



WEB COPY

C.S.No.318 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2023

PRONOUNCED ON : 31.07.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.S.No.318 of 2014

S.A.Velayudham

...

Plaintiff

versus

1.K.Thulasi

2.M.Thennarasu Pandian

3.P.Ezhumalai

...

Defendants

PRAYER: Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Code of Civil Procedure, praying for a judgment and decree against the defendants :-

- (a) to grant a judgment and decree for specific performance of the contract dated 26.03.2008 and supplementary agreement dated 22.05.2008 by directing the defendants to execute the sale deed in respect of the schedule property in favour of the plaintiff;
- (b) in the alternate the plaintiff seeks a decree for Rs.1,30,80,000/- being refund of a sum of Rs.55,00,000/- paid as advance and Rs.12,00,000/- spent for keep and development of the schedule property in all a total sum of Rs.67,00,000/- and Rs.63,80,000/-



WEB COPY

C.S.No.318 of



being interest at 18% per annum together with interest at 18% per annum on Rs.67,00,000/- from the date of plaint till the date of realization;

- (c) to grant permanent injunction restraining the defendants 1 to 3 or their men agents or anyone claiming through them or the agents from alienating or encumbering the plaint schedule property on the basis of the agreement of sale entered into between the plaintiff and defendants on 26.03.2008 and on 22.05.2008 and for cost;
- (d) to direct the defendants to pay the cost of the suit.

For Plaintiff : Mr.V.Raghupathy

For Defendants : set *ex parte* on 31.10.2022

J U D G M E N T

This Civil Suit has been filed for specific performance along with the relief of permanent injunction.

2. Heard the learned counsels for the plaintiff and the defendants and perused the materials available on record.

The case of the plaintiff in brief:-

3. The plaintiff and defendants entered into a sale agreement in respect of the suit property for a sale consideration of Rs.1,30,80,000/-; on



the date of the sale agreement itself the plaintiff has paid Rs.40,00,000/- as an advance to the defendants and possession was also handed over the plaintiff; the title deed including the original sale deed dated 21.06.2007 stood in the name of the third defendant were also been handed over to the plaintiff and the sale was agreed to be completed within 20 days.

3.1. The plaintiff pointed out certain defects in the title stated in the settlement deed dated 27.06.1989 and for which a supplementary agreement was entered into between the parties on 22.05.2008; on the basis of the supplementary agreement, a further sum of Rs.15,00,000/- was paid by the plaintiff to the defendants. The payments made at various dates towards the sale consideration are described as under:-

<i>Date</i>	<i>Amount</i>	<i>Cheque / Cash</i>
26.03.2008	Rs.17,00,000/-	Cash
26.03.2008	Rs.9,00,000/-	Cheque
26.03.2008	Rs.9,00,000/-	Cheque
06.04.2008	Rs.5,00,000/-	Cheque
22.05.2008	Rs.13,00,000/-	Cheque
22.05.2008	Rs.2,00,000/-	Cash



3.2. So all together the plaintiff had paid a total sum of Rs.55,00,000/- and the balance sale consideration was accepted to be paid at the time of registration; inspite of receiving the said amount, the defendants had not taken any initiative to perform their part of obligation; the time stipulated in the agreement is dependent on performance of obligation on the part of the defendants but agreement is contingent on the defendants getting the rectification of settlement deed; so the period of 20 days would start only when the defendants complete the rectification deed; the defendants have not registered the rectification deed and hence the suit is not barred by limitation; this is because of the fact that the contract between the parties being contingent contract, the time is continuing until the rectification is done.

3.3. Despite the plaintiff was ready and willing to perform his part of contract, the defendants did not co-operate; the plaintiff has invested Rs.12,00,000/- for levelling the plot and fulfilling the pit falls and constructing a fence and also removal of encroachers; the defendants had handed over the possession of the original title deed as a sign of part performance of the contract.



3.4. After the defendants found the development in the property, they thought that the property would become more valuable and evaded to perform the terms of the contract; the defendants had sent a legal notice on 06.08.2008 with false and untenable allegations and for which the plaintiff also sent a suitable reply on 19.08.2008; though the plaintiff is always ready and willing to perform his part of contract, the defendants had failed to do so.

3.5. The plaintiff issued a letter dated 16.09.2008 to the defendants' Power of Attorney by demanding the defendants to fulfill the terms of the contract; on 25.01.2012 also the plaintiff expressed his readiness and willingness by writing a letter to the defendants; again on 01.02.2012, he wrote another letter to the defendants' Power of Attorney and it was sent through registered post by stating that the plaintiff is always ready and willing to perform the contract. Thereafter, the plaintiff has filed the suit for granting the relief of specific performance to perform the contract dated 26.03.2008 and supplementary agreement dated 22.05.2008 by directing the defendants to execute the sale deed or an alternate relief of refund of a sum of Rs.55,00,000/- paid by the plaintiff towards partial sale consideration and also Rs.12,00,000/- spent for development of the suit property and in all a



total sum of Rs.67,00,000/- with interest along with the relief of permanent injunction restraining the defendants 1 to 3 from interfering the peaceful possession and enjoyment of the suit property by way of altering and encumbering the same along with costs.

4. The defendants set *ex parte* on 31.10.2022. However based upon the claim made by the plaintiff, the plaintiff has got the burden to prove

“(i) Whether the sale agreement dated 26.03.2008 and supplementary agreement dated 22.05.2008 are true and valid ?

(ii) Whether the plaintiff is ready and willing to perform his part of contract ?

(iii) Whether the plaintiff is entitled to get the relief of specific performance as prayed for ?

(iv) To what other relief the plaintiff is entitled to ?”

5. The plaintiff's power agent was examined as P.W.1 and Ex.P.1 to Ex.P.7 were marked.



6. The learned counsel for the plaintiff submitted that the sale agreement entered into between the plaintiff and defendants along with supplementary agreement dated 26.03.2008 and 22.05.2008 have been produced as Ex.P.5 and Ex.P.7 and the same remain unchallenged; the supplementary agreement has been executed only with a view of certain rectification needs to be done by the defendants in the earlier settlement deed relating to the suit property; the time for completing the sale will commence only after rectification is done and if rectification is not done, the plaintiff continues to have cause of action to file the suit and hence the suit is not affected by limitation.

6.1. The plaintiff has produced receipts issued by his developer as Ex.P.6 series in order to prove that he had spent Rs.12,00,000/- towards developing the property. The payments made by the plaintiff to the defendants on various dates has been stated by him in his evidence also. The plaintiff has sent several notices calling upon the defendants to complete rectification and execute the sale deed by receiving balance sale consideration. However the defendants had chosen to send a legal notice with false allegations and that has been properly replied by the plaintiff. The defendants had chosen to file a suit in O.S.No.447 of 2013 before the



District Munsif Court, Poonamallee, for claiming the permanent injunction in respect of the suit property and the same was dismissed. Having handed over the possession of the suit property and handing over the original title deed by partly performing the terms of contract, the defendants did not come forward to complete the terms of contract. Since the plaintiff has proved his claim through the acceptable evidence, he is entitled to the relief as prayer for.

Discussion:-

7. It is seen from Ex.P.5 sale agreement that the defendants agreed to sell the suit property in favour of the plaintiff for a sale consideration of Rs.16,00,000/- per ground. The suit property was measured and the total sale consideration was agreed between the parties at Rs.1,30,80,000/-. On the day of sale agreement itself, a sum of Rs.40,00,000/- was paid as advance to the defendants and the same has also been mentioned in the sale agreement. The time for registration by paying the remaining sale consideration was agreed at Rs.90,80,000/- within 45 days.

8. It is agreed between the parties that the time is essence of the



contract. However the plaintiff found certain defects in the settlement deed relating to the suit property and it requires rectification. Hence the parties had entered into a supplementary sale agreement on 22.05.2008 and in which it was agreed that the sale deed should be executed by the defendants only after the rectification in the settlement deed is effected. So as per the supplementary sale agreement, the time to complete the sale transaction was agreed to be done on or before 10th June 2008.

9. The plaintiff has stated that he has paid a partial sale consideration of Rs.55,00,000/- to the defendants and he had also spent Rs.12,00,000/- for developing the suit property. Out of the total partial sale consideration paid by the plaintiff, a sum of Rs.40,00,000/- was paid at the time of sale agreement itself and rest of the payments were made on various dates in person. Even after receiving the said sum, the defendants have not come forward to execute the sale deed. The various payments listed by the plaintiff on various dates through cheque and cash were not denied by the defendants.

10. The initial payment made by the plaintiff to the tune of



Rs.40,00,000/- has been mentioned in the sale agreement Ex.P.5 itself. In the supplementary sale agreement dated 22.05.2008, it is agreed by the first defendant that the plaintiff so far has paid a partial sale consideration of Rs.55,00,000/-. The sale agreement Ex.P.5 has been executed by the defendants in favour of the plaintiff and Ex.P.7 supplementary sale agreement was executed by the power agent of the first defendant on behalf of the defendants 1 to 3. In the supplementary sale agreement, it is stated that Ex.P.5 original sale agreement got cancelled and as per the supplementary sale agreement, the defendants have to execute the sale transaction on or before 10.06.2008 by receiving the balance sale consideration of Rs.75,80,000/-. After executing the said agreements, the defendants have also handed over the original title deed in favour of the plaintiff and the same is produced as Ex.P.5.

11. It is claimed by the plaintiff that he was put into possession of the suit property and that he had invested an approximate sum of Rs.12,00,000/- towards improving the suit property. The required vouchers have also been marked as Ex.P.6 series to substantiate the same. It is the submission of the plaintiff that the defendants did not rectify the defects in



some of the title deed relating to the property before the execution of the sale and hence the plaintiff could not move forward. The defendants have sent a legal notice to the plaintiff on 06.08.2008 which is marked as Ex.P.9 and in which the defendants have stated that the plaintiff had failed to pay the balance sale consideration of Rs.75,80,000/-.

12. As agreed in the supplementary sale agreement, the defendants would deduct Rs.2,00,000/- as agreed and refund the balance sale consideration of Rs.53,00,000/- by getting back the original document on or before 10th September 2008. After receiving the said notice, the plaintiff has sent a reply notice by stating that the defendants had allowed the plaintiff to do the improvements by spending a sum of Rs.12,00,000/-. Repeated demands made by the plaintiff to rectify a defect found in the earlier settlement deed pertaining to the suit property. However, the defendants continued to remain silent and did not respond. The defendants did not choose to refund the amount received from the plaintiff also, as stated in the notices dated 06.08.2008 and 08.09.2008 respectively.

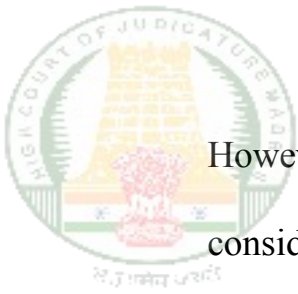
13. Further, the defendants did not come forward to defend the suit



by stating that the plaintiff contentions are not true. On the other hand, the plaintiff had proved his claim through the documents submitted by him. He has also established the fact that the defendants have partly performed their part of contract by giving original title deed in favour of the plaintiff and also by putting him in possession of the suit property and hence the plaintiff could do some developments in the suit property.

14. The plaintiff has proved the contract between himself and the defendants by producing the documents before the Court. The defendants have not proved anything contrary to the contents found in the document. Since the plaintiff has proved the sale agreement dated 26.03.2008 is true and valid and the supplementary sale agreement dated 22.05.2008 is continuation of the earlier sale agreement dated 26.03.2008, I hold that the plaintiff has proved that the sale agreements are true. **Thus, Issue No.1 is answered.**

15. The plaintiff has called upon the defendants to rectify the defects in some of the title deeds relating to the suit property and get the sale deed executed by receiving the balance sale consideration. In fact the plaintiff had also spent Rs.12,00,000/- towards developing the suit property.



However the defendants did not come forward to receive the balance sale consideration and execute the sale deed. It was claimed by the defendants that the plaintiff had committed the default and that the defendants would refund the partial sale consideration paid by the plaintiff, but nothing had done in this regard.

16. In the supplementary sale agreement the time for sale was agreed to be 20 days and the plaintiff had claimed that the defendants did not come forward to execute the sale deed. But the plaintiff had approached this Court only in the year 2014 after a lapse of nearly 6 years. Even though the failure on the part of the defendants to rectify the settlement deed would have some impact on the period of limitation for filing the suit for specific performance, the plaintiff has to prove that he is entitled to get the decree for specific performance as an equitable relief. Since the decree for specific performance is an equitable relief, the plaintiff has to establish before the Court that he is not only willing but was also ready to execute the sale deed immediately after the default on the part of the defendants was noticed by the plaintiff.

17. Even though the defendants had sent the legal notice to the



plaintiff to get the contract cancelled on 06.08.2008, the plaintiff did not rush to the Court immediately but filed the suit only in the year 2014. Due to the above conduct on the part of the plaintiff, I feel the plaintiff is only entitled to the relief of refund of partial sale consideration of Rs.55,00,000/- along with a sum of Rs.12,00,000/- spent by him towards development of the suit property and altogether a sum of Rs.67,00,000/- with interest. The plaintiff has claimed interest at the rate of 18% p.a. from the date of agreement (i.e) 22.05.2008 till the date of the plaint and thereafter from the date of the plaint till the date of realisation.

18. Taking into consideration of the market value and the appreciation in the property value and the rate of interest existed during the relevant point of time, the interest at the rate of 12% interest from the date of 22.05.2008 (date of the supplementary sale agreement) till the date of filing the suit can be allowed. However the interest applicable from the date of the suit can be fixed at 9% p.a. till the date of decree and thereafter from the date of the decree till the date of realisation at 6% p.a. **Thus, Issue Nos.2, 3 & 4 are answered accordingly.**

19. In the result, the suit in C.S.No.318 of 2014 is **decreed** in



respect of the relief of refund of a sum of Rs.67,00,000/- (Rupees Sixty Seven Lakhs only) with cost along with interest at the rate of 12% p.a. from 22.05.2008 till the date of the suit and at the rate of 9% p.a. from the date of the suit till the date of the decree and at the rate of 6% from the date of decree till the date of realisation. Time for payment 1 month.

31.07.2023

Speaking order / Non Speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri

Witnesses examined on the side of plaintiff:-

P.W.1	S.A.V.Sivanandam
-------	------------------

List of documents marked on the side of plaintiff:-

Ex.P1	Certified copy of the settlement deed dated 27.06.1989
Ex.P2	Certified copy of the sale deed executed by K.Ashok Kumar in favour of Thennarasu Pandiyan dated 21.06.2007
Ex.P3	Certified copy of the sale deed executed by K.Ashok Kumar in favour of K.Thulasi dated 21.06.2007
Ex.P4	Original sale deed executed by K.Ashok Kumar in favour of P.Ezhumalai dated 21.06.2007
Ex.P5	Original agreement of sale executed by A.Vijayalakshmi and Velayutham dated 26.03.2008



WEB COPY

Ex.P6	Series 10 nos original receipts issued by Arasi builders for developing the suit property in favour of the plaintiff
Ex.P7	Original supplementary sale agreement dated 22.05.2008
Ex.P8	Original encumbrance certificate dated 31.01.2008
Ex.P9	Original legal notice issued by the defendants to the plaintiff dated 06.08.2008
Ex.P10	Office copy of the reply notice issued by the plaintiff to the defendant dated 19.08.2008
Ex.P11	Original rejoinder issued by Vijayalakshmi to Velayutham dated 08.09.2008
Ex.P12	Office copy of the reply to Ex.P11 dated 16.09.2008
Ex.P13	Office copy of the notice issued by Velayutham to Vijayalakshmi with original postal receipt dated 25.01.2012 along with returned cover
Ex.P14	Office copy of the letter written by Velayutham to Vijayalakshmi with original postal receipt dated 01.02.2012 along with returned cover
Ex.P15	Office copy of the letter written by Velayutham to Vijayalakshmi with original postal receipt and acknowledgment card dated 01.02.2012
Ex.P16	Served copy of the plaint in O.S.No.447 of 2013 DMC Poonamallee filed by A.Vijayalakshmi against the plaintiff
Ex.P17	Original power of attorney by Velayutham in favour of Sivanandam dated 08.09.2019

31.07.2023

Copy to :

1.The Sub Assistant Registrar,
Original Side, High Court of Madras.

16/18



2. The Record Keeper,
Original Side Records Section,
High Court of Madras.

WEB COPY

C.S.No.318 of





WEB COPY

C.S.No.318 of 2014



R.N.MANJULA, J.

sri

Pre-Delivery Judgment made in
C.S.No.318 of 2014

31.07.2023