in possession of the suit property.

ii) Directing the defendants to execute and register the sale deed within the time to be specified by this Hon'ble Court failing which the sale deed to be executed and registered by this Hon'ble Court according to the provisions of order 21 Rule XXXIV (5) and 6(a) of the code of Civil procedure.

iii) To grant permanent Injunction restraining the defendants from alienating or encumbering the suit property.

iv) Directing the defendants to pay costs of this suit.

**A.No.1980 of 2013:-**

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Application praying that this Hon'ble Court be pleased to Appointing an Advocate Commissioner to note down the physical features of the schedule mentioned property.

This Civil Suit along with the application having been heard on 28.07.2021 in the presence of Mr.S.Muthuraman, advocate for the plaintiff in C.S.No.271 of 2012 and for the applicant in A.No.1980 of 2013 and Mr.S.Namasivayam, advocate for the defendants 2 & 3 in C.S.No.271 of 2012 and for the respondents 2 & 3 in A.No.1980 of 2013 and M/s R.Balambigai Gowri, advocate for the defendants 1 & 4 in C.S.No.271 of 2012 and for the respondents 1 & 4 in A.No.1980 of 2013 and upon reading the plaint filed in C.S.No.271 of 2012 and the Judge's Summons and the affidavit of AL. Arumugam filed in A.No.1980 of 2013 and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and **it is ordered and decreed as follows:**

That the plaintiff herein be and is hereby directed to pay the balance sale consideration of Rs.1,53,00,000/- (Rupees One Crore Fifty Three Lakhs only) within a period of two months from this date (i.e) on or



before 12.10.2021.

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2. That the defendants herein be and are hereby directed to execute and register the sale deed as stipulated in the agreement of sale dated 16.06.2011 in favour of the plaintiff in respect of the suit property morefully setout in the schedule hereunder.

3. That there shall be no costs of this suit.

SCHEDULE OF PROPERTY

All that piece and parcel of the vacant house site comprised in survey No.59/3 Saibaba Colony, Virugambakkam Village, Chennai 600 092, District measuring an extent of 3650 sq.ft. bounded on the

North By	: AL Arumugam Property
East By	: Defendants Property
South By	: Saibaba Colony Road
West By	: Parasuraman's Property

Measuring

East to West on the Northern Side	50 feet
East to West on the Southern Side	50 feet
North to South on the Eastern Side	73 feet
North to South on the Western Side	73 feet



Situate within the Sub Registration District of Virugambakkam and Registration District of Chennai South.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
12th DAY OF AUGUST 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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07.10.2021

C.S.No.271 of 2012
and
A.No.1980 of 2013

DECREE

DATED:12.08.2021

THE HON'BLE MR. JUSTICE
N.SESHASAYEE

FOR APPROVAL: 07.10.2021

APPROVED ON : 08.10.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.07.2021

Judgment Pronounced on : 12.08.2021

CORAM : JUSTICE N.SESHASAYEE

C.S.No.271 of 2012
and A.No.1980 of 2013

1.AL.Arumugam

.... Plaintiff

Vs

1.R.Sudha

2.R.Deepa

3.R.Sathya

4.R.Dhanalakshmi

.... Defendants

Prayer : Civil Suit filed under Section Order IV Rule 1 of O.S.Rules r/w Order VII Rule 1 of CPC., praying for judgment and decree in favour of plaintiff (a) to direct the defendants to execute and register the sale deed in accordance with the agreement of sale dated 16.06.2011 in favour of the plaintiffs in respect of the suit property morefully described in the schedule of the plaint by accepting the balance sale consideration of Rs.1,53,00,000/- (Rupees one crore fifty three lakhs only) and putting the plaintiff in possession of the suit property; (b) to direct the defendants to execute and register the sale deed within the time to be specified by this Court failing which the sale deed to be executed and registered by this Court according to the provisions of Order 21 Rule XXXIV (5) and 6(a) of the Code of Civil Procedure; (c) to grant permanent injunction restraining the defendants from alienating or encumbering the suit property (d) to direct the defendants



to pay costs of this suit

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For Plaintiff : Mr.S.Muthuraman

For Defendants : Mr.S.Namasivayam [D2 & D3]
Ms.R.Balambigai Gowri [D1 & D4]

JUDGMENT

The suit is laid for specific performance of a sale agreement dated 16.06.2011.

2.1 The case of the plaintiff is that on 16.06.2011, the plaintiff on the one part and a certain Rajendran and his three daughters on the other entered into an agreement of sale of the suit property. The aforesaid three daughters are arrayed as defendants 1 to 3. Rajendran has since passed away and his widow is the fourth defendant. The said sale agreement was signed by Rajendran, second and third defendant. The total consideration fixed was Rs.1.73 crores, of which, under the agreement, Rs.5 lakhs was paid. Time for performance was fixed at 90 days. On subsequent demand by the defendants, the plaintiff paid Rs.15 lakhs on 04.7.2011, and paid the same by way of three cheques, each for Rs.5 lakhs drawn on each of the defendants 2 to 4. The receipt of these amounts have been acknowledged by the recipients of the cheque - payment through their separate endorsements in the agreement itself. In all Rs.20.0 lakhs (Rs.5 lakhs +



Rs.15 lakhs) was paid, and the balance amount payable is Rs.1.53 crores.

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2.2 When the plaintiff insisted for the signature of the first defendant in the sale agreement, he was informed that the first defendant had been to the United States, and it was promised that the contractual obligations would be performed and the sale deed would be executed on her arrival to India. However, the defendants evaded the same. The plaintiff has been insisting those defendants who are locally available for completing the sale, but they did not show any interest to do the same. The first defendant, though promised to return to India to perform her part of the contract, she never arrived. It is under this circumstances, on 10.11.2011, the plaintiff issued a legal notice to all the defendants as well as to Rajendran. In the reply notice, it was contended that there is a pending litigation, involving the suit property. This was never informed to the plaintiff. Since the plaintiff has been demanding execution of the sale deed, the defendants required the plaintiff to be present at the Sub Registrar Officer, Virugambakkam on 18.01.2012 at 10.30 a.m., on which date, the plaintiff was very much present, but the defendants did not respond. Thereafter on 19.01.2012, the plaintiff issued a telegraphic notice to the defendants, informing the latter of his readiness and willingness to perform his part of the sale, and called upon the latter to perform their part. The suit



for specific performance is accordingly laid.

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3. The first defendant-Sudha did not file any written statement.

The defendants 2 to 4 in their written statement admitted the execution of the sale agreement along with Rajendran and also admitted the receipt of Rs.20 lakhs towards part of the sale consideration as fixed in the agreement. They however, contended that the plaintiff was aware of the litigations that affected the property and it is in this backdrop, the plaintiff has issued a lawyer notice dated 10.11.2011, to which a reply notice was issued by the defendants, in which, the plaintiff was required to return the original documents left with him by the defendants and to take back the advance amount given by the plaintiff towards purchase of the property. In this backdrop, on 06.03.2012, Rajendran had passed away. Indeed, he was admitted in the ICU at Vijaya Hospital sometime in February 2012, and hence, they have missed all the communications including the telegrams alleged to have been issued by the plaintiff then. The defendants are not evading performance of their contract but are hampered by disputes within the family, as well as by the pending litigations relating to the property. They are afraid that might breach the rule of *lis pendens*.

4. The following issues are framed for trial and adjudication :

i. *Whether the sale agreement dated 16.06.2011 is valid and binding on the defendants?*

ii. *Whether the time is the essence of the contract?*



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iii. *Whether there was encumbrance over the suit property on the date of execution of the agreement?*

iv. *Whether the plaintiff was ready and willing?*

v. *Whether the plaintiff is entitled to the decree for specific performance?*

vi. *To what other reliefs, the plaintiff is entitled to?"*

5. On the side of the plaintiff, the plaintiff was examined as PW1 and Exhibits P1 to P55 were marked, of which Ext.P1 is the agreement of sale, Ex.P2 is the legal notice and Ext.P3 is the reply notice. Whereas for the defendants, the fourth defendant was examined as DW1, but no documents were marked on her side.

6. Heard both sides. The learned counsel for the plaintiff submitted that in the written statement the defendants hardly have taken up any serious line of defence except indicating certain litigations affecting the property. The suit for specific performance is one for enforcing personal obligation under the contract of sale, since an agreement of sale does not create any interest in the property.

7. Per contra, learned counsel for the defendants submitted that in the said agreement, the first defendant has not signed the sale agreement and it may not bind the first defendant. Secondly, the tenants have not vacated as was required in the agreement. Therefore, the agreement *per se* cannot



the agreement and consequently, the defendants were not in a position to perform the condition precedent for performing the contract.

8. The counsel for the plaintiff would now contend that in Ext.P-3 reply notice, it is admitted that Sudha had also participated in the agreement. And, Sudha did not examine herself to explain this.

Issue 1

9.1 The sale agreement is marked Ext.P-1. The execution of this sale agreement is not disputed. The only objection was that the first defendant Sudha had not joined the execution of Ext.P1. Now, even if one of the parties has not executed the sale agreement, it cannot invalidate the entire agreement and it would bind those who have signed it. But will it bind Sudha, the first defendant? In Ext.P-3 reply notice issued on behalf of the defendants in response to the plaintiff's suit notice, in paragraph 3, Sudha admits about the sale agreement.

9.2 Here it is relevant to mention that Vide, T.N.Act 29/2012, sub-section (g) was inserted to Sec.17(1) of the Registration Act, which now required that every agreement for sale of immovable property for a value in excess of Rs.100/- must be compulsorily registered. This provision came into force on 01-12-2012. However, Ext.P-1 was executed on 16-06-2011. At the

time when the sale agreement was made, it was permissible in law to enter



into an oral agreement of sale. Viewed thus, can it be now inferred if Sudha, the first defendant, can be bound by any oral agreement? Answering it in the affirmative appears inevitable now, since in Ext.P-3 reply notice which was issued for and on behalf of defendants 1 to 3, the agreement was admitted. The first defendant Sudha did not attempt to explain it away by examining herself. Necessarily this Court has to hold that the sale agreement also binds the first defendant.

Issues 2 and 3

10.1 So far as encumbrances such as tenants, or litigations affecting the property, if any, which are cited as defences by the defendants to resist the cause of action are concerned, it must be stated that they have to fail even if there are any. It is contrary to the settled law that in a suit for specific performance, the vendors are forbidden from pleading want of title or other encumbrances in the suit property in them as a defence. Vacating the tenants or resolving other outstanding disputes over the property or any litigations are not very germane when a suit is laid for enforcing a personal obligation to perform a contract. All these terms by their very nature are aimed to give peaceful title and possession to a purchaser, and if the plaintiff ignores them, then the defendants need not overly worry for the plaintiffs and delay performing their contractual obligations.



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10.2 So far as Issue 2 is concerned, the issue itself need not have been made since this point is not seen as an aspect of dispute when the pleadings are read.

11. The suit is decreed and the plaintiff is directed to pay the balance sale consideration of Rs.1,53,00,000/-within a period of two months from today, and the defendants are directed to execute and register the sale deed as stipulated in the agreement of sale dated 16.06.2011 in favour of the plaintiff in respect of the suit property. No costs.

Sd./-N.S.S.J
12.08.2021

APPENDIX

I. Witnesses :

Plaintiffs :	
PW1	AL.Arumugam
Defendants :	
DW1	R.Dhanalakshmi

II. Exhibits :

Plaintiffs :		
Ex.P1	16.06.2011	Original sale agreement executed between the plaintiff and defendants 1 to 3 & Rajendran
Ex.P2	10.11.2011	Lawyer notice issued by the plaintiff counsel



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Plaintiffs :		
Ex.P3	Nil	Reply notice by D2 & D4
Ex.P4	19.01.2012	Telegram issued to D1 by the plaintiff
Ex.P5	19.01.2012	Paper publication by plaintiff
Ex.P6		Income Tax Return Acknowledgment filed by plaintiff
Ex-P7		Income Tax Return Acknowledgment filed by plaintiff for the year 2012-2013
Ex-P8		Income Tax Return Acknowledgment filed by plaintiff for the year 2013-2014
Ex-P9		Income Tax Return Acknowledgment filed by plaintiff for the year 2014-2015
Ex-P10		Income Tax Return Acknowledgment filed by plaintiff for the year 2015-2016
Ex.-P11		Statement of Accounts of Karur Vysya Bank from 01.04.2011 to 31.03.2012 filed by the plaintiff
Ex.P12		Statement of Accounts of Indian Bank for the period 01.07.2011 to 31.07.2011 filed by the plaintiff
Ex-P13		Statement of Accounts of Indian Bank for the period 01.10.2011 to 31.10.2011 filed by the plaintiff
Ex.P14		Statement of Accounts of Indian Bank for the period 01.11.2011 to 30.11.2011 filed by the plaintiff
Ex.P15		Statement of Accounts of Indian Bank for the period 01.12.2011 to 31.12.2011 filed by the plaintiff
Ex.P16		Statement of Accounts of Indian Bank for the period 01.01.2012 to 29.02.2012 filed by the plaintiff
Ex.P17		Statement of Accounts of Indian Bank for the period 01.3.2012 to 16.4.2012 filed by the plaintiff
Ex.P18		Statement of Accounts of Indian Bank for the period 01.04.2012 to 16.05.2012 filed by the plaintiff



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Plaintiffs :		
Ex.P19		Statement of Accounts of Indian Bank for the period 01.05.2012 to 30.06.2012 filed by the plaintiff
Ex.P20		Statement of Accounts of Indian Bank for the period 01.06.2012 to 31.08.2012 filed by the plaintiff
Ex.P21		Statement of Accounts of Indian Bank for the period 01.09.2012 to 31.09.2012 filed by the plaintiff
Ex.P22		Statement of Accounts of Indian Bank for the period 01.10.2012 to 31.10.2012 filed by the plaintiff
Ex.P23		Statement of Accounts of Indian Bank for the period 01.11.2012 to 30.11.2012 filed by the plaintiff
Ex.P24		Statement of Accounts of Indian Bank for the period 01.12.2012 to 01.01.2013 filed by the plaintiff
Ex.P25		Statement of Accounts of Indian Bank for the period 01.01.2011 to 31.03.2013 filed by the plaintiff
Ex.P26		Statement of Accounts of Indian Bank for the period 01.02.2013 to 28.02.2013 filed by the plaintiff
Ex.P27		Statement of Accounts of Indian Bank for the period 01.03.2013 to 31.03.2013 filed by the plaintiff
Ex.P28		Statement of Accounts of Indian Bank for the period 01.04.2013 to 30.4.2013 filed by the plaintiff
Ex.P29		Statement of Accounts of Indian Bank for the period 01.05.2013 to 01.06.2013 filed by the plaintiff
Ex.P30		Statement of Accounts of Indian Bank for the period 01.06.2013 to 30.06.2013 filed by the plaintiff
Ex.P31		Statement of Accounts of Indian Bank for the period 01.07.2013 to 30.11.2013 filed by the plaintiff
Ex.P32		Statement of Accounts of Indian Bank for the period 01.12.2013 to



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Plaintiffs :		
		21.04.2014 filed by the plaintiff
Ex.P33		Statement of Accounts of Indian Bank for the period 01.01.2014 to 31.01.2014 filed by the plaintiff
Ex.P34		Statement of Accounts of Indian Bank for the period 01.02.2014 to 28.02.2014 filed by the plaintiff
Ex.P35		Statement of Accounts of Indian Bank for the period 01.03.2014 to 31.03.2014 filed by the plaintiff
Ex.P36		Statement of Accounts of Indian Bank for the period 01.04.2014 to 05.5.2014 filed by the plaintiff
Ex.P37		Statement of Accounts of Indian Bank for the period 01.05.2014 to 31.07.2011 filed by the plaintiff
Ex.P38		Statement of Accounts of Indian Bank for the period 01.06.2014 to 30.06.2014 filed by the plaintiff
Ex.P39		Statement of Accounts of Indian Bank for the period 01.07.2014 to 31.07.2014 filed by the plaintiff
Ex.P40		Statement of Accounts of Indian Bank for the period 01.08.2014 to 31.08.2014 filed by the plaintiff
Ex.P41		Statement of Accounts of Indian Bank for the period 01.09.2014 to 30.09.2014 filed by the plaintiff
Ex.P42		Statement of Accounts of Indian Bank for the period 01.10.2014 to 31.10.2014 filed by the plaintiff
Ex.P43		Statement of Accounts of Indian Bank for the period 01.07.2011 to 31.07.2011 filed by the plaintiff
Ex.P44		Statement of Accounts of Indian Bank for the period 01.11.2014 to 31.12.2014 filed by the plaintiff
Ex.P45		Statement of Accounts of Indian Bank for the period 01.01.2015 to 28.2.2015 filed by the plaintiff
Ex.P46		Statement of Accounts of Indian Bank



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Plaintiffs :		
		for the period 01.03.2015 to 06.4.2015 filed by the plaintiff
Ex.P47		Statement of Accounts of Indian Bank for the period 01.04.2015 to 31.05.2015 filed by the plaintiff
Ex.P48		Statement of Accounts of Indian Bank for the period 01.05.2015 to 30.06.2015 filed by the plaintiff
Ex.P49		Statement of Accounts of Indian Bank for the period 01.07.2015 to 31.07.2015 filed by the plaintiff
Ex.P50		Statement of Accounts of Indian Bank for the period 01.08.2015 to 31.08.2015 filed by the plaintiff
Ex.P51		Statement of Accounts of Indian Bank for the period 01.09.2015 to 30.9.2015 filed by the plaintiff
Ex.P52		Statement of Accounts of Indian Bank for the period 01.10.2015 to 31.11.2015 filed by the plaintiff
Ex.P53		Statement of Accounts of Indian Bank for the period 01.10.2015 to 31.12.2015 filed by the plaintiff
Ex.P54		Statement of Accounts of Indian Bank for the period 01.06.2016 to 24.3.2016 filed by the plaintiff
Ex.P55		Statement of Accounts of Indian Bank for the period 01.3.2016 to 31.3.2016 filed by the plaintiff
<i>Documents by defendants : NIL</i>		

Sd./-N.S.S.J.
12.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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