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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2014

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

C.S.No.104 of 2011

S. Padma Rathod

..Plaintiff

-Vs.-

1. A. Rajasekar

2. Hemanth Kumar C. Jain

3. Bharat Kumar C. Jain

4. Sushiladevi Jain

..Defendants

Prayer:- Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Civil Procedure Code praying for a judgment and decree in favour of the plaintiff (i) for specific performance, directing the defendants herein to execute a sale deed in favour of the plaintiff herein as per the agreement of sale dated 16 April 2010 executed by the first defendant in respect of the immovable property, comprised in Survey Nos.764/1 & 764/2, Vepery and bearing Door No.3, Salai Street, Vepery, Chennai-7 on receipt of the agreed balance sale consideration of Rs.40,00,000/-(Rupees forty lakhs only) from the plaintiff herein, failing which, this Hon'ble Court may be pleased to direct the Registry to execute and register a sale deed as aforesaid in favour of the plaintiff as per the agreement dated 16 April 2010 on the plaintiff depositing the aforesaid balance sale consideration into this Hon'ble Court to the credit of the above suit; (ii) granting a declaration declaring the



purported sale deed dated 9 September 2010 created by defendants 1 to 3 in favour of 4th defendant, as sham and nominal and is not binding on the plaintiff herein in any way; (iii) for a permanent injunction restraining the defendants herein, their agents, assigns, men or any other person claiming through them in any manner encumbering the plaint schedule property; (iv) awarding the costs of this suit to the plaintiff.

For Plaintiffs : Mr.M. Balasubramanian
Defendants : Ex parte
by order dated 03.04.2013

J U D G M E N T

This is a suit for specific performance of the agreement dated 16 April 2010 and for a declaration declaring that the sale deed dated 9 September 2010 as null and void and not binding on the plaintiff.

The facts:

2. The plaintiff entered into an agreement of sale with the first defendant on 16 April 2010 in respect of the schedule property. The plaintiff agreed to pay a total sum of Rs.60 lakhs. The plaintiff paid a sum of Rs.5 lakhs by way of cheque dated 16 April 2010 drawn on Karnataka Bank Limited. Subsequently, she paid another sum of Rs.15 lakhs



by way of three cheques. The payments were all endorsed on the back side of the sale agreement. The plaintiff has paid a total sum of Rs.20 lakhs to the first defendant. According to the plaintiff, there was a suit pending before the VIII Assistant City Civil Court, Chennai in O.S.No.3513 of 2008 involving the subject property. The plaintiff agreed to execute the sale deed, after the disposal of the said case. Since the first defendant failed to take steps for execution of document in spite of readiness on the part of the plaintiff to pay the balance consideration and having suspected the bona fides, the plaintiff applied for encumbrance certificate of the property. The encumbrance certificate disclosed that the first defendant along with defendants 2 and 3 executed a sale deed in favour of the fourth defendant on 9 September 2010 assigning the subject property for a total sum of Rs.27,66,000/-. This fraudulent transaction made the plaintiff to file the suit for specific performance and declaration.

3. The defendants were set ex parte on 3 April 2013.

The issues:

4. This Court framed the following issues:

(i) Whether the plaintiff is entitled to a decree for specific performance of the agreement dated 16 April 2010?



(ii) Whether the plaintiff is entitled to a decree of declaration that the sale deed dated 9 September, 2010 is sham and nominal and not binding on her?

(iii) Relief and cost?

Evidence:

5. The husband of the plaintiff was examined as P.W.1. The plaintiff marked Exs.P.1 to P.8 to prove the claim made in the plaint.

Analysis:

6. The plaintiff entered into a sale agreement with the first defendant on 16 April 2010. The agreement of sale was marked as Ex.P.6. The sale agreement contained an endorsement made by the first defendant with regard to the receipt of the initial amount of Rs.5 lakhs and the subsequent payment of Rs.15 lakhs. Therefore, it is evident that as against the total sale consideration of Rs.60 lakhs, the plaintiff has paid a sum of Rs.20 lakhs. Since the first defendant has accepted subsequent payments on 16 April 2010 and 27 May 2010, it is evident that time is not the essence of the contract. The plaintiff has very clearly proved the execution of the agreement of sale. The plaintiff has also shown her willingness to pay the balance sale consideration and to get the sale deed executed. The



materials available on record clearly shows that the plaintiff has been ready and willing to perform her part of the contract. Therefore I am of the view that the plaintiff is entitled for a decree of specific performance of the agreement dated 16 April 2010. The first issue is therefore answered in favour of the plaintiff.

7. The next issue relates to the sale deed executed by defendants 1 to 3 in favour of the fourth defendant, notwithstanding the execution of Ex.P.6.

8. Ex.P.5 shows that the property belongs to the first defendant. However, the sale deed executed in favour of the fourth defendant and marked as Ex.P.7 indicates that defendants 2 and 3 have also signed the said document to make it appear as if they are also having a right in the property. The sale deed was executed for a sum of Rs.27,66,000/-. It is worth mentioning here that the first defendant has entered into a sale agreement with the plaintiff for a sum of Rs.60 lakhs and received an advance of Rs.20 lakhs. However, the subsequent sale deed in respect of the very same property shows that the property was sold for a sum of Rs.27,66,000/-. Therefore, it is



very clear that the subsequent sale deed was a fraudulent transaction made to defeat the claim made by the plaintiff.

The sale deed in Ex.P.7 appears to have been executed only to avoid the execution of the sale deed in favour of the plaintiff after receiving the balance sale consideration. Therefore, I hold that Ex.P.7 is a fraudulent document and the same is not binding on the plaintiff. The second issue is accordingly decided in favour of the plaintiff and against the defendants

9. In the result, the suit is decreed as prayed for with costs. The plaintiff is directed to deposit the balance sale consideration to the credit of C.S.No.104 of 2011 on or before 9 June 2014. The first respondent is directed to execute the sale deed within fifteen days from the date of deposit, failing which it is open to the plaintiff to take steps for execution of document through Court.

sd/.K.K.S.J
28.04.2014

//Certified to be a true copy//
Dated this the day of 2016

R.s/17.02.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.