



C.S.No.686 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 04.08.2023

Judgment Pronounced on : 20.10.2023

CORAM

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

C.S.No.686 of 2019

Dilip Kumar Ostwal

....

Plaintiff

Vs.

1.S.Vijayalakshmi

2.S.Selvam

3.E.Hemalatha

....

Defendants

Prayer : Civil Suit filed under Order IV Rule 1 read with order VII Rule of 1 of CPC praying for a judgment and decree against the defendants for the following relief:

(a) directing the defendants to execute and register the sale deed in favour of plaintiff after receiving the balance of sale consideration of Rs.2,76,38,600/- as per sale agreement point No.4 and as per terms and conditions of sale agreement dated 26.10.2016.

or

direct the defendants to pay the advance amount of Rs.65,15,000/-



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paid by the plaintiff as per terms and conditions of sale agreement dated 26.10.2016 with interest as per sale agreement point No.10 at the rate of 15% per annum on monthly rests, from the date of payment of advance amount on 26.10.2016 and 24.03.2017 till date, interest amount is Rs.35,31,400/- in all total amount of RS.1,00,46,400/-, till the date of actual payment.

(b) directing the defendants 1 to 3 to pay costs of the suit

For Plaintiff : Mr.S.Mahaveer

For Defendants : Mr.G.Thangavel

JUDGMENT

This Civil Suit has been filed seeking a relief of specific performance directing the defendant to execute a sale deed after receiving the balance sale consideration of Rs. 2,76,38,600/- or directing the defendants to pay the advance amount along with interest of Rs.1,00,46,400/- with interest at the rate of 15% per annum till its realization along with costs.



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Plaint in brief:-

2.The defendant is the owner of the plaint schedule property. A sale agreement in respect of the suit property was entered on 26.10.2016 with the plaintiff for sale consideration of Rs. 3,80,00,000/-. The 2nd and 3rd defendants who are the children of the first defendant have also been included in the sale agreement by way of abundant caution. An advance amount of Rs.50,00,000/- which comprises of Rs.50,000/- as cash and Rs.49,50,000/- by way of cheque was paid to the 1st defendant towards TDS. A further advance of Rs.15,00,000/- was also paid through RTGS on 24.03.2017 for discharging the house loan taken by the 1st defendant from LIC Housing Finance Limited. The defendants have signed a separate receipt for the said amount, and another sum of Rs.15,000/- being the TDS @ 1% of the second advance amount has been deposited with the concerned department. Altogether a total advance sum of Rs.65,15,000/- has been paid by the plaintiff till then.

2.1. Since the plaintiff owned the adjacent property measuring 3100 sq.ft but the access to the said property is only just 16 feet, the plaintiff



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intended to purchase the defendants' property just to have a better access to his property. The plaintiff had agreed for a premium price demanded by the 1st defendant. Even though the plaintiff wished to go for direct registration, the 1st defendant needed some time to vacate the tenants in the scheduled property and hence five months time limit was agreed to complete the sale. In order to get ready for an earlier registration, the plaintiff had also sold his other property located in Periyar Nagar. Since the 1st defendant was not able to relocate himself and also vacate the tenants in the suit property, the time was further extended to 30.06.2017. The first defendant had also sent a letter dated 23.03.2017 and requested to alter the terms of payment. Agreeing for the same the plaintiff released an another sum of Rs.15,00,000/- to the defendants to clear the LIC housing finance Ltd loan. Even after the plaintiff had accepted to revise the terms and conditions, the defendants did not do anything on their part. In fact, the plaintiff noticed that the 1st defendant had undertaken a repair work in the vacated portion in the ground floor. When enquired the plaintiff came to understand that the 1st defendant is constructing a shop area with an intention to rent the same to a new tenant. As this developments were noticed



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by the plaintiff on 15.09.2017, he sent a legal notice to the defendants on 16.09.2017. As per the terms of the agreement dated 26.10.2016 the defendants have to bear interest at the rate of 15% p.a on the amount received, if the defendants caused delay in executing the sale deed beyond the agreed terms of five months. Since the defendants did not execute the sale deed within five months, they are also liable to pay interest of Rs. 35,31,400/-.

2.2. The plaintiff had sent a legal notice on 16.09.2017 and informed that the plaintiff was all along ready and willing to perform his part of contract and he asked the defendants to stop further constructions in the suit property. The defendants sent a reply notice dated 23.09.2017 with false allegations. The plaintiff has also sent his rejoinder on 28.09.2017 and stated that he was always ready and willing to purchase the plaint schedule property. The defendants never informed the plaintiff that he had vacated the entire tenants in the petition mentioned property and he was ready and willing to execute the sale deed. The sale deed could not be executed because of the default on the part of the defendants. Hence the plaintiff has filed this suit with the above mentioned prayer.



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Written Statement in brief:-

3. The sale deed cannot be executed only in view of the default on the part of the plaintiff. Despite the plaintiff knew well that the tenants were vacated from the suit property and kept it vacant, the plaintiff did not come forward to pay the balance sale consideration and get the sale deed executed. The suit has been filed without any cause of action. Even though the defendants were not eager to execute the sale deed, the plaintiff did not materialise the same. For the legal notice sent by the plaintiff, the defendants sent a suitable reply.

3.1. The legal notice was sent by suppressing the real facts. In the reply notice, they have stated that they are ready and willing to execute the sale deed but the plaintiff had suppressed the same. The plaintiff who had caused undue hardship is liable to pay compensation for a sum of Rs.15,05,000/-. It is unlawful on the part of the plaintiff to claim interest for a sum of Rs. 35,31,400/- and the defendants are not liable to return the advance amount because the defendants had already sustained the loss due to the inaction on the part of the plaintiff. The suit schedule property is lying vacant for several years



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and hence the plaintiff is not entitled to get any refund or compensation as claimed by him. Hence the suit should be dismissed.

4. On the basis of the above pleadings in the plaint and the written statement filed by the defendants, this Court has framed the following issues:

- “i. Whether the plaintiff is entitled to get the sale deed executed as sought for in the plaint?*
- ii. Whether the defendants are liable to execute a sale deed in favour of the plaintiff?*
- iii. Whether the time is the essence of contract?”*
- iv. Whether the plaintiff is entitled for costs of the suit?*
- v. what is the balance sale consideration that has to be paid by the plaintiff?*
- vi. What other relief the plaintiff is entitled to?*

5. I felt the above mentioned issues involved in the suit can be further reframed by touching upon the essential points in dispute as below:



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(i) Whether the plaintiff was ready and willing to execute his part of contract?

(ii) Whether the defendants had failed to vacate the tenants from their premises before the prescribed time as agreed in the sale agreement?

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

(iv) Whether the plaintiff is entitled to get the alternate relief of refund of advance amount along with interest as claimed by him?

(iv) To what Relief if any?

6. During the course of the trial, on the side of the plaintiff he examined himself as PW.1 and Ex.P1 to P11 were marked. On the side of the defendants, 2nd defendant has been examined as DW.1 and Ex.D1 to D6 were marked.

7. Heard the respective submissions of the learned counsels for the



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8.The learned counsel for the plaintiff submitted that the execution of the sale deed is admitted by the defendants. The plaintiff was always ready and willing to perform his part of contract. The plaintiff has produced Ex.P12 and Ex.P13 which are the fixed deposit receipts in the name of the plaintiff's father and his wife to show that the financial position of the plaintiff is sound. Had the defendants vacated the tenants and intimated the plaintiff about vacant possession, the plaintiff would have immediately paid the balance sale consideration and got the sale deed registered. The defendants did not send any notice to the plaintiff by stating that the tenants in the suit property has been vacated. Even during the cross examination, the 2nd defendant admitted that he had not informed the plaintiff about the vacant possession. So as per the clauses seen in the agreement for the default on the part of the plaintiff he has to pay 15% interest on the advance money. The defendants needed money to clear the LIC housing loan and materialised the same by getting a portion of the advance amount towards settling the loan. Thereafter, he did not show his honesty and



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invited the plaintiff to pay the balance sale consideration. The rental income collected from the property would be around Rs.1,20,000/-. The defendants did not prove the readiness and willingness to perform their part of the contract. Even though the legal notice was issued the defendants did not come forward to show his bona fide. Hence the suit should be decreed as prayed for. In support of his contention, he cited the division bench judgement of the Hon'ble Supreme Court in ***K.Karuppuraj Vs M.Ganesan*** reported in (2021)10 ***Supreme Court Cases*** 777.

9. The learned counsel for the defendants submitted that the sale agreement could not be completed only due to default on the part of the plaintiff. Had the plaintiff paid the balance sale consideration the sale would have completed. The defendant is not liable to pay the interest and advance amount since the plaintiff did not co-operate with the defendant to fulfil the contract hence the suit is liable to be dismissed.



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WEB **Discussion**

10. The fact that a sale agreement was entered into between the plaintiff and the defendants on 26.10.2016 in respect of the suit property for a sale consideration of Rs.3,80,00,000/- is not disputed. The time limit for performing the above sale agreement was five months from the date of the agreement. At the time of entering the sale agreement itself, the plaintiff has made a payment of Rs.50,00,000/- as advance. Despite five months time limit according to the sale agreement would expire on 26.03.2017, an another payment of Rs.15,00,000/- was paid on 24.03.2017 and that was also acknowledged by the defendants. Since the 1st defendant was also residing in the suit property and she found it difficult to vacate herself from the premises in the month of March 2017, the 1st defendant has sent a letter to the plaintiff by seeking to extend the sale agreement for further three months. The said letter has been marked as Ex.P1.

11. The plaintiff has also agreed to the above request of the 1st defendant and accordingly the time limit has been extended for a further three



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months. Though the 2nd defendant was examined as DW.1, he has stated in his chief examination that the further time of three months was extended at the request of the plaintiff. Ex.P1 letter sent from the defendant would confirm the fact that the further time was extended only at the request of the defendant and not at the request of the plaintiff. During the cross examination of DW.1, it is admitted by DW.1 that the defendants had requested three months time to vacate themselves from the suit property.

12. One of the essential stipulations in the sale agreement is that the defendant has to vacate the tenants of the suit property and keep it vacant at the time of executing the sale deed before the expiry of the time limit. The defendants have asserted that the tenants were vacated even before Ex.P1 letter was sent to the plaintiff. Hence according to the plaintiff the tenants in the premises were not vacated and further time of three months was agreed to be extended for vacating the tenants as well as the defendants themselves from the suit property. In fact in Ex.P1 letter, the pattern for next payment of the part sale consideration has also been made specific. Had things gone in accordance with the understanding and the agreement, the contract would have got



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13. The receipts which have been produced as Ex.P2 would show that the second part payment of advance sale consideration of Rs.15,00,000/- was paid to the defendants to enable the defendants to clear the housing loan taken by them from the LIC Housing Finance Limited. So from the money availed from the part sale consideration received in pursuant to the sale agreement the defendants had discharged the housing loan existed in respect of the suit property.

14. The core contention of the plaintiff is that the defendants failed to vacate the tenants and keep the premises vacant and that is the reason why the plaintiff could not make further payments, though he had the financial wherewithal's to meet out the balance sale consideration all along.

15. The second defendant was examined as DW.2 and he has stated in his evidence that the plaintiff was not able to manage the sale consideration



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within the stipulated time. From the bank statements of the plaintiff and his parents which are available at Ex.P12 & Ex.P13, it would only show that the plaintiff has a good financial support and he has movable and immovable assets of his own. Hence the plaintiff has proved to be a man of means and there is no difficulty to presume about his readiness to perform the contract. But the defendants had exhibited a strange attitude of effecting repairs in the suit property and he was inducting new tenants also. This conduct of the defendants had disturbed the plaintiff and thereafter he had chosen to send the notice dated 16.09.2019- Ex.P3 calling upon the defendants to receive the balance sale consideration and to execute the sale deed.

16. The act of inducting new tenants was not disputed by the defendants. But the defendants had contended that they had kept the suit properties vacant as per the agreement and the plaintiff did not come forward to execute the sale deed and only thereafter they had inducted new tenants by repairing the suit property. The defendants had received heavy amount as advance. If the plaintiff has not come forward to execute the sale deed by



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paying the balance sale consideration, the natural attitude of the defendant would be sending a notice to the plaintiff by cancelling the sale agreement and return the advance amount.

17. Without sending such a notice, the defendants appear to have unilaterally proceeded to induct new tenants. The defendants have chosen to send a reply to the notice sent by the plaintiff and the reply notice is marked as Ex.P4. Even in the reply notice the defendants have stated that the plaintiff was default in getting the sale deed executed. In fact, he called upon the plaintiff to pay the balance sale consideration within seven days, so that the defendant would come forward to get the sale deed executed. The reply notice of the defendant is dated 23.09.2017 and Ex.P3 legal notice of the plaintiff is dated 16.09.2017. So the willingness of the defendant to get the balance sale consideration even after 23.09.2017 would only show that the time is not the essence of the contract.

18. The plaintiff has stated that the plaintiff was all along ready and



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willing to perform his part of contract; but the offer to receive the balance sale consideration within seven days from the reply notice was without complying the stipulations of the said agreement. That means the defendant without vacating the tenants in the suit property had called upon the plaintiff to pay the balance sale consideration within seven days. If the tenants were not vacated from the suit property, it is quite natural for the plaintiff not to proceed further until a clear signal is given from the side of the defendant after the tenants vacated. The so called readiness exhibited by the defendant without vacating the suit property is nothing but impossibilities imposed on him and expecting him to divulge money without any practical assurance for the deal get executed. Hence, **issue No.1 is answered in favour of the plaintiff** and the **issue No.2 is answered against the defendants and in favour of the plaintiff.**

19. In fact, the plaintiff has sent a notice dated 28.09.2017 after receiving the reply notice sent by the defendant and made it categorically clear that the property should be vacant as agreed already. The plaintiff further stated in his notice dated 28.09.2017 that once the tenants are vacated the plaintiff



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would pay the balance sale consideration without fail. However, the plaintiff claimed Rs. 30,00,000/- as damages for having caused repair work in the suit property and changed its nature and continued to put up unauthorised constructions over the same.

20. The defendants sent a re-jointer on 09.10.2017 but made counter allegations by stating that the plaintiff has deteriorated the contract and he is liable to pay the compensation for the damages suffered in terms of loss of rents. Again the plaintiff has sent a notice dated 09.10.2017 and reiterated his earlier contention along with calculations to show that the amount paid and the interest claimed by him and stated that the vacant possession of the suit property is essential for proceeding further.

21. DW.1 has admitted in his evidence that he had effected the repair in the suit property because the tenants who vacated from the suit property did not repair the building and hence he needed to effect repairs. The terms of the agreement does not contemplate a condition that the suit property should be



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repaired before handing over the possession to the purchaser. In such case no vendor would venture to spend money to repair the suit property and to effect corrections unnecessarily.

22. In fact, the plaintiff is the neighbour of the defendant and the very proposal to purchase the suit property by the plaintiff is to enjoy his property conveniently by having a better access. In such case, the plaintiff would be very much anxious to purchase the suit property and there is no reason on the part of the plaintiff to cause delay. As stated already the financial wherewithal of the plaintiff is also proved to be sound and the only issue that has been addressed repeatedly by the plaintiff is the failure on the part of the defendant to vacate the tenant and his active involvement in putting further construction over the suit property.

23. The defendant on one side blames the plaintiff that he did not come forward to furnish the sale transaction and on the other side he continued to put up construction and inducted new tenants also. In fact, the plaintiff has



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stated that he was ready to directly go for registration of sale deed even without the agreement, but only in view of the occupation of the tenants and the defendant himself the sale agreement has to be entered by granting time for the defendant and the tenant to vacate the premises and keep it vacant.

24. As stated already DW.1 has given a strange statement that he needed to effect repairs since the earlier tenants did not attend the repairs to the building. The renovation or fresh construction in the building would change the features of the suit property and for which the plaintiff cannot be held responsible. The defendant did not put the plaintiff on notice before putting any constructions or effecting repair work in the suit buildings. DW.1 has admitted that he did not send any legal notice after completion of six months by stating that he was ready and willing to perform the contract by vacating the tenants but the plaintiff alone did not come forward to get the sale deed executed.

25. The evidence on record would prove that the plaintiff was ready and willing to perform the contract but the defendant alone did not cooperate to



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get the sale deed executed and caused confusion by doing repairs and construction in the suit property. In fact the plaintiff had agreed to purchase the suit property considering the convenient access that might be available to him.

26. The plaintiff has proved through the evidence available on records and also through his conduct along with his financial capability that he was always ready and willing to perform his part of contract. On the other hand the defendant failed to prove that the sale could not be fructified due to any default on the part of the plaintiff. In fact the defendants conduct would show that he was not ready and willing to perform his part of contract.

27. The plaintiff has claimed relief of specific performance or the alternate relief of refund of the advance amount, by charging interest for the advance amount already paid by him. Since the value of the property would have also increased by passage of time the prayer of the plaintiff that the defendants have to pay interest to him cannot be considered, in the event of granting him the main relief of specific performance itself. Since the plaintiff



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has proved all the essential ingredients to get the relief of specific performance he is entitled to get the relief of specific performance as prayed for. **Thus issue Nos.3 & 4 are answered.** Since the plaintiff has already been found to be entitled to get the relief of specific performance, he is not entitled to get any other relief. **Thus, issue No.5 is answered.**

28. In the result, the suit is **decreed** by granting the relief of specific performance to the plaintiff and the plaintiff is directed to deposit the balance sale consideration within 4 weeks, after deducting the partial sale consideration of Rs.65,00,000/- already paid or after putting the defendants on notice. It is up to the defendants to receive the amount so depositing from the Court within two weeks from the date of deposit and execute the sale deed at the expense of the plaintiff. Failing which the plaintiff is entitled to file execution proceedings for implementing the decree and get the sale deed executed through the Court.

20.10.2023

Index : Yes
Speaking order
Neutral : Yes
jrs



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APPENDIX

I. Witnesses :

Plaintiff :

PW.1	Mr.Dilip Kumar Ostwal
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Defendant :

DW.1	Mr.S.Selvam
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II. Exhibits :

Sl. No	Exhibits	Description of documents
1	Ex.P1	The letter from the defendants to plaintiff dated 23.03.2017. (Marked through PW.1 chief)
2	Ex.P2	The receipt for further advance amount paid issued by all the defending to the plaintiff dated 24.03.2017. (Marked through PW.1 chief)
3	Ex.P3	The office copy of the legal notice issued to the defendants dated 16.09.2017.(Marked through PW.1 chief)
4	Ex.P4	The original reply notice issued to the plaintiff counsel dated 23.09.2017.(Marked through PW.1 chief)
5	Ex.P5	The office copy of the another legal notice dated 28.09.2017. (Marked through PW.1 chief)
6	Ex.P6	The original another reply notice dated 09.10.2017. (Marked through PW.1 chief)
7	Ex.P7	The another legal notice dated 19.10.2017. (Marked through PW.1 chief)
8	Ex.P8	The bank statement of the plaintiff's account dated 21.10.2019/(Marked through PW.1 chief)
9	Ex.P9	The unregistered Sale agreement dated 26.10.2016. (the learned



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Sl. No	Exhibits	Description of documents
		counsel for the defendant objected to mark the unregistered sale agreement stating that it is inadmissible document. The learned counsel for the plaintiff has stated that orders of this court passed in CRP (MD) No.1877/2017 and CMP.(MD) No. 9778/2017 in which at page no.24 in para no.29 it has been stated that 'Therefore, the proviso to Section 49 as it now stands is that unregistered document affecting immovable property, which is compulsorily registrable, can be received as evidence for the following reasons:- a) as evidence of a contract in a suit for specific performance and b)as evidence of any collateral transaction, which transaction is not required to be effected by a registered instrument.” Both the counsels are admitted that the suit is filed for specific performance of contract. Hence as per the above cited order of this Court this unregistered document is entitled to be marked) (Marked through PW.1 chief)
10	Ex.P10	The original bank statement of IDBI Bank dated 01.03.2017 to 21.03.2017. (Marked through PW.1 chief)
11	Ex.P11	The certified copy of the sale deed Kilpauk Garden Property dated 27.05.2004. (the learned counsel for the defendant objected and stated that since the original is with the plaintiff he also filed the original with the above said objection this document is marked.)(Marked through PW.1 chief)
12	Ex.P12	The certified copy of the bank fixed deposit receipt balance statement of plaintiff and his family members dated 31.03.2016.
13	Ex.P13	The certified copy of the Bank fixed deposit receipt balance statement of plaintiff and his family members dated 31.03.2017.
14	Ex.D1	Office copy of the reply notice dated 30.10.2017 along with two postal receipt. (the learned counsel for the plaintiff objected that the postal acknowledgement card is not enclosed) (Marked through PW.1 cross)
15	Ex.D2	The original receipt for the repayment of rental advance issued by Mr.P.Palraj dated 11.12.2016. (marked through DW1 chief)



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Sl. No	Exhibits	Description of documents
16	Ex.D3	The original receipt for the repayment of rental advance issued by Mr.Vijaya Bahadur Verma dated 26.11.2016 (marked through DW.1 Chief)
17	Ex.D4	The original receipt for the repayment of rental advance issued by Mr.Gowtham dated 26.01.2017. (marked through DW.1 chief)
18	Ex.D5	The original receipt for the repayment of rental advance issued by Mrs.T.Santhanalakshmi dated 08.02.2017. (marked through DW.1 chief)
19.	Ex.D6	The original receipt for the repayment of rental advance issued by Mrs. V.Sumithra dated 15.03.2017 (marked through DW.1 chief)

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