



WEB COPY



C.S.No.354 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM

THE HONOURABLE Ms. JUSTICE **R.N.MANJULA**

C.S.No.354 of 2008

Dr.RM.Arumugam

... Plaintiff

-Vs.-

1. Mr.Seenan Sarathy

2. Ms.Anandhi

... Defendants

Prayer: Civil Suit filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of Original Side Rules, praying to pass a judgment and decree in favour of the plaintiff and as against the defendants:

a) for Specific Performance, directing the Defendants to execute a Sale Deed in favour of the Plaintiff and/or his nominee(s)/assign(s) in respect of the undivided share of the land and the Flat along with all rights, common area and appurtenances at Plot No.1/1A, UR Nagar, Anna Nagar Western Extension, Chennai admeasuring 1058 square feet of plinth area on the 2nd floor more fully described in the Schedule 'A', 'B' & 'C' hereunder and also hand over to the plaintiff the originals of the parent documents of title or, in default, to execute the sale deed by this Honourable Court in favour of the Plaintiff on behalf of the Defendants;

b) For a permanent Injunction restraining the defendants and their men or their agents or servants, legal representatives or any other person from



C.S.No.354 of 2008

selling or alienate or encumbering or disturbing peaceful possession of the property situated at Plot No.1/1A, II Floor, UR Nagar, Anna Nagar Western Extension, Chennai-600 101 in any manner whatsoever;

c) for damages, directing the Defendants and their men or their agents or servants, legal representatives to pay to the Plaintiff a sum of Rs.3,00,000/- (Rs.Three lakhs only) to compensate for the following factors, namely, delay, inability caused to the Plaintiff from effective disposition of his property, mental agony caused to the Plaintiff by the persistent recalcitrant attitude of the defendants, escalation in the cost of Registration and other incidental expenses, the quantum being limited and restricted to Rs.3,00,000/- by the Plaintiff.

d) for costs, directing the Defendants to pay the Plaintiff, the entire costs of the suit and

e) granting such further or other reliefs as this Honourable Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Ms.G.Santhimeenakshi

For Defendants : Ex-parte

J U D G M E N T

The suit property belongs to the first defendant and the second defendant is the Power Agent of the first defendant. Both the defendants had executed sale agreement in respect of the suit property in favour of the



C.S.No.354 of 2008

plaintiff on 06.10.2005 by agreeing to sell the suit property for a sale consideration of Rs.18.00 lakhs. On the date of sale agreement, the plaintiff made a part sale consideration of Rs.1,50,000/- [Rupees One Lakh and Fifty Thousand only]. It was agreed between the parties that Rs.8,50,000/- should be paid within ten days from the date of sale agreement and the remaining Rs.8,00,000/- should be paid within the stipulated time of three months. As agreed, the plaintiff made the balance payment. Though there is a little delay in making the payment, the plaintiff did not raise any objections and accepted the same. In view of the delay involved in payment, the plaintiff agreed to pay an excess Sale consideration of Rs.1,00,000/- and that was paid along with the final payment made on 05.07.2006 and due endorsements have been made on the back side of the sale agreement. But thereafter, the defendants did not come forward to execute the sale agreement. The plaintiff was constrained to send a legal notice to the defendants on 12.10.2007 by calling upon them to come forward and execute the sale deed in favour of the plaintiff, as per the terms of the agreement dated 06.10.2005.

1.1. Since the defendants did not come forward to execute the sale deed, the plaintiff sent the legal notice on 12.10.2007 and the same was received by the defendants on 15.10.2007. The defendants sent a reply notice on



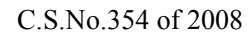
27.10.2007 by stating that the extra sale consideration fixed for the delay caused in executing the sale agreement was Rs.2,00,000/- and not Rs.1,00,000/-. By stating so, the defendants refused to execute the sale agreement and that prompted the plaintiff to come before this Court with a suit for Specific Performance along with other reliefs.

2. The defendants appeared through counsel, however, did not file any written statement. Subsequently, the learned counsel for the defendants also reported no instructions. Hence, the defendants were set ex-parte.

3. The defendants 1 and 2 remained ex-parte and did not file any written statement. However, taking into consideration of the averments made in the plaint, the following issues have been framed for consideration:-

- 1. Whether the suit sale agreement dated 06.10.2005 is true and valid?*
- 2. Whether the plaintiff is entitled to decree for Specific Performance?*
- 3. What other reliefs the plaintiff is entitled to?*

4. The suit has been filed for Specific Performance along with the reliefs of permanent injunction and damages. The plaintiff got examined himself as PW1 and Exs.P1 to P9 were marked.



6. It is submitted that on receiving the entire payment, the first defendant had handed over the possession of the flat to the plaintiff, but however, he did not execute the sale agreement. The first defendant is said to be an NRI, who lives at Singapore and the plaintiff was making several reminders and he had also caused a legal notice to the defendants on 12.10.2007. The copy of the legal notice is produced as Ex.P3 and the



WEB COPY

acknowledgment (Ex.P4) shows that the first defendant was in receipt of the said legal notice. All of a sudden the defendants had sent a notice on 27.10.2007 by making false averments and the same is marked as Ex.P5. The plaintiff had sent a rejoinder notice along with his willingness by making an offer of Rs.20,000/- as ex-gratia. The copy of the rejoinder was marked as Ex.P6. The plaintiff had performed his part of agreement. But the defendants have not come forward to execute the sale deed as agreed. The plaintiff submitted that he is a senior citizen and while he was travelling to his Advocate's office to hand over certain documents for the purpose of this case, he found that the original documents, namely the copies of the General Power of Attorney and the sale deed were missing. He also filed a police complaint for the same. In connection with this, he also effected a paper publication and the copy of the publication is also produced as Exs.P9 & P10. Since the primary evidence is not available and the plaintiff had given proper explanation as to how he had lost the documents, he was allowed to produce the secondary evidence. But the defendants did not make their appearance to deny the documents and the facts stated by the plaintiff and the evidence of the plaintiff remains unchallenged. Since the plaintiff, through his evidence and documents has proved the execution of the sale agreement and the terms



C.S.No.354 of 2008

of the sale deed and the payments made by him to fulfill his part of the contract and also failure on the part of the defendants to perform his part of the sale deed, he is entitled to get the relief as prayed for.

7. The Civil Suit is decreed as prayed for with costs.

29.03.2023
(1/2)

kmi

Witnesses examined on the side of plaintiff:-

P.W.1	RM.Arumugam (plaintiff)
-------	-------------------------

List of documents marked on the side of plaintiff:-

Exhibit No.	Dated	Description
P-1	04.10.2005	Photo copy of General Power of Attorney
P-2	06.10.2005	Photocopy of the Sale Agreement
P-3	12.10.2007	Office copy of the lawyer Notice
P-4	15.10.2007	Photocopy of the Acknowledgment
P-5	27.10.2007	Served copy of the Reply Notice
P-6	06.11.2007	Office copy of the Rejoinder Notice for the Reply notice
P-7	25.08.2021	Paper publication of English
P-8	27.08.2021	Paper publication of Tamil
P-9	29.09.2021	Online print out copy of Online complaint (65B certificate is submitted)



C.S.No.354 of 2008

Witnesses examined on the side of defendants:--

WEB COPY Nil

List of documents marked on the side of defendants:--

Nil

List of Court documents marked:--

Nil

29.03.2023

(2/2)

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case: Yes/No

kmi

Registry to note: Registry is directed to issue the order copy along with the above typed list of witnesses and documents.

Copy to:

1. Sub-Assistant Registrar, Original Side, High Court, Madras.
2. Record Keeper, Original Side Records Section, High Court, Madras.



WEB COPY



C.S.No.354 of 2008

R.N.MANJULA, J.

kmi

C.S.No.354 of 2008

29.03.2023