



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.684 of 2014

J. Sukumar

...Plaintiff

Vs.

1.S.Paneerselvam

2.S. Balaguru

... Defendants

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

a) directing them to handover vacant possession of the suit property being Door No.56, Kamarajar Salai, Kodungaiyur, Chennai – 600 118 to the plaintiff.

b) permanent injunction restraining the defendants their men, agents, servants, representatives or anyone acting in the trust for or on behalf of them from creating any encumbrance over the suit property being Door No.56, Kamarajar Salai, Kodungaiyur, Chennai 600 118 and



WEB COPY

c) to award the costs of the suit.

For Plaintiff : Mr. S.Balaji
For Defendants : D1 - Refused
D2 - Set exparte on 25.07.2017

J U D G M E N T

The case of the plaintiff is that the first defendant is the owner of the suit schedule property bearing D.No.56, Kamarajar Salai, Kodungaiyur. Chennai -600 118 comprised in Survey No.104, 6 part, T.S.No.75, Block No.27 of an extent of 4940 sq.ft. The said property was originally owned by Kullappaa Naicker and Manicka Naicker who conveyed the same by a deed of sale dated 28.05.1957 to one Mrs.Kannammal registered as Doc.No.1117 of 1957 at the Sub Registrar Office, Sembium. Mrs.Sarasa as the sole surviving legal heir is entitled to the suit property absolutely after the demise of her parents viz. Mrs.Kannammal and Kannappa Kaicker. She subsequently executed a deed of settlement dated 24.03.2004 settling the suit property in favour of her son, the first defendant herein which was duly registered as Doc.No.2488 of 2004 in the office Sub-Registrar, Sembium. The first defendant being absolute owner of the suit property has been in possession and enjoyment of

2/12



WEB COURT

the same. He expressed his intention to sell the suit property. After mutual negotiations the sale price were fixed at Rs.1,00,00,000/- and the same was executed on 30.04.2012 by the plaintiff and the first defendant which was duly registered in the Sub Registrar office. On the date of execution of the sale agreement, the plaintiff had paid a sum of Rs.10,00,000/- to the first defendant as part payment of the sale consideration and the receipt of the same was duly acknowledged by the first defendant. It was further agreed by them that vacant possession of the suit property would be handed over to the plaintiff at the time of registration of sale deed. Thereafter it was brought to the knowledge of the plaintiff that the first defendant had executed a power of attorney in favour of the second defendant herein authorizing him to deal with the suit property and also to carry out acts and deeds as adumbrated there under. In spite of the plaintiff insisting for early execution of the sale deed, the second defendant kept postponing the same on some pretext. After herculean efforts taken by the plaintiff, he was able to contact the first defendant who causally informed that anything with regard to the suit property had to be talked to the second defendant who was his authorized power agent. Thereafter, the second defendant came



WEB.COM

forward to execute the sale deed on 26.06.2014. and received the balance sale consideration and duly registered as Doc.No.3576 of 2014. The first defendant assured and promised that he would handover possession within two months and based on the said assurance and bonafide believing the same, the plaintiff waited for the same. But the plaintiff received a legal notice dated 14.07.2014 issued on behalf of the first defendant wherein it was stated that the plaintiff had not adhered to the terms of the sale agreement dated 30.04.2012 and as such the plaintiff was called upon to cancel the said agreement. Thereafter the first defendant assured that he would vacate and handover the property after the expiry of the month of Aadi which is considered inauspicious to move to a new house or leave the existing house. Based on the assurance of the first defendant, the plaintiff restrained from issuing any reply to the said legal notice. In spite of repeated pleas to the defendants to handover the possession of the suit property, the same has not been carried out. Hence the plaintiff has filed this suit.

2. On perusal of records, it is seen that the second defendant was set exparte on 25.07.2017.



WEB COPY

3. The learned counsel for the first defendant has filed a written statement that the 1st defendant has entered into a sale agreement dated 30.04.2012 with the plaintiff for the sale of the defendant's property for a total sale consideration of Rs.1 Crore and the plaintiff had paid an advance amount of a sum of Rs.10,00,000/- as part payment towards the sale consideration. Mrs. Sarasa is the lawful legal heir of Mrs.Kannammal and Mr.Kannappa Naicker, and she is in the absolute possession and enjoyment of the above said property. He further submitted that the said Sarasa executed Settlement Deed in favour of the 1st defendant by virtue of a settlement deed dated 24.03.2004 registered as Doc.No.2488/2004 on the file of the Sub-Registration Office, Sembium. Therefore, the 1st defendant is the ostensible owner of the said property by paying all taxes and other charges without any encumbrances and in absolute possession and enjoyment. The plaintiff had agreed to pay the balance amount of Rs.90,00,000/-. The 1st defendant has specifically enforced to rescind the contract since the above act has not been specially performed within the specified time by the plaintiff as per the sale agreement dated 30.04.2012



as stipulated under clause 4 page 3 of the Sale Agreement. The plaintiff was penalized to Rs.10,00,000/- for the non-payment of the balance of Rs.90,00,000/- which was due as early as in November 2012. The 1st defendant has caused a legal notice dated 14.07.2014 calling upon the plaintiff that the above sale agreement will not have any binding effect on the 1st defendant from the date of receipt of the legal notice and thereafter the 1st defendant decided to rescind the sale agreement dated 30.04.2012. The plaintiff colluded with the 2nd defendant to deceive the property without paying the balance consideration on bonafide belief, the 1st defendant entered into power of attorney with the said 2nd defendant on promise to execute a sale deed to add in favour of a third party where the plaintiff was nowhere in the scene for purchasing the suit property has committed fraud on the 1st defendant and obtained sale deed from the 2nd defendant. The 1st defendant submits that since the plaintiff has not come forward to cancel the said agreement before the Sub-Registrar Office, Madhavaram, in Docu.No.2/26 of 2012 within 15 days from the date of receipt of the Notice, the said agreement is not binding upon the 1st defendant in any manner. The plaintiff failed to perform his part of the contract and the same amounts



to breach of contract. The above sale deed was found only from the documents furnished to the 1st defendant. Since there was not even a phone call by the plaintiff, the 1st defendant caused a legal notice on 14.07.2014. After receiving summons only the 1st defendant came to know that the plaintiff has colluded with the 2nd defendant and thereafter he applied for encumbrance certificate and found the collusion between the plaintiff and the 2nd defendant. Hence he prayed to dismiss the suit.

4. On the pleadings of the parties, the following issues were framed:

(i) Whether the plaintiff is entitled to vacant possession of the suit property bearing Door No.56, Kamarajar Salai, Kodungaiyur, Chennai 118?

(ii) Whether there was any privity of contract between the plaintiff and the first defendant?

(iii) Whether the time is essence of the contract entered into between the plaintiff and the first defendant, if it is held that there is a privity of contract between the



WEB COPY



plaintiff and the first defendant?

(iv) Whether the legal notice dated 14.07.2014 by the first defendant to the plaintiff would amount to rescinding the agreement of sale dated 30.04.2012, particularly, when the said notice had been issued subsequent to the execution of the sale deed by the second defendant as Power of Attorney Agent of the first defendant in favour of the plaintiff?

(v) Whether the legal notice is legally binding and has any legal value?

(vi) Whether the execution of the sale deed by the second defendant as Power of Attorney Agent of the first defendant is binding on the first defendant?

(vii) Whether the first defendant should have cancelled the Power of Attorney Agent to substantiate his allegations of collusion between the plaintiff and the second defendant?

(viii) To what are the reliefs, the parties are entitled?



WEB COPY

5. The plaintiff examined himself as P.W.1 and marked 8 documents as Ex.P1 to Ex.P8.

6. Mr.Saravana Kumar, learned counsel for the first defendant reported no instructions from the first defendant, he sent a notice through RPAD and the same was also refused. Thereafter, this court by its order dated 25.07.2023 has set D1 as exparte.

7. Heard the learned counsel for the plaintiff and perused the materials available on record.

8. The plaintiff had narrated the averments made in the plaint. To prove his contention, he has filed the following documents:

Ex.P1 - photocopy of the settlement deed dated 24.03.2004 in favour of Paneerselvam; Ex.P2 - the certified copy of the sale agreement dated 30.04.2012 between Pannerselvam and Sugumar; Ex.P3 - certified copy of



WEB COPY

the power of attorney dated 30.04.2012 executed by Paneerselvam to Balaguru.; Ex.P4 - certified copy of the sale deed dated 26.06.2014 executed by Balaguru in favour of Sugumar; Ex.P5 - Axis Bank original statement of plaintiff dated 09.08.2017; Ex.P6 - IDBI Bank original statement of Saraswathi; Ex.P7 - cash receipt dated 25.06.2014 issued by Balaguru and Ex.P8 - legal notice dated 14.07.2014 issued by 1st defendant's counsel to Sugumar. There is no rebuttal evidence on the side of the defendants. The plaintiff has proved his contention through his oral and documentary evidences.

9. In view of the above, the suit is therefore decreed as prayed for.

No costs.

10. One month time is granted for handing over the vacant possession of the suit property.

21.08.2023

Index : No
Internet : Yes
Speaking/Non-speaking
gv

10/12



WEB COPY

List of the witnesses examined on the side of the plaintiff:

PW1 – Mr.J.Sugumar

List of Exhibits marked on the side of the plaintiff :

<i>Sl.No</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	Ex.P1	The photocopy of the settlement deed dated 24.03.2004 in favour of Paneerselvam
2	Ex.P2	The certified copy of the sale agreement dated 30.04.2012 between Paneerselvam and Sugumar.
3	Ex.P3	The certified copy of the power of attorney dated 30.04.2012 executed by Paneerselvam to Balaguru.
4	Ex.P4	The certified copy of the sale deed dated 26.06.2014 executed by Balaguru in favour of Sugumar.
5	Ex.P5	The Axis Bank original statement of plaintiff dated 09.08.2017.
6	Ex.P6	The IDBI Bank original statement of Saraswathi (plaintiff's wife)
7	Ex.P7	The Cash receipt dated 25.06.2014 issued by Balaguru
8	Ex.P8	The legal notice dated 14.07.2014 issued by 1 st defendant counsel to Sugumar.

21.08.2023

gv



WEB COPY



A.A.NAKKIRAN.,J.

gv

C.S.No.684 of 2014

21.08.2023