



C.S.No.919 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2022

PRONOUNCED ON : 15.12.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

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1.Lakshmi
2.Meenakshi Ammal
3.Nagarajan
4.Babai
5.Kamala Narasimman

...

Plaintiffs

VS.

1.M/s/Apparao Garden Co-operative
Housing Society
Rep. by its Special Officer,
Having their office at
No.5, A.J.T.Dorairaj Nagar,
Aminjikarai, Chennai – 600 029.

2.S.Pushpammal
3. Mani
4. Pattammal
5.V.Jayaraman
6.V.R.Ramakrishnan
7.K.A.Subramanian
8.Nalini
9.K.Subramania Chettiar
10.G.Venkatesan
11.P.R.Srinivasan
12.S.P.Muthaiya
13.N.Pandiyan
14.G.Muthu
15.K.S.Alamelu

...

Defendants



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Prayer: This Civil Suit is filed under Order VII Rule 1 of Code of Civil Procedure and Order IV Rule 1 of O.S.Rules, for a judgment and decree against the defendants as follows: (i) to direct the defendants 1 to 14 herein to quit and deliver vacant possession of the suit property morefully described in the schedule hereunder to the plaintiffs in its original form by removing all the constructions if any put up thereon, and in default permit the plaintiffs to remove all the super structures and constructions existing thereon and recover the cost of the same from the defendants; (b) to direct the defendants to pay costs of the suit.

For Plaintiffs : Mr.S.Kanniah

For Defendant : Mr.P.G.Thiyagu
No.1 for Mr.R.Subramanian

For Defendant : Set exparte on 21.07.2011
Nos.2 to 4 & 14

For Defendant : Set exparte on 13.12.2010
Nos.5 to 13 & 15

J U D G M E N T

The suit is filed for the relief of direction against the defendants 1 to 14 to quit and deliver the vacant possession of the suit property by removing all the construction, if any, put up there on and in default, permit the plaintiffs to remove the superstructure and constructions and recover the costs of the same from the defendants and for costs.



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2.The case of the plaintiffs is that, the part of the land to an extent of

10 grounds and 1700 sq.ft. in T.S.No.12, Block No.11, Puliur Village, Egmore – Nungambakkam Taluk, morefully described in the schedule was owned by K.R.Sundararajan, husband of the second plaintiff and father of the other plaintiffs and the 15th defendant. It was purchased under a sale deed dated 29.10.1950, from one P.Srinivasa Iyengar. K.R.Sundararajan and other owners of the adjacent lands appointed one P.K.Sowmyanarayanan, Advocate, as their agent to sell the properties in favour of the first defendant Society. The said power agent entered into an agreements of sale on 28.02.1978 and on 02.04.1978 with the first defendant Society for a consideration of Rs.1,15,200/-. Rs.40,200/- was paid as advance. In the sale agreement dated 02.04.1978, no amount was mentioned towards sale consideration and no advance was received by the plaintiffs and the 15th defendant's father or his agent. It was mutually agreed that the sale price relating to the suit property would be fixed separately and the sale deeds relating to the extent of property in favour of the first defendant Society will be executed on receiving the entire sale consideration. The first defendant Society was unable to honour its commitment. The first defendant Society filed a suit in O.S. No.7732 of 1988, on the file of VII Assistant City Civil Court for the relief of specific



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performance directing the plaintiffs to execute the sale deed in favour of the first defendant Society, in respect of the suit property. The suit was dismissed on 08.09.2004 holding that the first defendant is not entitled to the relief of specific performance of agreement. The first defendant filed an appeal in A.S.No.360 of 2005, before the IIIrd Additional Judge, City Civil Court, Chennai. That appeal was dismissed on 03.02.2006, confirming the judgment of the Trial Court. First defendant failed to restore the possession of the suit property, which was taken surreptitiously and without the consent and knowledge of the plaintiffs. The defendants 2 to 14 claim to be the members of the first defendant Society are in illegal and unlawful possession. Since the 15th defendant, sister of the plaintiffs is not co-operating, she is shown as a defendant. Under these circumstances, the suit is filed for the aforesaid reliefs.

3.The case of the first defendant Society is that the first defendant Society already proved that the entire sale consideration was paid to the owner K.R.Sundararajan for the land measuring 24700 sq.ft. in T.S.No.12, Block No.11, Puliur Village, Egmore – Nungambakkam Taluk. The plaintiffs refused to give the copy of the title deeds. Therefore, the suit in O.S. No.7732 of 1988 was filed for specific performance. The plaintiffs are



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bound by the terms and conditions in the original sale agreement, dated 28.02.1978. The entire sale consideration as per this agreement was paid.

The sale agreement does not lapse by efflux of time once the entire sale consideration is paid. There was no agreement to re-fix the sale price. The extent of the property owned by the owner is only 24700 sq.ft. and not 10 grounds and 1700 sq.ft. The Power Agent received an advance amount of Rs.1000/- towards the sale consideration, by cash. But, he died before executing the sale deed in favour of the first defendant Society. The owner of the land refused to receive the balance sale consideration of the price already fixed under the agreement dated 28.02.1978. The possession was handed over on 28.02.1978. The first defendant Society is not bound in law either morally or legally to restore the possession of the suit property to the plaintiffs. This suit on the same cause of action in earlier proceedings is barred. Therefore, the suit is liable to be dismissed.

4.On the basis of the aforesaid pleadings, the following issues are framed:

1.Whether the 1st Defendant paid entire sale consideration as agreed by Original owner to the said owner Mr.K.Sundararajan (the father of the plaintiff) who was



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represented by Power Agent one P.K.Sowmyanarayanan, Advocate who signed the original agreement and also the renewal of the agreement dated 28.02.1978 as on 2.4.1979 ?

2. Whether these plaintiffs are bound by the said agreement executed by the said Power the Agent and renewal of the same and entire payments made under the said agreement ?

3. Whether the plaintiffs are bound by the sale deeds executed in favour of the members of the 1st Respondent society?

4. Whether the suit is maintainable when all the purchasers of the suit property are not made parties in this suit?

5. Whether the suit is barred by limitation or maintainable in law?

6. Whether the defendants 2 to 15 are necessary parties to the suit? Whether the suit is liable to be dismissed on the



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ground of mis joinder of parties ?

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7.Whether the suit is liable to be dismissed on the ground of Non-joinder of necessary parties?

8.Whether the suit property extent as claimed in the suit C.S.No.943 of 2008 is correct or not?

9.Whether the original owner, the father of the plaintiffs K.R.Sundararajan handed over possession under the suit agreement in O.S.No.7732 of 1993 or not ?

10.Whether the suit is barred by the provisions of Section 10, 11 and 12 of C.P.C. as the S.A.No.1411 of 2008 is pending before this Hon'ble Court on the same cause of action and between the same parties ?

11.Whether the parties / members from 1st Defendant society with respect to suit property have perfected their title by adverse possession and hence on that ground whether the suit is liable to be dismissed ?

12. To what relief is the plaintiff entitled to ?



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5.PW1 was examined on the side of the plaintiffs and Exs.P1 to P8 were marked. No witness was examined on the side of the defendants and Ex.D1 was marked during the course of cross examination of PW1.

6.The learned counsel for the plaintiffs submitted that the plaintiffs' father was the owner of the suit property and after him, the plaintiffs inherited the suit property and therefore, they are the owners of the suit property. There was a sale agreement in respect of the suit property between the plaintiffs' father K.R.Sundararajan and the first defendant Society. However, the first defendant Society failed to perform its part of the contract and it filed a suit in O.S. No.7732 of 1988 for the relief of specific performance on the basis of the sale agreement. The said suit was dismissed and the appeal filed against the dismissal in A.S.No.360 of 2005 was also dismissed. Subsequently, Second Appeal in S.A.No.1411 of 2008 was filed and it was also dismissed as withdrawn on 18.11.2019. Somehow, the first defendant Society took possession of the property. Now, the first defendant Society failed in securing the relief of specific performance and



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therefore, it is liable to handover the possession of the property.

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7.Per contra, the learned counsel for the first defendant Society submitted that defendants 5 to 13 & 15 remained ex-parte in this case. Summons to defendants 2, 3, 4 & 14 was not taken and therefore, the suit was dismissed against these defendants. Suit summons were not taken to the individual addresses of defendants 2 to 14, but it was taken to the address of the first defendant. There was no proper service of summons to defendants 2 to 14. The sale agreements dated 28.02.1978 and 02.04.1978 are not produced. The plaintiffs have also not produced any document to show their title to the suit property. This suit is barred by limitation for the reason that the plaintiffs have not filed the suit once the first defendant Society failed to perform its part of the contract. The first defendant Society paid the entire sale consideration and therefore, possession was handed over to the first defendant Society. First defendant's possession is a legal possession and it cannot be construed as an illegal possession. There is no details or evidence given with regard to the date from when the first defendant Society illegally possessed the property. Therefore, the learned counsel for the first defendant Society submitted that the plaintiffs are not entitled to any relief and the suit is liable to dismissed.



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8.From the pleadings, evidence and submissions of the learned counsel appearing for the parties, there is no dispute regarding the fact that the suit property was originally owned and possessed by the plaintiffs' father deceased K.R.Sundararajan. Only because of the fact that K.R.Sundararajan was the owner of the property, the first defendant Society entered into the sale agreement with K.R.Sundararajan. Therefore, the claim of the learned counsel for the first defendant Society that the plaintiffs failed to produce the original title deeds and therefore, they cannot succeed in the suit cannot be accepted.

9.As admitted by both parties, the first defendant Society filed the suit in O.S. No.7732 of 1988 against the first plaintiff seeking the relief of specific performance. The copy of the plaint is produced as Ex.P1. The written statement of the first plaintiff is produced as Ex.P2. The suit was dismissed after contest on 08.09.2004. The copy of the judgment is produced as Ex.P3. The copy of the decree is produced as Ex.P4. The first defendant filed an appeal in A.S.No.360 of 2005 and that was dismissed on



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03.02.2006. The copy of the judgment is produced in Ex.P5. The copy of the decree is produced in Ex.P6. The Encumbrance Certificates are produced as Ex.P7 and Ex.P8. The defendants produced Ex.D1, letter of authority given by K.R.Sundararajan authorising P.K.Sowmyanarayanan, Advocate to sell the vacant land.

10.Considering all these documents, especially, Exs.P3 and P5 judgments, it is clear that the suit filed by the first defendant Society against the plaintiffs seeking the relief of specific performance was dismissed. The possession of the first defendant Society of the suit property is only in its capacity as an agreement holder. Once the suit filed for enforcing specific performance of contract on the basis of the sale agreement is negated, its possession becomes illegal. Therefore, in the considered view of this Court, the first defendant Society is liable to hand over the possession of the suit property to the plaintiffs.

11.With regard to the contentions of the learned counsel for the first defendant Society that the defendants 2 to 14 had not been served properly, this Court finds substance in his submissions. Even from the plaint, we can see that the individual addresses of defendants 2 to 14 were not given.



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Their address is given as that of the first defendant Society. It is also submitted by the learned counsel for the first defendant Society that the suit against the defendants 2, 3, 4 & 14 was dismissed for not taking summons to them. Defendants 5 to 13 & 15 remained ex-parte. They remained ex-parte for the reason that the summons was not taken to their residential individual address. Merely because they were set ex-parte, this Court is of the view that a decree cannot be passed against them unless service of summons was satisfactorily completed. This Court is of the view that service of summons to D2 to D14 was not satisfactorily completed and therefore, no decree can be passed against them.

12. Issue no.1:

The first defendant Society has not produced any evidence to show that it paid the entire sale consideration to the owner K.R.Sundararajan, who was represented by his power agent P.K.Sowmyanarayanan. Therefore, this issue is answered against the first defendant Society that it failed to prove the payment of the entire sale consideration to the owner K.R.Sundararajan.

13. Issue No.2:

The suit filed for specific performance of contract on the basis of the sale agreement was dismissed and the dismissal was confirmed by the First Appellate Court and the Second Appellate Court and therefore, there is no



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occasion to consider this issue.

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14. Issue No.3:

When the sale in favour of the first defendant Society is not completed, the sale executed by the first defendant Society in favour of its members will not bind the plaintiffs.

15. Issue No.4:

The first defendant Society has not given the details of the purchasers and therefore, it cannot be held that the suit is not maintainable for non impleadment of the purchasers.

16. Issue No.5:

This suit is filed immediately after the dismissal of A.S.No.360 of 2005 and therefore, the suit is not barred by limitation.

17. Issue No.6:

The defendants 2 to 15 are necessary parties for the reason that they are the members of the first defendant Society. The suit is not liable to be dismissed for misjoinder of parties.



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18. Issue No.7:

The first defendant Society has not produced the details of the purchasers and therefore, the non impleadment of the purchasers cannot be a ground for the dismissal of the suit.

19. Issue No.8:

The specific performance suit was filed for the extent given in the sale agreement. For the same property, this suit is filed and therefore, this Court finds that the extent claimed in this suit is correct.

20. Issue No.9:

It is claimed by the first defendant Society that it executed the sale deed in favour of its members. It goes without saying that the possession of the property was handed over or taken over by the first defendant.

21. Issue No.10:

The suit is not barred by the provisions of Sections 10, 11 & 12 of C.P.C. since S.A.No.1411 of 2008 was dismissed on 18.11.2019.

22. Issue No.11:

Since all the members of the first defendant Society are not before



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this Court and the defendants 2 to 14 have not filed their written statement claiming title by adverse possession, it is not necessary to answer this issue.

23. In the result,

(i) the plaintiffs and the 15th defendant are entitled to the relief of direction from this Court directing the first defendant Society to quit and deliver the vacant possession of the property after removing all the constructions put up thereon and in default permit the plaintiffs and the 15th defendant to remove all constructions and recover the costs from the first defendant Society.

(ii) The suit against the defendants 2 to 14 is dismissed.

(iii) Considering the facts of the case, the parties are directed to bear their own costs.

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.12.2022

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

List of witnesses examined on the side of plaintiffs:

1.Mrs.Lakshmi (PW1)

List of documents marked on the side of plaintiffs:



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<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1.	P1	Copy of the plaint in O.S.No.7732 of 1998 on the file of City Civil Court, Chennai dated 20.04.1998.
2.	P2	Copy of the written statement filed in O.S.No.7732 of 1998 on the file of City Civil Court, Chennai dated 06.06.2002.
3.	P3	Certified Copy of the judgment in O.S.No.7732 of 1998 on the file of the VII Assistant Judge, City Civil Court, Chennai dated 08.09.2004.
4.	P4	Certified Copy of the Decree in O.S.No.7732 of 1998 on the file of VII Assistant Judge, City Civil Court, Chennai dated 08.09.2004.
5.	P5	Certified Copy of the Judgment in A.S.No.360 of 2005 on the file of the III Additional Judge, City Civil Court, Chennai dated 03.02.2006.
6.	P6	Certified Copy of the decree in A.S.No.360 of 2005 on the file of the III Additional Judge, City Civil Court, Chennai dated 03.02.2006.
7.	P7	Original Encumbrance Certificate No.5292 dated 29.05.2008.
8.	P8	Original Encumbrance Certificate No.5291 dated 29.05.2008.

List of witnesses examined on the side of the defendants:

NIL

List of documents marked on the side of defendants:

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1.	D1	Certified copy of the letter of authority by father of plaintiffs K.Sundararajan, dated 18.02.1977 (marked during the cross examination of PW1 on 20.04.2011)



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