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C.S No.58 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 16.12.2024

CORAM:

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

C.S.No.58 of 2023

(O.S No.8979 of 2010)

1.B.Ravishankar

2.Anuradha Subramanian

... Plaintiffs

VS.

1.T.K.Ramanathan (deceased)

2.T.K.Ramachandran (deceased)

3.T.K.Balasubramanian

4.T.K.Rajamani

5.T.K.Swaminathan

6.T.K.Venkataraman

7.Savithri Rajaraman

8.Ramamurthy

9.Gurumurthy(deceased)

10.Narayana Murthy

11.Anuradha

(Defendants 8 to 11 were impleaded as legal heirs of the deceased 2nd defendant as per order dated 05.12.2017 passed in I.A No.5056 of 2013)

12.Saroja Ramachandran

13.Sumithra

14.Krishnamurthy Gurumurthy



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(Defendants 12 to 14 were impleaded as legal heirs of 9th defendant as per order dated 28.03.2019 passed in I.A No. 14506 of 2018)

15.Saroja Ramanathan

16.Asha

17.Anand

(Defendants 15 to 17 were impleaded as legal heirs of 1st defendant as per order dated 07.08.2023 passed in I.A No.1 of 2022)

... Defendants

Prayer: Civil Suit filed under Order VII Rule 1 of Civil Procedure Code, praying for the following judgment and decree as against the defendants:

(a) directing the defendants herein to execute, convey and register in favour of the plaintiffs the 1/3rd undivided interest in the schedule property 49/1, Habibullah Road, T.Nagar, Chennai-17 after receiving the balance sale consideration of Rs.1,87,000/-.

(b) on their failure to receive the said price and execute and register the sale deed in favour of the plaintiffs, directing the execution and registration of the sale deed by the Registrar of the High Court, Madras.

(c) directing the defendants to pay to the plaintiff the cost of the suit.

For Plaintiffs : Mr.S.Kothandaraman

For Defendants : D1, D2 & D9-deceased
D3 to D8, D10 to D17- Set exparte



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J U D G M E N T

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

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

The plaintiffs are the wife's brother's son and daughter of late K.S.V.Raman who was living in the front portion together with an undivided 1/3rd interest in the land at No.49/1, Habibullah Road, T.Nagar, Chennai. The plaintiffs are the owners of the two thirds undivided interests in the land and building thereon. The defendants 1 to 7 are sons and daughters of the sister's son and the legal heirs of the said KSV Raman. The said deceased KSV Raman was living with the plaintiffs after the demise of his wife during 2002, as he had no issues. The plaintiffs were taking care of the said Raman. He settled in Chennai during 1986 and purchased a vacant land at 49, Habibullah Road, T.Nagar Chennai during 1986, from the father of the defendants, after paying full consideration for the same and after putting up construction of a ground floor, he was in possession and enjoyment of the same. The father of the plaintiffs and after his life time the



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plaintiffs took care of his family and provided them with all assistance both physical and financial as and when needed. Since the deceased Raman had no issues he bestowed love and affection on the plaintiffs. During 1992, the said deceased permitted the 2nd plaintiff to put up construction on the 1st floor over his ground floor portion of his building. She had put up the construction at her own cost with the entry to the 1st floor through his ground floor portion and is now in possession and enjoyment of the same. Likewise the said Raman also permitted the 1st plaintiff to put up construction of a building in the vacant rear portion of his building during 1997. Accordingly, the 1st plaintiff had put up construction of building in the rear portion and is now in possession and enjoyment of the same. The plaintiffs also got the property assessed in the Corporation records in their respective names.

2.01. During 2002, the said Raman also agreed with the plaintiffs that he will sell the ground floor portion which was in the occupation of the said Raman for a consideration of Rs.12,50,000/- to either of them and that he will execute the necessary sale document after some time conveying the property to them. The property agreed to be sold is morefully set out and



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described in the schedule. During September 2002, the 1st plaintiff gave a sum of Rs.2,50,000/- to the said Raman, in terms of the agreement of sale and towards the sale consideration for the said ground floor portion, who along with his wife passed on a stamped receipt, recounting his agreement to sell the property and agreed to receive the balance of Rs.10,00,000/- and execute the sale deed. Further payments of Rs.75,000/- and another sum of Rs.67,000/- were also paid to the said Raman by the plaintiffs. The wife of the said Raman died on 01.12.2002. On 24.01.2003, the said Raman executed and registered deed of settlement out of love and affection in respect of the undivided 1/3rd interest covering the rear portion, one in favour of the 1st plaintiff and another 1/3rd undivided interest covering the 1st floor portion in favour of the 2nd plaintiff witnessed by the 5th defendant. Though the said Raman had received part payments towards the sale price he did not want to sell the property, then.

2.02. In view of the sudden demise of his wife, the said Raman decided to live with the plaintiffs as he had no other place to go and no other person to attend him in his last years. The said Raman put the plaintiffs in possession of the said schedule property as he had by then



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received a part of the sale price and in token of it he had given a complete set of the keys of the schedule property. The plaintiffs are in possession and enjoyment of the said property ever since. He postponed the execution of the sale deed in respect of the schedule property to the plaintiffs to a later date even though the plaintiffs have always been ready and willing to pay the balance of the amount and perform their part of contract throughout and have the sale deed registered. However, he wanted registration to take place at a later date. During 2003, the said Raman fell down and sustained head injuries and he was admitted in hospital and thereafter he died on 15.06.2004. The 1st defendant had filed a suit in O.S No.4517 of 2004 against the plaintiffs before the City Civil Court, Chennai claiming that the deceased Raman had executed a Will appointing him as an executor and trustee for the schedule property and for an injunction restraining them from interfering with his possession and enjoyment of the said schedule property as if he is in possession. The 1st defendant as an executor of the said Will of the said Raman also filed O.P No139 of 2005 before this Court for grant of probate in his favour. The plaintiffs filed a caveat and subsequently, the said OP is converted to TOS No.17 of 2005. Under the said agreement of



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sale of the schedule property, so far the plaintiffs had paid a sum of Rs.10,67,000/- to the said Raman , but due to his sudden death, the balance consideration could not be paid to him and the property conveyed by him to the plaintiff. The 1st defendant wanted a sum of Rs.18 lakhs for conveying the property and refused to take into consideration the payments made to the deceased towards the sale price. Hence the suit.

3. The brief averments made in the written statement filed by the 1st defendant are as follows:

All the allegations contained in the plaint except those that are specifically admitted herein are denied as false. The suit is not maintainable either in law or on facts. The deceased K.S.V.Raman, a retired NN D Agent, Canara Bank, Calcutta purchased vacant land in Plot No.2, Block No.108, T.S No.4749(part) bearing Old Door No.49(Part), Habibullah Road, T.Nagar, Chennai-600 017, measuring an extent of 2520 sq.ft. from Kuppuswamy Iyer, vide Deed of Sale dated 8.12.1986, registered as Document No.261 of 1987 on the file of the Sub Registrar, Thyagaraya Nagar from out of his own savings. The said K.S.V Raman was married to Kamala in the year 1949. The couple had no children. The said Kamala



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Raman expired on 1.12.2002 and after her death, in the year 2003, late

K.S.V.Raman executed a Deed of Sale and transferred his rights with

respect to the building on the rear side and the first floor portion of the

property bearing Door No.49/1, Habibullah Road, T.Nagar, Chennai-600

017 to the 1st and 2nd plaintiffs respectively. He also conveyed 1/3rd

undivided share of land of the said property in favour of each plaintiffs.

After the above sale, K.S.V.Raman, in his own right, resided exclusively in

the ground floor front portion of the building and also enjoyed 1/3rd

undivided share of land being the subject matter of the present suit.

K.S.V.Raman executed a registered Will dated 27.11.2003 at Chennai

before two independent witnesses bequeathing the suit property and various

items of movables then in his possession. Further, the Testator had

appointed the 1st defendant being a Chartered Accountant by profession, as

the Executor of his Will. The said K.S.V.Raman expired on 15.06.2004 and

his Will has come into effect. This defendant filed O.P No.139 of 2005

before this Court for grant of probate. However, the said Original Petition

has been converted into T.O.S No.17 of 2005 after the plaintiffs herein

lodged their caveat challenging the Will. The said Testamentary Original



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Suit is pending before this Court.

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3.01. The 1st defendant is the nephew of late K.S.V.Raman and the deceased had high regard for him. In fact, this defendant performed the last rites of the deceased as per his wish. In his Will, the Testator has given a specific direction to this defendant to liquidate all his deposits, etc. and distribute the proceeds to the beneficiaries mentioned in the Will. The Will also sought to create a Trust with a corpus fund in the name and style of K.S.V.Raman Trust to perform various obligations such as feeding and distribution of cloths to the poor, performing poojas, ceremonies etc., The Testator had given various directions in the said Will to manage and maintain the suit property and dispose of the movables lying in the said property. But since the plaintiffs prevented this defendant from entering into the suit property, this defendant filed a suit against them in O.S No.4517 of 2004 on the file of the IV Assistant City Civil Court, Chennai seeking for a permanent injunction.

3.02. The plaintiffs are the children of late K.S.V.Raman's wife's younger brother and have no caveatable interest to challenge the Will. It is absolutely false to state that the plaintiffs were taking care of late Raman



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while he was in Chennai. On the other hand, K.S.V.Raman was looked after by this defendant and the other defendants being his close relatives.

Further, their contention that the deceased had agreed to convey the balance 1/3rd of the undivided share of land as well as to sell the ground floor portion of the suit property in his occupation for a consideration of Rs.12,50,000/- is denied as false. The payment alleged to have been made during September 2002 and the further payment and alleged stamped receipt are beyond truth. The allegation that the deceased Raman, in terms of the agreement of sale and towards the sale consideration for the said ground floor portion passed on a stamped receipt after receiving part of the sale consideration, is denied as false. Late K.S.V.Raman never parted with the possession of the suit property till his life time. The possession still remains with this defendant as executor of the Will. The further allegation that Raman suffered from indifferent health during 2003 and has been incapacitated has been made only for the purpose of this case with a view to question the genuineness of the Will.

3.03. In order to purchase peace, settlement/mediations took place between the contesting parties and they have decided to put an end to all the



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pending litigations. In the circumstances, this defendant withdrew the suit filed by him in O.S No.4517 of 2004 on the file of the IV Assistant City Civil Judge, Chennai on 29.09.2008. Now the parties have mutually agreed to settle the issues and have taken necessary steps towards the same. In the circumstances, there may not be any triable issues in this suit. In view of the foregoing statement, the plaint does not deserve any consideration.

4. Based on the aforesaid pleadings, the following issues were framed for trial:

1. Whether the plaintiffs are entitled to execute, convey and register of sale deed for 1/3rd undivided interest in the suit property after receipt of balance sale consideration as prayed for?

2. Whether the Will dated 27.11.2003 executed by K.S.V Raman is true? If so, binding the parties in the suit?

3. To what other reliefs?

5. Pending suit, the defendants 1, 2 and 9 died. The defendants 8 to 11 were impleaded as legal heirs of the deceased 2nd defendant. The defendants 12 to 14 were impleaded as legal heirs of the deceased 9th



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defendant. The defendants 15 to 17 were impleaded as legal heirs of the deceased 1st defendant. During the trial, inspite of several opportunities, the defendants 3 to 8 and 10 to 17 did not enter appearance before this Court and hence, they were set exparte on 22.10.2024.

6. On the side of the plaintiffs, the 1st plaintiff was examined as P.W.1 and Ex.P.1 to Ex.P.7 were marked.

7. Heard the learned counsel for the plaintiffs and perused the records.

8. P.W.1, in his evidence has stated the plaintiffs are the wife's brother's son and daughter of late K.S.V.Raman who was living in the front portion together with an undivided one third interest in the land at No.49/1, Hahibullah Road, T.Nagar, Chennai and the plaintiffs are the owners of the two thirds undivided interest in the land and building thereon. The defendants 1 to 7 are sons and daughters of the sister's son and the legal heirs of the said KSV Raman. Since the deceased Raman had no issues, he



bestowed love and affection on the plaintiffs. During 1992, the said deceased permitted the 2nd plaintiff to put up construction on the 1st floor over his ground floor portion of his building. She had put up the construction at her own cost with the entry to the 1st floor through his ground floor portion and is now in possession and enjoyment of the same. Likewise, the said Raman also permitted the 1st plaintiff to put up construction of a building in the vacant rear portion of his building during 1997. Accordingly, the 1st plaintiff had put up construction of building in the rear portion and is now in possession and enjoyment of the same. The plaintiffs also got the property assessed in the Corporation records in their respective names.

9. He further stated that during 2002, the said Raman also agreed with the plaintiffs that he will sell the ground floor portion which was in the occupation of the said Raman for a consideration of Rs.12,50,000/- to either of them and that he will execute the necessary sale document after some time conveying the property to them. The property agreed to be sold is morefully set out and described in the schedule. During September 2002, the 1st plaintiff gave a sum of Rs.2,50,000/- to the said Raman, in terms of



the agreement of sale and towards the sale consideration for the said ground floor portion, who along with his wife passed on a stamped receipt, recounting his agreement to sell the property and agreed to receive the balance of Rs.10,00,000/- and execute the sale deed. Ex.P1 is the original receipt. Further payment of Rs.75,000/- and another sum of Rs.67,000/- were also paid to the said Raman by the plaintiffs. To prove the said payments, statement of accounts (Ex.P4) is marked. After the demise of his wife, the said Raman, the said Raman executed and registered deed of settlement dated 24.01.2003 out of love and affection in respect of the undivided 1/3rd interest covering the rear portion, one in favour of the 1st plaintiff and another 1/3rd undivided interest covering the 1st floor portion in favour of the 2nd plaintiff witnessed by the 5th defendant. To prove the same, Ex.P2 and Ex.P3 settlement deeds dated 24.01.2023 are marked. The said Raman put the plaintiffs in possession of the said schedule property as he had by then received a part of the sale price and in token of it he had given a complete set of the keys of the schedule property. The plaintiffs are in possession and enjoyment of the said property ever since. He postponed the execution of the sale deed in respect of the schedule property to the



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plaintiffs to a later date even though the plaintiffs have always been ready and willing to pay the balance of the amount and perform their part of contract throughout and have the sale deed registered. However, he wanted registration to take place at a later date. In the meanwhile, the said Raman died on 15.06.2004 due to his illness. Under the said agreement for sale, the plaintiffs so far had paid to the said Raman, a total sum of Rs.10,67,000/-, but due to his sudden death, the balance consideration could not be paid to him and the property conveyed to him to the plaintiff. To prove further payments made by the 2nd plaintiff on various dates, Canara Bank passbook in the name of 2nd plaintiff is marked as Ex.P5. Thereafter, the 1st defendant insisted Rs.18 lakhs for conveying the property and refused to take into consideration the payments made to the deceased towards the sale price. Hence the plaintiffs issued notice to the defendants to execute a deed of sale in favour of the plaintiffs. Ex.P6 is the original Telegraphic notice with acknowledgment card. Ex.P7 is the series of original Telegraphic receipts. After receipt of the said notice, the defendants had not come forward to execute the sale deed in favour of the plaintiffs though they were ready and willing. Hence the present suit.



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10. The learned counsel for the plaintiffs submitted that in para 8 of the written statement filed by the 1st defendant, it is stated as follows:

"In order to purchase peace, settlement/mediations took place between the contesting parties and they have decided to put an end to all the pending litigations. In the circumstances, this defendant withdrew the suit filed by him in O.S No.4517 of 2004 on the file of the IV Assistant City Civil Judge, Chennai on 29.09.2008. Now the parties have mutually agreed to settle the issues and have taken necessary steps towards the same.".....

11. From the evidence of P.W.1 and the documents filed, it is proved that an agreement of sale was entered between the plaintiffs and the deceased K.S.V.Raman in respect of the suit schedule property for a total consideration of Rs.12,50,000 and subsequently, the said Raman died due to his illness and even after receipt of a sum of Rs.10,67,000/-, the defendants who are the legal heirs of the deceased K.S.V.Raman had not come forward to execute the sale deed in favour of the plaintiffs. Though the defendants 3



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to 8 and 10 to 17 were served summons, they had not entered appearance, and hence they were set exparte. Therefore, the evidence of P.W.1 and documents filed on behalf of the plaintiffs remain unchallenged. Hence, the plaintiffs have proved their case.

12. In the result, the suit is decreed as prayed for with costs. Time for execution of sale deed is two months.

16.12.2024

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

P.W.1. - B.Ravishankar

Documents produced on the side of the plaintiffs:

Ex.P1 ... Original receipt dated nil.

Ex.P2 24.01.2003 Duplicate copy of the settlement deed in favour of 1st plaintiff

Ex.P3 24.01.2003 Duplicate copy of the settlement deed in favour of the 1st plaintiff.

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- Ex.P4 ... Statement of accounts.
- Ex.P5 ... Canara Bank passbook
- Ex.P6 ... Original Telegraphic notice with acknowledgment card
- Ex.P7 ... Series of original Telegraphic receipts (10 nos).

Witnesses and documents on the side of the defendants:

Nil

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A.A.NAKKIRAN,J.

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