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C.S.No.851 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

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

C.S.No.851 of 2010

Mrs.Elizabeth Syiem

... Plaintiff

Vs.

1.Mr.Parthasarathy Vasanth

2.Geetha Vasanth

... Defendants

Prayer: Plaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of C.P.C., praying for the following judgment and decree as against the defendants;

a) For specific performance of the sale agreement dated 27.03.2010 by directing the defendants to execute and register the sale deed in favour of the plaintiff or her nominee in respect of the Schedule 'B' mentioned property and in the event of the defendants failing to execute and register the sale deed in favour of the plaintiff or her nominee in terms of the sale agreement dated 27.03.2010 to execute and register the same by the Registrar of this Court.

b) For direction in the alternate the defendants to refund the sum of Rs.6,80,000/- with interest at the rate of 24% per annum from the date of sale agreement 27.03.2010.



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c) permanent injunction restraining the defendants, their men, agents from interfering with the peaceful possession and enjoyment of the 'B' schedule mentioned property and from alienating the Schedule 'B' mentioned property to any third party.

d) Directing the defendants to pay the costs of the suit.

For Plaintiff : Mr.U.Chandramohan

For Defendants : Ms.M.Sneha

JUDGMENT

This suit has been filed for the relief of specific performance of the sale agreement dated 27.03.2010 by directing the defendants to execute and register the sale deed in favour of the plaintiff or her nominee in respect of the Schedule 'B' mentioned property and in the event of the defendants failing to execute and register the sale deed, the same shall be executed and registered by the Registrar of this Court and for other consequential reliefs.

2. The learned counsel for the plaintiff filed a memo to withdraw the above suit which has been filed for the relief of specific performance against the defendants.



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3. The suit property belongs to the first defendant and the second defendant is the wife of the first defendant. Even though the learned counsel for the defendants did not have any objection for allowing the suit to be withdrawn as not pressed, her objection is about the way in which the plaintiff had dragged the matter from the year 2010.

4. The plaintiff was the tenant of the first defendant since 2005 and even from the year 2005, she was not regular in paying the rent and the parties even knocked the doors of the Rent Control Court for seeking the relief of eviction on the ground of default in payment of rent. However, for the reasons best known to the parties, they had entered into a sale agreement, in which, the property was agreed to be sold to the plaintiff for a valuable consideration of Rs.1,50,00,000/- and an advance amount of Rs.5,00,000/- was paid by the plaintiff.

5. The contention of the learned counsel for the defendants is that the plaintiff had put the defendants to face the task of filing rent control proceedings and also dragged the proceedings from the year 2010.



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6. The records would show that the parties have already been referred to Mediation and during the Mediation, the matter could not get settled.

Now all of a sudden, the plaintiff has filed a memo stating that she is residing in Indonesia and she is not able to prosecute the case. In fact, the plaintiff has been examined as P.W.1 and she was also cross examined. The trial is pending only for the defendants' side witness. The defendants are also ready to examine themselves as witnesses.

7. The conduct of the plaintiff shows that she did not have any serious intention to prosecute the case for the purpose for which it has been filed, but to drag the defendants to Court. It is learnt that during the pendency of this proceedings, the plaintiff had vacated the premises and handed over the key to the defendants through an agent.

8. Since the plaintiff who had laid the suit had opted to withdraw the suit, she need not be compelled to conduct the suit and permission can be granted to withdraw the suit without any liberty to file a fresh suit on the same cause of action. At the same time, the hardship caused to the defendants cannot be ignored. The manner in which the proceedings were



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conducted and the recalcitrant attitude of the plaintiff in protracting the proceedings and then by wasting the time of the Court should be dealt by imposing cost.

9. In view of the same, the memo to withdraw the suit is recorded and the plaintiff is allowed to withdraw the suit on payment of cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the Tamil Nadu State Legal Services Authority, Chennai, within a period of one month from the date of receipt of a copy of this judgment.

06.04.2023

Index : yes / no
Internet : yes / no
Speaking / non speaking
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R.N.MANJULA,J.
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