



C.S.No.371 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.07.2023
Pronounced on	22.08.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.S.No.371 of 2021

M.S.Ganesh

... Plaintiff

Vs.

1.S.Govindaprasad
2.Radha Govindaprasad

... Defendants

Prayer: Complaint filed under Order IV 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) Directing the defendants to specifically perform the sale agreement dated October 2019 by executing the sale deed in plaintiff's favour in respect of the suit property, viz., the residential apartment bearing Flat No.B-4, The Palms, No.6, Police Commissioner's Office Road, Egmore, Chennai 600 008, together with proportionate undivided share of land and have the same registered, by receiving the balance sale consideration of Rs.1,00,00,000/- (Rupees One Crore Only), failing which this Court may be



C.S.No.371 of 2021

pleased to execute the sale deed in favour of the plaintiff in respect of the said property or in the alternative, direct the defendants to pay the plaintiff a sum of Rs.22,50,000/- (Rupees Twenty Two Lakhs Fifty Thousand only) (Advance amount of Rs.15,00,000/- plus interest of Rs.7,50,000/- upto the date of plaint) together with interest @ 24% per annum on Rs.15,00,000/- from the date of plaint till the date of realisation.

b) granting permanent injunction restraining the defendants, their men, servants and agents and anyone claiming under them, from interfering with the plaintiff's possession and enjoyment of the suit property viz., the Residential Apartment bearing Flat No.B-4, The Palms, No.6, Police Commissioner's Office Road, Egmore, Chennai 600 008.

For Plaintiff : Mr.K.A.Mariappan

For Defendants : set exparte on 18.10.2022

JUDGMENT

The suit has been filed to direct the defendants to specifically perform the sale agreement dated October 2019 by executing the sale deed in plaintiff's favour in respect of the suit property, viz., the residential apartment bearing Flat No.B-4, The Palms, No.6, Police Commissioner's Office Road, Egmore, Chennai 600 008, together with proportionate



C.S.No.371 of 2021

undivided share of land and have the same registered, by receiving the balance sale consideration of Rs.1,00,00,000/- (Rupees One Crore Only), failing which this Court to execute the sale deed in favour of the plaintiff in respect of the said property or in the alternative to direct the defendants to pay the plaintiff a sum of Rs.22,50,000/- (Rupees Twenty Two Lakhs Fifty Thousand only) (Advance amount of Rs.15,00,000/- plus interest of Rs.7,50,000/- upto the date of plaint) together with interest @ 24% per annum on Rs.15,00,000/- from the date of plaint till the date of realisation and for permanent injunction.

The averments stated in the plaint are as follows:

2. The defendants are the owners of the Flat bearing Flat No.B-4, The Palms, No.6, Police Commissioner's Office Road, Egmore, Chennai 600 008. The defendants purchased the suit property by virtue of the sale deed dated 27.12.2003. The plaintiff originally became the tenant under the defendants and he has been residing in the suit property from the year 2011 by paying the monthly rent of Rs.35,000/- and rental advance of Rs.2,50,000/-. During October 2019, the defendants approached the



C.S.No.371 of 2021

plaintiff and offered him to sell the suit property to himself for a sale consideration of Rs.1,15,00,000/-. After the plaintiff accepted the offer, a sale agreement was entered into between the plaintiff and the defendants during the month of October 2019. On the date of execution of the sale agreement, the plaintiff paid a sum of Rs.15,00,000/- as advance and the plaintiff's possession from the date of sale agreement is considered to be an agreement holder. Hence the rental agreement was not renewed subsequently.

2.1. The plaintiff who himself is a building contractor, had done renovation work for the Flat by spending a sum of Rs.2,00,000/- and the said sum is still due. The plaintiff had paid another sum of Rs.1,80,000/- to the defendants. As per the sale agreement, the sale should be completed within three years from the date of execution of the sale agreement. Since both the defendants are the residents of United States of America and they were not able to travel to India due to Covid -19 pandemic, long period was fixed for completing the sale. Despite the plaintiff called the defendants to come to India and complete the sale agreement, the defendants did not come



C.S.No.371 of 2021

forward to complete the sale. Hence the plaintiff sent a legal notice on 05.11.2021 that the plaintiff is ready and willing to pay the balance sale consideration of Rs.1,00,00,000/-. But the defendants did not send any reply to the legal notice sent by the plaintiff. Hence the plaintiff had filed the suit for specific performance and other reliefs. The plaintiff also claimed an alternate relief for recovery of advance amount together with interest at the rate of 24% on Rs.15,00,000/-

2.2. According to the plaintiff, on 10.11.2021, at about 7 a.m., three men appeared to be the henchmen of the defendants threatened the plaintiff to vacate the suit property. Hence the plaintiff has filed a suit for specific performance and permanent injunction restraining the defendants and their men from interfering with the possession of the plaintiff.

3. On perusal of the records, it is seen that the Court summons has been sent to the address of the defendants and returned unserved as “left”. Thereafter, substituted service of publication has been effected in a local daily by showing the same address of the defendants. Though service has



C.S.No.371 of 2021

been completed on the defendants, there was no representation on behalf of the defendants. Therefore, the defendants were set exparte on 18.10.2022.

4. The following issues are required to be decided in the present suit:

"(i) Whether the sale agreement dated October 2019 is true and valid?

(ii) Whether the plaintiff is entitled to the relief of specific performance or the alternate relief of recovery of advance amount along with interest and to what other relief?"

5. The plaintiff examined himself as P.W.1 and exhibits P1 to P4 were marked.

6. The defendants who are the owners of the suit property are said to have entered into the sale agreement with the plaintiff during October 2019 for selling the suit property for a sum of Rs.1,15,00,000/-. Even before the sale agreement, the plaintiff is said to be the tenant of the defendants and



C.S.No.371 of 2021

he was paying a sum of Rs.35,000/- as rent for the suit property. It is claimed by the plaintiff that subsequent to the sale agreement, he was considered as an agreement purchaser and from then onwards, he seems to be holding the tenancy agreement and he was given with the possession of the property as part performance.

7. The plaintiff claims possession over the suit property as a part performance of the alleged sale agreement entered in October 2019. Hence, he is obliged to file a registered sale agreement only. But the plaintiff has produced an unregistered sale agreement as Ex.P3. The sale agreement did not contain any date but it contains only month and year. The date in the sale agreement is blank and in pencil '20th' is seen to be written beside the space, probably it must be the date of the sale agreement. There is no witness who had attested the sale agreement and the space for witnesses is also blank. The time for the agreement is agreed to be three years and it is stated by the plaintiff in his plaint that such a long period for complying the sale agreement was agreed taking into account of the Covid-19 situation that the defendants are the residents of the United States of America. Having



C.S.No.371 of 2021

admitted that the defendants are the residents of the United States of America, the plaintiff had chosen to send the pre-suit notice and the summons to some local address. Even the sale agreement does not contain their residential address at United States of America.

8. In the sale agreement under clause 9, it is mentioned as under:

"9. The purchaser who already in possession and occupation of the schedule property as a tenant and the said possession will now become an agreement holder from the date of this sale agreement."

9. The above clause would represent that there was a part performance agreed between the parties in terms of Section 53(A) of the Transfer of Property Act. As per Section 17(1)(a), any document containing the contract to transfer for consideration of any immovable property for the purpose of Section 53(A) of the Transfer of Property Act shall be registered, if the contract has been executed on or before the commencement of the Registration and Other Related Laws Amendment Act, 2001.



C.S.No.371 of 2021

10. The said amendment came into force with effect from 24.09.2001. If those contracts are unregistered, it cannot have any effect for the purpose of Section 53(A). Since the plaintiff has filed an unregistered agreement which is said to have been entered into between the parties subsequent to the above said amendment and it remains unregistered, the sale agreement cannot be taken into consideration. Further, the sale agreement lacks genuinity, in view of the blanks and absence of attesting witnesses. With regard to other payments and expenses incurred by the plaintiff, no documentary evidence is produced. Since Ex.P3 sale agreement is found to be unreliable and unregistered, the same cannot be taken into consideration. **Thus issue No.(i) is answered.**

11. In view of the same, the plaintiff is not entitled to get the relief of specific performance or any decree for recovery of money as claimed by him. **Thus, the issue No.(ii) is answered.**

12. If the plaintiff could not prove with reliable documents that he is in possession of the suit property as an agreement holder, then he has to be seen as a tenant or an encroacher. Excepting the self-serving evidence of



C.S.No.371 of 2021

P.W.1, there is no evidence available to show that the plaintiff's possession was disturbed by the defendants or their men. Even in the plaint, he has not stated in any specific terms that the alleged strangers were the henchmen of the defendants.

13. The plaintiff himself has admitted that the rental agreement is not renewed after a particular point of time. The defendants being the original owner, are entitled to get back the possession from the plaintiff in accordance with the due process of law, in the absence of any extension of tenancy or there is any default in payment of rent or any other grounds for that matter. The plaintiff has not established a prima facie case and he has not proved that the balance of convenience is in his favour. Since the plaintiff has not proved his case, he is not entitled to get the relief as prayed for.

14. For the above said reasons, this Civil Suit is dismissed. No costs.

Index : yes

Internet : yes

Speaking

Neutral Citation : Yes

gsk

22.08.2023



WEB COPY



C.S.No.371 of 2021

R.N.MANJULA,J.
gsk

C.S.No.371 of 2021

22.08.2023