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C.S.No.363 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.11.2023

Pronounced on : 30.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.S.No.363 of 2006

P.Dharamchand

.... Plaintiff

Vs

1.E.M.V.Muthappa Chettiar (Deceased)
Rep. By POA E.M.V.Viswanathan

2.M/s.Heritage Property Development Pvt. Ltd.,
Rep. by its Chairman and Managing Director
Having Office at :
No.13/7, Dhandapani Street
T.Nagar, Chennai – 600 017.

3.M/s.South Side Hotels & Resorts Ltd.,
(Formerly Honey Bee Securities Ltd.,)
Rep by its Director Mr.P.Raghuraman
Whispering Heights
F-O. No.132, St.Marys Raod
Alwarpet, Chennai – 600 018.

4.E.M.V.M.Viswanathan

.... Defendants

[3rd Defendant impleaded as per order dated 19.01.2009
in Appln.No.5031/2008]

[4th Defendant brought on record as legal heirs of the deceased
1st defendant as per order dated 29.01.2021 in Appln.No.3177/2020]



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Prayer : Civil Suit filed under Section Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC., praying for a judgment and decree against the defendants :

- (a) to direct the first defendant to specifically perform the obligations of the contract dated 9.6.2005 by executing a deed of sale or deeds of sale or Power of Attorney in favour of the plaintiff or his nominee or nominees in respect of the suit schedule property or in the alternative, direct the defendants to pay a sum of Rs.2,34,00,000/- inclusive of all Rs.18.0 lakhs, being the amounts already spent towards the agreement as damages with future interest at 12% from the date of plaint till the date of realization pending alienation or encumbering the suit schedule property.
- (b) To grant such further or other reliefs and
- (c) costs of the suit.

[Prayer (a) amended as per the common orders of this Hon'ble Court dated 22.2.2011 in A.No.3905 & 3906 of 2010 in C.S.No.363/2006]

For Plaintiff : Mr.P.Vasanthakumar Visweswaran

For Defendants : Mr.R.Murugan
for M/s.Rugan & Arya [D2 & D3]



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JUDGMENT

The suit is laid for specific performance of an agreement for sale along with a building situated therein at Survey No.4/2A, correlated to T.S.No.4, Block No.4 of Parangimalai Village, Kancheepuram District.

2. The case of the plaintiff is :

(a) The suit property originally belonged to a certain E.M.Viswanathan Chettiar. He obtained the same through a settlement deed dated 27.11.1955. The first defendant is the son of E.M.Viswanathan Chettiar. On 17.04.1981, the said Viswanathan Chettiar executed a Will, bequeathing the suit property in favour of the first defendant, and about a month later, on 19.05.1981, he passed away. As a consequence, the first defendant became the absolute title owner of the suit property as per the Will of his father. Ever since, the first defendant has been exercising his right of ownership over the property.

(b) Be that as it may, a certain Gunaseelani Ammal claimed title to the property based on a Will dated 23.08.1976, alleged to have been



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executed by the same Viswanathan Chettiar in her favour. Initially that Will came to be probated in O.P.No.821 of 2001. But later it was revoked and the controversy is now pending in T.O.S.No.41 of 2003. (It was verified by this court from the Registry that this testamentary suit was later dismissed as withdrawn on 27.03.2006).

(c) Even while this testamentary suit was pending, Gunaseelani Ammal had sold the suit property to a certain Venkatachalam, Chinnasamy, Visalakshmi, Vimala and Arulmozhi.

(d) On the strength of the sale deed, the purchasers laid C.S.No.621 of 2004 against Gunaseelani Ammal, besides the present first defendant, and few others for permanent injunction. That suit is also pending adjudication. (This Court had verified from the Registry that this suit was dismissed as settled out of Court on 04.10.2005)

(e) While things stood thus, the first defendant found it difficult to manage the property, and hence constituted his son, the fourth defendant in suit as his power of attorney through whom he entered into a contract with the plaintiff for a sale of property for a total consideration of Rs.2.34 crores. Pursuant to this agreement, the plaintiff paid a sum of Rs.6.0 lakhs under two cheques, both drawn on



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Indian Overseas Bank, Mylapore Branch, Chennai. one dated 18.05.2005 for Rs.2.0 lakhs, and the other dated 09.06.2005 for Rs.4.0 lakhs. On the same day the fourth defendant has issued a document styled as a receipt evidencing the sale agreement. On receipt of the said amount, the photostat copies of the title documents pertaining to the suit property was handed over to the plaintiff. It was agreed that the plaintiff should pay the balance sale consideration of Rs.2,28,00,000/- in four instalments.

- (f) The first defendant had agreed to execute a formal sale agreement upon receipt of further payments by the plaintiff.
- (g) The plaintiff has been ready and willing to pay the balance sale consideration of Rs.2,28,00,000/-. However, despite receiving Rs.6.0 lakhs, the first defendant did not come forward to execute the sale agreement.
- (h) In this setting, the plaintiff issued a letter dated, 01.10.2005, to the fourth defendant, the power of attorney of the first defendant, to which the fourth defendant issued his reply dated 06.10.2005, repudiating the entire terms and conditions earlier agreed upon along with a demand draft for Rs.6.0 lakhs drawn on M/s Karnataka Bank



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- (i) Upon receiving this reply, the plaintiff issued a legal notice dated 19.10.2005, through which, he conveyed his continuous readiness and willingness to perform his part of the contract, along with the demand draft for Rs.6.0 lakhs that the first defendant had issued. This evoked a reply from the fourth defendant dated 02.11.2005, in which he took up a contention that only execution of separate sale agreement alone would constitute an enforceable contract, and mere receipt of reply notice will not bind or create any right in respect of the suit property.
- (j) The plaintiff soon issued public notice through dailies and has laid a suit for specific performance.
- (k) However, the plaintiff had come to realise that the second defendant is rushing to obtain the sale of suit property.

Hence, the suit.

3. The third defendant is impleaded because it has come to the knowledge of the plaintiff that while the defendants 1 and 2 are about to deal with the suit property, the third defendant had purchased it from the second defendant.



4.1 In his written statement through the Power of Attorney, the first defendant pleads as below :

- There never was any sale agreement between the plaintiff and the first defendant as regards the suit property. Indeed, about six months prior to the institution of suit, on 17.10.2005, this defendant represented by his Power Agent, the fourth defendant, had sold the suit property to the second defendant
- The receipts which the plaintiff relied on to build the case for subsistence of a contract is false, which even a bare reading of the receipt dated 09.06.2005 will expose.
- Turning to the allegation of the plaintiff about his readiness and willingness to perform his part of the contract, he had conveyed it only in May, 2006, while the property was already sold some six months prior to it. Indeed, after obtaining the photostat copies of the title documents on 09.06.2005, the plaintiff never had shown any interest in purchasing the property. It is only after coming to know about the alienation of the suit property to the second defendant, the plaintiff pretends to be interested in purchasing the property, as if he did not know about the alienation.



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- The sum of Rs.6.0 lakhs which the fourth defendant who is the power agent of the first defendant had received have already been returned to the plaintiff by a demand draft dated 06.10.2005. Indeed, vide his letter dated 06.10.2005, this defendant had provided the reasons for returning it too. However, even for this amount, the plaintiff had demanded and obtained a cheque from this defendant, drawn on M/s.Karnataka Bank, Anna Nagar Branch. Now after sale of the property, and after knowing fully well about the alienation made by first defendant, the plaintiff has approached the Court with no cause of action.
- The receipt dated 09.06.2005 issued by fourth defendant would not constitute a sale agreement between the parties.
- The suit is liable to be dismissed.

4.2 The second defendant had filed the written statement, in which it pleads as follows :

- This defendant had purchased the suit property from the first defendant on 17.10.2005, and this was disclosed to the plaintiff in fourth defendant's reply dated 02.11.2005. This fact was deliberately



suppressed by the plaintiff and he had not whispered about it in his plaint.

- This apart, the receipt dated 09.06.2005 would not constitute a valid sale agreement.
- This defendant is a bonafide purchaser for the value without notice of any sale agreement between the first defendant and the plaintiff as alleged by the plaintiff.
- After purchasing the property thereof, the second defendant had mutated the revenue records in its name.

4.3 On its part, the third defendant too had filed a separate written statement, in which it had adopted the line of contention of the other two defendants, and pleads that it is a bonafide purchaser of the suit property for value from the second defendant, it having purchased the same under the sale deed dated 22.01.2008.

5. On the above pleadings, following issues are framed :

(1) Whether there is any completed and enforceable agreement for sale between the plaintiff and the first defendant?

(2) Whether the plaintiff has been ready and willing to



perform his part of the contract under the suit agreement for sale?

(3) Whether the prayer for specific performance is barred by Section 22(2) of the Specific Relief Act?

(4) Whether the suit for specific performance without a prayer for possession is maintainable?

(5) Whether the second and third defendants are bonafide purchasers having purchased the suit property for value without notice of the suit agreement?

(6) Whether the plaintiff is entitled to the relief of specific performance?

(7) Whether the plaintiff is entitled to the alternative relief of refund of advance amount?

(8) Whether the plaintiff is entitled to any damages besides claiming refund of advance amount? If so, what is the reasonable amount that can be awarded as damages?

(9) To what relief the parties are entitled?

6.1 The dispute went to trial. For the plaintiff, he examined himself as P.W.1 and had marked Exts. P1 to P19. For the defendants, the second defendant examined himself as D.W.1 and he had produced a solitary document in Ext.D1. Of the documents produced by the plaintiff, Ext.P1, dated 09.06.2005, styled as a receipt, is the document on which rests the core of his cause of



action.

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6.2 Significantly in the context of the suit, the fourth defendant, who had executed Ext.P1 receipt which is alleged to constitute a sale agreement did not testify before the Court.

7. The arguments advanced on either side are along the predictable lines. With the first defendant opting not to participate in trial, it has become a straight contest between the plaintiff and the second defendant. This substantially alters the criteria for deciding the case.

Arguments for the Plaintiff:

8. The learned counsel for the plaintiff made the following submissions:

- a) Ext.P.1, dated 09.06.2005 possesses all the features of a completed sale agreement, even though it is styled as a receipt. First, it describes the property to be sold; secondly, it states the total sale consideration as Rs.2.34 crores; thirdly, it speaks about payment of Rs.6.0 lakhs by the plaintiff as advance; and fourthly, it also stipulates that the balance sale consideration must be paid in four instalments. The time for performance



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of the contract by the plaintiff, however, was not stipulated, which only implies that the parties have not considered the time as an essential term of the contract. Even *dehors* Ext.P1, it is still inferable that there was an agreement between the parties. At the relevant time when this agreement was made, oral agreement of sale was valid, and it should not be ignored.

- b) To prove that the plaintiff is ready and willing to perform his part of the contract, the plaintiff has produced Ext.P-10 series containing copies of FD receipts, attested by the Bank Manager, which are either in the name of the plaintiff or his family members. The total sum that they represent is more than the total consideration for the suit property.
- c) As stated above, Ext.P1 contract does not stipulate the time for performance. It is in this background the plaintiff sent Ext.P2 notice, dated 01.10.2005, barely four months after the Ext.P1 receipt/sale agreement, intimating to the Power of Attorney of the first defendant, the former's readiness and willingness to perform his part of the contract. But the first defendant came out with a mischievous reply dated 06.10.2005 (Ext.P4) wherein he would deny that he ever had entered into a sale agreement, and issued a cheque for Rs.6.0 lakhs.
- d) In response to Ext.P3 reply, the plaintiff had issued a legal notice dated



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19.10.2005, on the first defendant's power of attorney, in which the latter was informed or reminded about the various litigations in which the suit property was involved and how the plaintiff was constrained to purchase peace with those litigants at a cost. This was replied to on behalf of the first defendant raising untenable contentions.

- e) Now to defeat the interest of the plaintiff, the first defendant had sold the suit property to the second defendant as evidenced by Ext.P.11, dated 17.10.2005. This sale is not bonafidely executed.
- f) So far as non seeking of possession is concerned, granting a decree for possession is incidental to a decree for specific performance for the sale of the property, and that it does not affect the maintainability of the suit for specific performance.

9. Per contra, the learned counsel for the defendants 2 and 3 argued as below :

- (a) By no stretch of imagination, can Ext.P1 be construed as a sale agreement. First it is styled as a receipt; second, it contemplates execution of a sale agreement upon payment of the entire sale consideration. This position was reiterated even in Ext.P6, reply notice of the fourth defendant dated 02.11.2005. Indeed, it is made



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clear even in Ext.P1, that the said receipt will not bind or create any right to property to both the parties if further payment is not made.

(b) Apparently, the second defendant had purchased the suit property from the first defendant on 17.10.2005. And, this defendant has pleaded that it is a bonafide purchaser for value without notice of any agreement itself. Now the burden is on the plaintiff to establish that this defendant indeed had notice of any agreement of sale which the plaintiff alleges.

(c) The plaintiff has claimed in Ext.P5, his legal notice dated 19.10.2005 that there were litigations relating to the property and that the plaintiff had purchased peace with those litigants at a certain costs. This is a sweeping statement without any basis, and at any rate, it will not bind the second defendant.

(d) In terms of Section 22 of the Specific Relief Act, no suit for specific performance is maintainable if possession of the property is not claimed. Admittedly, the plaintiff is not in possession of the suit property and he also admits the same in his cross-examination as P.W.1.

(e) The entire dispute revolves around a finding to the issue whether



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Ext.P1 constitutes a complete and enforceable sale agreement.

Ext.P1 has two parts. The first part is the body of the document containing certain terms; and the second part details the schedule of property (suit property). For ascertaining whether Ext.P1 constitutes a sale agreement, it is necessary to extract the first part of the document (Ext.P1) :

RECEIPT

I E.M.V.M. Viswanathan, S/o.E.M.V.Muthappan Chettiar, residing at No.3, Rajagopalan Road, 1st Street, Valmiki Nagar, Thiruvannamiyur, Chennai-41, Power Agent of Mr.E.M.V.Muthappan Chettiar, residing at No.1, Prithiv Block, Parsen Apartments, Dindugal Main Road, Madurai. By registered Power of Attorney document No.751 of 2001 dated 06.10.2004 acknowledge receipt of a sum of Rs.600000/- (Rupees six lakhs only), by Cheque No.145693 dated 18.05.2005 for Rs.200000/- (Rupees two lakhs only) and by Cheque No.428703 dated 09.06.2005 for Rs.400000/- (Rupees four lakhs only), both the cheques drawn on Indian Overseas Bank, Mylapore Branch, from Mr.P.Dharamchand, Son of Mr.J.D.Pannalal, residing at No.76/238, R.K.Mutt Road, Mylapore, Chennai-4 towards the part advance and handed over the xerox copies of the documents relating to property mentioned in the Schedule hereunder. Total sale consideration agreed by both the parties is Rs.2340000/-



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(Rupees two crore and thirty four lakhs only) Balance amount of Rs.22800000/- (Rupees two crore twenty eight lakhs only) will be paid in four instalments. This receipt will not bind or create any right to property to both the parties if further payment is not made or if the agreement is not executed. On further payment the agreement will be executed."

Now if the entire Ext.P1 including the schedule of property thereto is analysed, it describes the property intended to be dealt with, the total sale consideration, the advance amount paid, handing over of the copies of the title documents by the first defendant to the plaintiff, and also how the balance amount must be paid. But what is significant is the highlighted portion of the above extract of Ext.P1. This portion very apparently contemplates execution of a sale agreement subsequent to the payment of the entire sale consideration.

(f) This idea is reiterated in paragraph No.1 of Ext.P6, reply notice. It indicates two aspects :

(a) that Ext.P1 was executed more as an understanding that Rs.6,00,000/- received as advance would be returned in the eventuality of plaintiff was dissatisfied with the title to the property; and



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(b)that if the the plaintiff expresses his willingness to proceed ahead, he was required to pay the balance and take a separate sale agreement. Ext.P6 is dated 02.11.2005, the earliest point of time wherein the fourth defendant had made known of his understanding of Ext.P1.

9.2. What Ext.P1 actually connotes is that how then to construe Ext.P1. Reading in expressed terms, it only conveys the idea that there is an agreement to enter into further agreement. It must be understood in the context of the facts which the plaintiff himself alleged in Ext.P5, his legal notice to the fourth defendant. In this legal notice, the plaintiff has alleged that the suit property was embroiled in few litigations and that he had to purchase peace at considerable expenses.

9.3 While there is no evidence to indicate that he had actually made payments to purchase peace, yet the fact remain he knew that there are litigations in the property. If ordinary course of human nature were to form the basis for constructing the true import of Ext.P1, then the line of construction put on it by



the fourth defendant vide Ext.P6 appears more probable. After all, when a property is involved in few litigations, no man with ordinary prudence will venture into to invest substantial amount on a property which is involved in litigations. As indicated in paragraph Nos. 2(b) & 2(d), this Court when informed of the litigations, had verified from the Registry that both the two litigations (T.O.S.No.41 of 2003 and C.S.No.621 of 2004) have now been dismissed.

10. This only fortifies the conclusion of this court that Ext.P1 is but a document which envisages execution of a sale agreement subsequently. This Court therefore has no hesitation to hold that Ext.P1 standing alone, cannot constitute a complete and enforceable sale agreement. Accordingly, **Issue No.1** is decided against the plaintiff.

Issues 2,3 & 4 :

11.1 In view of the finding entered for Issue No.1, deciding these issues and even subsequent issues are a mere formality without any real purpose. Turning to **Issue No.2**, going by Ext.P10 series of documents (which are the attested copies of FD receipts in the name of the plaintiff or his relatives), it must be held



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that the plaintiff has established his readiness to perform what he considered as an agreement to sale. But as already held earlier, this has little relevance now.

11.2 Turning to the other two issues (Issue Nos.3 &4) are concerned, Section 22 mandates that no possession shall be handed over to the plaintiff in a suit for specific performance, unless the same is specifically asked. This however does not affect the maintainability of the suit for specific performance. Indeed in *Manickam alias Thandapani and Another Vs. Vasantha* [2022 SCC Online SC 2096], the Hon'ble Supreme Court has categorically held that relief of possession is ancillary to the decree for performance and that it need not be specifically claimed. And, the proviso to Section 22(2) makes it evident that it is only directory and not mandatory, and that the plaintiff can seek possession even in execution proceedings. These issues are accordingly decided against the defendants.

Issue No.5

12. The defendants 2 and 3 contend that they are bonafide purchasers for value without notice of any agreement for sale between the plaintiff and the first



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defendant. The burden is on the plaintiff to prove the contra. There is hardly any evidence on record to indicate that these defendants had notice about the sale agreement. And, given the fact that this Court has found that there is no complete and enforceable sale agreement, there is nothing to bother the defendants any more.

Issue Nos.6 to 9

13. Since Ext.P1 does not constitute a sale agreement, the plaintiff is neither entitled to a decree for specific performance nor is entitled to an alternate relief of damages against the first defendant. At the best, the plaintiff is entitled to a decree for repayment of Rs.6,00,000/- from the first defendant. Since the first defendant is now dead, this Court merely directs the fourth defendant, the Power Agent of the first defendant, to make the said payment. If a decree to be made, it cannot carry interest, since the first defendant through his power agent fourth defendant has already volunteered to pay this, when he enclosed a cheque for Rs.6,00,000/- along with Ext.P4 letter, which the plaintiff had declined to accept.

14. To conclude, this Court merely moulds the relief and directs the fourth



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defendant to pay a sum of Rs.6,00,000/- to the plaintiff, payable with interest at 6% from this day, until it is paid. Given the nature of dispute raised, this Court considers that the plaintiff is not entitled to any costs. Connected miscellaneous petitions if any, shall stand closed.

.11.2023

Index : Yes / No

Speaking order / Non-speaking order
ds

APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
PW1	P.Dharamchand
<i>Defendants :</i>	
DW1	V.Krishnaprasadh

II. Exhibits :

Ex.P1	09.06.2005	Xerox copy of the receipt given by Mr.E.M.V.M.Viswanathan (4 th defendant), the Power Agent of the 1 st defendant for Rs.6.0 lakhs
Ex.P2	01.10.2005	Xerox copy of the letter addressed by the plaintiff to Mr.E.M.V.M.Viswanathan, fourth defendant, the Power Agent of the first defendant
Ex.P3	05.10.2005	Xerox copy of the postal acknowledgment card for having received Ext.P2 letter
Ex.P4	06.10.2005	Xerox copy of the letter addressed to the plaintiff by Mr.E.M.V.M.Viswanathan, the fourth defendant
Ex.P5	19.10.2005	Xerox copy of the legal notice sent to Mr.E.M.V.M.Viswanathan, the fourth defendant by the



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		plaintiff's Advocate
Ex.P6	02.11.2005	Xerox copy of the reply notice sent by the fourth defendant's Advocate in reply to plaintiff's letter under Ext.P5
Ex.P7	29.11.2005	Xerox copy of the public notice published in Tamil Daily Dhina Malar
Ex.P8	06.01.2006	Xerox copy of the legal notice issued by the 4th defendant's Advocate to the plaintiff
Ex.P9		Original Pass Book of the plaintiff showing the payment made to E.M.V.M.Viswanathan, the Power Agent of the first defendant, on 20.05.2005 & 11.06.2005
Ex.P10 (series)		True copies of the fixed deposit receipts from 21.04.2005 onwards
Ex.P11	17.10.2005	Certified copy of the sale deed executed by the first defendant in favour of the second defendant
Ex.P12	10.09.2007	Advertisement published in Dina Malar & Bill for publication in newspaper by the plaintiff
Ex.P13	10.09.2007	Advertisement published in Deccan Chronicle by the plaintiff
Ex.P14	22.01.2008	Certified copy of the sale deed executed by the second defendant in favour of third defendant
Ex.P15	04.03.209	Advertisement published in ' The Hindu'.
Ex.P16	08.04.2010	Copy of the complaint lodged with the Inspector of Police, Mylapore along with the certificate issued by the Inspector
Ex.P17	09.04.2010	Affidavit submitted by the plaintiff to the police for missing of certain documents
Ex.P18	06.10.2004	Xerox copy of General Power of Attorney executed by the first defendant appointing the fourth defendant as his Attorney
Ex.P19	18.01.2006	Xerox copy of the plaint in C.S.No.38 of 2006
Defendants :		
Ex.D1	04.01.2011	Counter affidavit filed by the plaintiff in A.No.3906 of 2010 in C.S.No.363 of 2006.

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Pre-delivery Judgment in
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