



C.S No.49 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 31.01.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.49 of 2022

R.Karthikeyan

... Plaintiff

VS.

1.R.Ilango

2.N.V.R.Srinivasan

3.R.Kumaran,

4.Lalithkumar

... Defendants

Prayer: Civil Suit filed under Order VII Rule 1 of Civil Procedure Code read with Order IV Rule 1 of the Madras High Court O.S Rules, praying for the following judgment and decree as against the defendants:

(i) directing the defendants herein to execute the sale deed in favour of the plaintiff with regard to the suit schedule property after receiving the balance consideration of Rs.1,20,00,000/- as per the sale agreement dated 20.08.2021 and deliver possession of the suit schedule property.

(ii) In the alternative direct the defendants to refund a sum of Rs.20,00,000/- to the plaintiff with an interest of 18% p.a from the date of filing this suit

(iii) award costs to the plaintiff.



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For Plaintiff : Mr. Mukunth

For M/s.Sarvabhauman Associates

For Defendants : Set exparte

J U D G M E N T

This Civil Suit has been filed for specific performance and for costs.

2.0 The brief facts of the case of the plaintiff are as follows:

The plaintiff is a businessman residing at Coimbatore. He intended to purchase a property at Chennai. The defendants 1 to 3 are the absolute owners of the suit schedule property. The property was originally purchased by the father of the defendants 1 to 3, V.Ramachandiran vide sale deed dated 25.05.1962, doc.no.1639/1962, SRO, T.Nagar, Chennai. He died intestate on 10.07.2000 leaving behind his wife Vijayalakshmi and 3 sons and 4 daughters. On 29.07.2013, release deed was executed by Vijayalakshmi and 4 daughters relinquishing their 5/8th undivided share in the suit property in favour of the defendants 1 to 3 herein. The defendants 1 to 3 have thus obtained 1/3rd undivided share each in the suit schedule



property. On 26.09.2013, the 3rd defendant, R.Kumaran had executed a registered power of attorney in favour of the 2nd defendant NVR Srinivasan with regard to his 1/3rd share in the suit property empowering him all power to deal with the property including sale of property.

2.01. The defendants 1 and 2 had obtained a loan from M/s.Sundaram Finance by pledging their 2/3rd share in the suit schedule property and defaulted the same. Sundaram Finance had obtained an order of attachment of the suit property on 27.11.2013 in E.P No.187 of 2012 on the file of the High Court, Madras. The defendants had thereafter entered into a sale agreement with one Mr.Lalithkumar, S/o.Uchabraj Raj on 08.10.2013 registered as doc.no.2465/2013. The said Lalithkumar is arrayed as 4th defendant. The defendants 1 to 3 agreed to sell the property to the 4th defendant for a sum of Rs.37 lakhs. But the sale agreement did not fructify and the 4th defendant did not take any steps. In case the suit is decreed in favour of the plaintiff, he is ready to settle the dues of the 4th defendant from the balance of consideration to be paid to the defendants 1 to 3.



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2.02. In the meanwhile, the plaintiff was introduced to the defendants

1 to 3 through some known persons. The plaintiff came to know that the defendants offered to sell the suit schedule property and clear off the Sundaram Finance Loan and also to Lalithkumar as the previous sale agreement did not fructify. Negotiations were entered into between the plaintiff and defendants 1 to 3 and the defendants offered to sell the property a sum of Rs.1,40,00,000/- and the same was agreed by the plaintiff. A sale agreement was entered between the plaintiff and the defendants 1 to 3 on 20.08.2021. On the date of sale agreement i.e 20.08.2021, a sum of Rs.6,00,000/- was received by the defendants 1 to 3 and thereafter, on 08.09.2021, a sum of Rs.2,00,000/- on 09.02.2021, a sum of Rs.2,00,000/- and on 19.09.2021, a sum of Rs.10,00,000/- were paid to the defendants 1 to 3. The plaintiff had totally paid a sum of Rs.20,00,000/- to the defendants within a period of one month from the date of sale agreement.

2.03. As per clauses 3, 4 and 5 of the sale agreement, the defendants 1 to 3 covenanted that within a period of 60 days from the date of sale agreement, they shall i) settle their dues with Sundaram Finance and obtain



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court orders to release the attachment in the suit schedule property, ii) the defendants 1 to 3 would further receive additional advance from the plaintiff and refund the lessee's and tenants in the suit schedule property and deliver vacant possession to the plaintiff and iii) defendants 1 to 3 would further receive additional advance from the plaintiff and settle the 4th defendant, Mr.Lalithkumar and obtain cancellation of sale agreement executed in his favour and intimate the plaintiff. As per clause 5 of the agreement, the time for execution of the sale deed by paying balance amount by the plaintiff was fixed as 90 days from the date of execution of the sale agreement. Since the defendants 1 to 3 failed to perform their above mentioned obligations within their agreed period of 60 days, a further period of 30 days was extended on 29.11.2021. All parties have set forth signatures and acknowledging extension of time. The loan towards Sundaram Finance was cleared and the attachment was raised.

2.04. The plaintiff had been reminding and appealing to the defendants 1 to 3 to specifically to perform their part of the obligations mentioned in the agreement but they did not adhere to. Apart from the



above, the plaintiff had also sent his representatives to remind and insist the defendants 1 to 3 to execute the sale deed. The plaintiff had been and is still ready and willing to perform the agreement on his part of which the defendants 1 to 3 had notice. The plaintiff had issued legal notice dated 17.12.2021 to the defendants 1 to 3 stating that he is ready and willing and calling upon them to receive the balance consideration of Rs.1,20,00,000/- and execute the sale agreement in his favour. The defendants 1 to 3 sent a legal notice dated 17.12.2021 to the plaintiff, claiming that the plaintiff was ready and willing to perform the contract and also mentioned that they had received only a sum of Rs.19 lakhs and not Rs.20 lakhs as found in the sale agreement. The plaintiff can prove the payments of Rs.20 lakhs made to the defendants 1 to 3. The defendants 1 to 3 sent a reply notice dated 22.12.2021 reiterating false and misleading facts and the plaintiff had sent a reply notice on 23.12.2021 to the defendants 1 to 3 again insisting them to come forward for executing the sale deed after receiving the balance amount. The plaintiff is having sufficient funds to pay the balance consideration and had also filed the bank statement to show that he has balance consideration in his account and can be paid any time. Since there



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was no response, with no other alternative, the plaintiff is constrained to file the present suit for specific performance directing the defendants 1 to 3 to execute the sale deed in favour of the plaintiff after receiving the balance amount. Hence the suit.

3. Though summons was served on the defendants, they did not enter appearance before this Court and hence, they were set exparte 10.10.2023.

4. On the side of the plaintiff, the plaintiff and one Jayakanthan were examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.12 were marked.

5. Heard the learned counsel for the plaintiff and perused the records.

6. P.W.1, in his evidence has stated the defendants 1 to 3 are the absolute owners of the suit schedule property and the defendants 1 and 2 had obtained a loan from M/s.Sundaram Finance by pledging their 2/3rd share in the suit schedule property and defaulted the same. Hence, Sundaram Finance had obtained an order of attachment of the suit property



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on 27.1.2013 in E.P No.187 of 2012 on the file Hon'ble High Court, Madras. To prove the same Ex.P1 is marked. Ex.P2 is the web copy of the order dated 29.10.2021. Ex.P3 is the letter issued by the Assistant Registrar regarding the order of attachment. Thereafter, the defendants had entered into a sale agreement (Ex.P5) with one Lalithkumar, who is the 4th defendant herein, on 08.10.2013 agreeing to sell the property in favour of him and received a sum of Rs.37 lakhs from him. But, the sale agreement did not fructify and the 4th defendant did not take any steps. In order to clear off the Sundaram Finance Loan and also to the 4th defendant Lalithkumar as the previous sale agreement did not fructify, the defendants 1 to 3 offered to sell the property to the plaintiff for a total consideration of Rs.1,40,00,000/-. On 20.08.2021, a sale agreement was entered into between the plaintiff and the defendants 1 to 3 and on the same day, a sum of Rs.6,00,000/- was received by the defendants 1 to 3 through on line transaction. To prove the same, Ex.P4 sale agreement was marked. Thereafter, on 08.09.2021, a sum of Rs.2,00,000/-, on 09.09.2021, a sum of Rs.2,00,000/- and on 19.09.2021, a sum of Rs.10,00,000/- were paid to the defendants 1 to 3. To prove the said payments, an endorsement made by the



defendants on the backside of the first page of the Ex.P4 sale agreement is marked as Ex.P11. Ex.P12 is the endorsement made by both the parties on the backside of the second page of the sale agreement Ex.P4, extending the time for a period of 30 days to perform their contract of sale. After receiving the said amounts, the defendants had not come forward to execute the sale deed in favour of the plaintiff though he was ready and willing. Hence the plaintiff issued a legal notice Ex.P6 to the defendants to perform their contract. For the said notice, the defendants issued a reply on 22.12.2021, which is marked as Ex.P8. To the said reply, the plaintiff sent a rejoinder dated 23.12.2021. Even thereafter, there was no response from the defendants. Hence the present suit.

7. From the evidence of P.W.1 and the documents filed, it is proved that in order to clear the loan obtained from the Sundaram Finance and also to the 4th defendant, Lalithkumar, the defendants had entered into a sale agreement in respect of the suit schedule property with the plaintiff for a total consideration of Rs.1,40,00,000/- and even after receipt of a sum of Rs.20,00,000/-, the defendants had not come forward to execute the sale



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deed in favour of the plaintiff. P.W.2, Mr.Jayakanthan, one of the attesting witness to the Ex.P4 sale agreement also corroborated the evidence of P.W.1. Though the defendants were served summons, they had not entered appearance, and hence they were set exparte. Therefore, the evidence of P.W.1 and P.W.2 and documents filed on behalf of the plaintiff remain unchallenged and there is no rebuttal evidence against the case of the plaintiff. Hence, the plaintiff has proved his case.

8. In the result, the suit is decreed with costs, directing the defendants to execute the sale deed in favour of the plaintiff in respect of the suit schedule property, after receiving the balance sale consideration of Rs.1,20,00,000/- as per the sale agreement dated 20.08.2021 and consequently, deliver vacant possession of the suit schedule property, within a period of two months.

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Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiff:

P.W.1. - R.Karthikeyan

P.W.2 - I.Jayakanthan

Documents produced on the side of the plaintiff:

- Ex.P1.... Certified copy of the petition in E.P No.187 of 2012.
- Ex.P2 29.10.2021 Web copy of the order passed in E.P.187 of 2012.
- Ex.P3 10.11.2021 Letter from the Assistant Registrar, O.S-I, High Court of Madras.
- Ex.P4 20.08.2021 Original sale agreement
- Ex.P5 08.10.2013 Photocopy of the sale agreement in favour of the 4th defendant.
- Ex.P6 17.12.2021 Original legal notice sent by the defendants
- Ex.P7 17.12.2021 Office copy of the legal notice sent by the plaintiff.
- Ex.P8 22.12.2021 Reply notice given by the defendant
- Ex.P9 23.12.2021 Rejoinder to the reply notice
- Ex.P10 ... Online copy of Encumbrance certificate
- Ex.P11 Endorsement made on Ex.P4 by the defendants
- Ex.P12 29.11.2021 Endorsement made on Ex.P4 by the defendants



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Witnesses and documents on the side of the defendants:

Nil

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A.A.NAKKIRAN,J.

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