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C.S.NO.83 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.NO.83 OF 2021
AND O.A.NOS.133 AND 134 OF 2021
AND A.NO.6543 OF 2023

M/s.R.Misrilal Jewellers Pvt. Ltd.,
Represented by its Managing Director
M.Bhikamchand
Having office at No.10/12, Veerappan Street,
1st Floor, Sowcarpet,
Chennai – 600 079.

.. Plaintiff

VS.

J.Vijayakumar

.. Defendant

PRAYER: Civil Suit filed under Order IV Rule 1 of High Court Original Side Rules 1956 read with Order VII Rule 1 of Civil Procedure Code for the following reliefs :

(a) Directing the defendant to perform his part of the obligation under the Agreement of Sale dated 12.06.2019 by executing a Deed of Sale in favour of the plaintiff or his nominee or nominees upon receipt of the balance sale consideration of Rs.42,18,133/- payable by the defendant on a date to be fixed by this Court and or in default, direct the Officer of this Court to execute a Deed of Sale in respect of the Suit schedule “A” mentioned property strictly in accordance with the terms of the agreement for sale dated 12.06.2019 upon deposit of the balance sale consideration of Rs.42,18,133/- by the plaintiff



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and executor and register the sale deed at the cost and expenses of the plaintiff by delivering vacant possession of the property along with the original title deeds, pertaining to the suit schedule mentioned property on a date to be fixed by the Court.

In the alternative relief, direct the defendant to refund the advance sale consideration of Rs.72,81,867/- (Rupees Seventy Two Lakhs Eighty One Thousand Eight Hundred and Sixty Seven Only) paid by the plaintiff together with interest at the rate of 12% per annum monthly rests from the date of payment till realization;

(b)For a declaration that the plaintiff has an equitable charge over the suit “A” schedule property from the moneys spent pursuant to the agreement dated 12.06.2019 S.R.O., Thyagarayanagar and Registration District of Chennai South.

(c)For a permanent injunction restraining the defendant or his agent or anyone authorized by him or empowered by him from in any manner encumbering, alienating or dealing with the suit “A” schedule property in any manner detrimental to the interest of the plaintiff either by way of sale, mortgage, lease or otherwise except in accordance with the registered agreement for sale dated 12.06.2019 and registered as document No.1867 of 2019, in the office of the Sub-Registrar, Thyagarayanagar and Registration District of Chennai – South.

(d)For permanent injunction restraining the defendant or his agent or anyone authorized by the defendant or empowered by him from interfering with the custody of the documents of title of Schedule “A” property more fully described in Schedule “B” except in accordance with law Agreement for Sale dated 12.06.2019 and D.No.1867 of 2019 S.R.O. Thyagarayanagar and Registration District of Chennai – South.

(e)For such further or other relief.

(f)Costs of the suit.



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For Plaintiff : Ms.Vasudha Thiagarajan
For Defendant : Mr.E.Senthil Kumar

J U D G M E N T

The Suit has been filed for specific performance of Agreement of Sale dated 12.06.2019 and with a direction to execute the Sale Deed in favour of the plaintiff and alternative relief of refund the advance sale consideration of Rs.72,81,867/- with 12% interest and also for declaration of equitable charge over the Suit “A” Schedule property and permanent injunction restraining the defendant from encumbering, alienating or dealing with the Suit “A” Schedule property.

2.The brief facts leading to the filing of the Suit are as follows:

The plaintiff is a Private Limited Company registered under the Companies Registration Act, 1956 and carrying on business in jewellery under the name and style of M/s.R.Misrilal Jewellers Pvt. Ltd. The plaintiff's Managing Director and the defendant are friends over the past 25 years. The defendant used to purchase gold as well as silver jewellery from the plaintiff



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and used to avail credit facility and subsequently would pay the value of the goods as and when he has possessed of funds for the value of invoice raised in his name for the purchase made from time to time. During such transaction, the defendant purchased gold jewellery worth about Rs.58,00,000/- (Rupees Fifty Eight Lakhs Only) and invoice also raised on 03.06.2019 for Rs.58,00,000/-. As the amount could not be paid by the defendant, the defendant has come forward to sell his property for a total sale consideration of Rs.1,15,00,000/- (Rupees One Crore Fifteen Lakhs Only) and executed an Agreement of Sale dated 12.06.2019 and the same was registered as Document No.1867/2017. The amount payable by the plaintiff to the defendant was adjusted in the Agreement. Besides after adjusting Rs.58,00,000/- payable by the defendant, a further sum has also been paid as an advance. Accordingly, the plaintiff has paid totally a sum of Rs.72,81,867/- to the defendant for purchase of the property. The plaintiff agreed to pay the remaining sale consideration on or before 15.10.2019 subject to production of all the relevant records, documents of title sought for by the plaintiff for scrutiny and legal opinion. It is also agreed between the parties that the sale shall be completed before 15.10.2019. The plaintiff is



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always ready and willing to purchase the property. However, the defendant has not produced the documents of title sought for by the plaintiff. Hence, as the defendant failed to perform his part of the contract, the Suit has been filed.

3. Admitting the execution of the Agreement of Sale dated 12.06.2019, it is the specific contention of the defendant that the said Agreement has been executed on the basis of the guideline value, whereas the total sale consideration agreed is Rs.2,60,00,000/- (Rupees Two Crores Sixty Lakhs Only) in respect of which, a separate Memorandum of Understanding was entered between the parties on 15.07.2019. It is also specifically admitted that the sale shall be completed before 15.10.2019 whereas the plaintiff has not shown any interest to purchase the suit property though the defendant has made repeated requests. Accordingly, the defendant has issued a legal notice to the plaintiff on 16.10.2019. However, the plaintiff requested time on the ground that he could not register the suit property due to his business activities. Despite the defendant giving another 21 days time, the plaintiff has not paid the remaining sale consideration to complete the sale. Hence, the



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crux of the defense is that the total sale consideration agreed between the parties is Rs.2,60,00,000/- and not Rs.1,15,00,000/-. The defendant also denied the readiness and willingness on the part of the plaintiff.

4. Based on the above pleadings, the following issues were framed by this Court on 09.02.2022:-

“1. Whether the plaintiff is entitled to relief of specific performance as prayed for in the suit?

2. Whether the plaintiff is entitled for alternative relief of direction to the defendant to refund the advance sale consideration of Rs.72,81,867/- with interest @ 12% monthly rests?

3. Whether the plaintiff is entitled for declaration of equitable charge over the suit “A” schedule property as prayed for?

4. Whether the plaintiff is entitled for permanent injunction restraining the defendant or his agent or anyone authorized by him or empowered by him in any



*manner encumbering, alienating or dealing with the suit
“A” schedule property as prayed for?*

5. Whether the plaintiff is entitled for permanent injunction restraining the defendant or his agent or anyone authorized by the defendant or empowered by him from interfering with the custody of the documents of title of “A” schedule property more fully described in schedule “B” except in accordance with law agreement for sale deed 12.06.2019 as prayed for?

6. Whether the plaintiff is entitled for costs of the suit?

7. To what other relief the plaintiff is entitled to?

5. After hearing the submissions of both sides, the issues are re-casted as follows. Evidence is already on record to decide the following issues:

(i) Is there any Memorandum of Understanding between the parties for a different sale consideration?

(ii) Whether the plaintiff was always ready and



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willing to perform his part of contract?

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

(iv) Whether the plaintiff is entitled to the alternative relief as prayed for?

6. On the side of the plaintiff, plaintiff has been examined as P.W.1 and Exs-P.1 to P.17 were marked.

7. On the side of the defendant, the defendant himself has examined as D.W.1 and Ex-D.1 is marked.

Issue No.(i)

8. It is the contention of the learned counsel for the plaintiff that having admitted the registered document, the defendant now cannot resile from the same. Once the registered document operates, any un-registered documents will not have any place. It is the further contention of the plaintiff that since the defendant has not produced the documents with free of



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encumbrance, the sale could not be completed and the defendant has also admitted that the plaintiff has capacity to mobilize the funds. If such being is the position, the plaintiff is entitled to a decree and judgment as prayed for.

9.The learned counsel for the defendant would submit that Ex-D.1 original Memorandum of Understanding dated 15.07.2019 makes it clear that the parties have in fact agreed to a different sale consideration. Ex-D.1, in fact, clearly prove the fact that Ex-P.8 registered sale agreement is only for the guideline value. In any event, the contention of the learned counsel for the defendant that Ex-P.11 legal notice was sent by the plaintiff. Even in the plaint, plaintiff was admitted that they are not in a position to register the sale deed. That itself clearly indicates that their readiness and willingness is absent from the very inception. Hence, it is the contention that at the most, the defendant is willing to return the advance amount with interest as agreed.

10.As far as the Memorandum of Understanding dated 15.07.2019 is concerned, it is the contention of the defendant that the said



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Memorandum of Understanding has been executed by the plaintiff for a different sale consideration. According to the defendant, the sale consideration was originally agreed for Rs.2,60,00,000/- only. Though the said Memorandum of Understanding was marked as Ex-D.1, the plaintiff has totally denied such document and the very execution itself is denied by the plaintiff. In such a case, onus lies on the defendant to prove the execution of such document. However, no witnesses have been examined to prove the execution of the document by the plaintiff, which is marked as Ex-D.1. That apart, when any registered document is in existence, in respect of the immovable properties, such registered document shall take effect against any oral agreement or declaration relating to such property under Section 48 of the Registration Act, 1908.

11.In fact, Section 48 of the Indian Registration Act, makes it very clear all non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by



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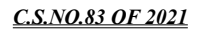
delivery of possession

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12.In such view of the matter, admittedly, the possession is also not handed over to the plaintiff in this matter. Accordingly, even assuming that Ex-D.1 is executed, it cannot be given any effect as per Section 48 of the Registration Act, 1908. In the light of the above discussions, issue No.(i) is answered.

Issue No.(ii)

13.As far as Ex-P.8 - registered Sale Agreement dated 12.06.2019 is concerned, it is not disputed by the parties. Similarly, the receipt of the advance amount after adjusting the value of the goods is also not seriously disputed by the defendant. In Ex-P.8, it is agreed between the parties that the sale shall be completed before 15.10.2019. Though time is not the essence of the contract, in respect of the immovable properties, the time agreed between the parties makes a contract essence and the same cannot be ignored altogether. It is the stand of the plaintiff that the defendant



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under Ex-P.11 they have expressed their intention not to purchase the property. This fact clearly established the conduct of the plaintiff that they are not interested in purchasing the property and it also clearly exhibits that they were never ready and willing to perform their part of the contract from the very inception. Accordingly, issue No.(ii) is answered against the plaintiff.

Issue No.(iv)

14.As far as alternative relief is concerned, Ex-P.8 is not disputed by the defendant and an advance of Rs.72,81,867/- is also not disputed by the defendant. It is the submission of the learned counsel for the defendant that they will pay the amount within six months. Once the amount is not disputed, and the sale has not been completed in time, this Court is of the view that the defendant cannot retain the advance amount and he is liable to return advance sale consideration. Accordingly, the plaintiffs are certainly entitled to a decree for sum of Rs.72,81,867/- with interest @ 12% per annum from the date of sale agreement till the date of decree and thereafter @ 9% per annum till the date of realization.



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15.It is submitted by the learned counsel for the defendant that the amount would be paid within six months. This submission is also recorded. Till the amount is realized, taking note of the nature of the amount, there shall be a charge over the property. Issue No.(iv) is answered accordingly.

16.Accordingly, the **Suit is decreed** for recovery of a sum of Rs.72,81,867/- (Rupees Seventy Two Lakhs Eighty One Thousand Eight Hundred and Sixty Seven Only) with interest @ 12% per annum from the date of agreement of sale till the date of decree and thereafter @ 9% per annum till the date of realization and the **Suit is dismissed in respect of the relief for specific performance** and charge is created over the Suit property till the amount is realized.

17.In fine, the Suit is partly decreed with costs. Consequently, connected applications are closed.



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Index : Yes/No

Neutral Citation: Yes/No

Speaking / Non-speaking order

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LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 – Mr.M.Bhikamchand

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE PLAINTIFF

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Certified Copy of the Sale Deed registered as Doc.No.1285/1996	28.06.1996
2	P-2	Original Construction Agreement signed by Le Josephin Consal, Managing Director of Le Royal Constructions	16.07.2004
3	P-3	Memorandum of Association of plaintiff company	21.05.2013
4	P-4	Certificate of incorporation of plaintiff company	31.01.2012
5	P-5	Original Sale Deed	01.10.2004
6	P-6	Invoice No.2019-20/03 for supply of goods on credit	03.06.2019
7	P-7	Original board resolution	10.06.2019
8	P-8	Certified Copy of the Sale Agreement vide registered document No.1867/2019	12.06.2019
9	P-9	Certified Copy of the plaintiff's statement of account in Tamil Nadu Mercantile Bank dated 01.07.2019 to 10.08.2019	
10	P-10	Original board resolution to file case	23.12.2019
11	P-11	Office copy of the letter from plaintiff to defendant	30.09.2019
12	P-12	Original reply letter from defendant to plaintiff	09.10.2019
13	P-13	Original letter from defendant to plaintiff	16.10.2019
14	P-14	Office copy of the legal notice from plaintiff to defendant	28.12.2019
15	P-15	Original reply letter from defendant to plaintiff	20.01.2020
16	P-16	Office copy of the rejoinder notice from plaintiff's counsel to defendant	06.11.2020
17	P-17	Encumbrance Certificate from 01.01.2000 to 12.11.2020	



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LIST OF WITNESSES EXAMINED ON THE SIDE OF THE DEFENDANT

D.W.1 – Mr.J.Vijayakumar

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE DEFENDANT

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	D-1	Original Memorandum of Understanding	15.07.2019

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