



C.S.No.168 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.168 of 2022

1.Maheswari Govindarajan
2. Ramu Miriampalli

... Plaintiffs

Versus

M.Rajeswari

... Defendant

Prayer : Complaint filed under Order IV Rule 1 of the Original Side Rules read with Section 15 of Specific Relief Act read with Order VII Rule 1 of the Code of Civil Procedure, to pass a judgment and decree to :

- a) directing the defendant to receive the balance sale consideration of Rs.1,08,00,000/- from the plaintiffs and execute the sale deed in favour of the plaintiffs before the Sub-Registrar Office Konnur within the Registration District of Chennai-North in respect of schedule mentioned property and upon their failure to do so, direct the Registrar of the Hon'ble High Court of Madras to execute the sale



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deed in favour of the plaintiff before the Sub-Registrar Office, Konnur and alternatively directing the defendant to refund the advance amount of Rs.50,00,000/- to the plaintiffs with interest at the rate of 24% per annum from the date of plaint till realization;

- b) for the Permanent injunction restraining the defendant, her agents, representatives or any one claiming under the defendant, from alienating, encumbering transferring or in any way deal with the suit schedule mentioned property;
- c) for the costs of the suit.

For Plaintiffs : Mr.V.Chandrakanthan
For Defendants : Mr.D.Padma Prakash

JUDGMENT

This Civil Suit has been laid for

a. directing the defendant to receive the balance sale consideration of Rs.1,08,00,000/- from the plaintiffs and execute the sale deed in favour of the plaintiffs before the Sub-Registrar Office Konnur within the Registration District of Chennai-North in respect of schedule mentioned property and upon their failure to do so, direct the Registrar of the Hon'ble High Court of Madras to execute the sale deed in favour of the plaintiff



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before the Sub-Registrar Office, Konnur and alternatively directing the defendant to refund the advance amount of Rs.50,00,000/- to the plaintiffs with interest at the rate of 24% per annum from the date of plaint till realization;

b. for the Permanent injunction restraining the defendant, her agents, representatives or any one claiming under the defendant, from alienating, encumbering transferring or in any way deal with the suit schedule mentioned property.

2.The brief facts of the case are as under :

2.1. The defendant has agreed to sell the suit property for a total sale consideration of Rs.1,58,00,000/- to the plaintiffs and agreement of sale was entered between the parties on 04.12.2021. On the date of agreement, Rs.30 lakhs was paid by cash, on 10.12.2021, a sum of Rs.10 lakhs was paid through Cheque. Hence, on the date of agreement, a sum of Rs.40 lakhs was paid as advance to the defendant. It is agreed between the parties that the sale transaction shall be completed within two months from the date of agreement. The plaintiff has transferred further advance of Rs. 10 lakhs to



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the defendant through the bank. The plaintiffs are always ready and willing to pay the balance sale consideration to the defendant. However, the defendant has delayed the registration of the document. The plaintiffs have issued a legal notice on 28.01.2022 informing that they are always ready and willing to pay the balance sale consideration. The defendant received the notice on 01.02.2022 and stated that she is ready and willing to complete the registration. However, the defendant sought further time for registration in order to find out the suitable place for shifting. The plaintiff on 16.02.2022 issued a legal notice informing the defendant that they are not interested to grant further time and requested to refund the advance amount. Further, the defendant sent a legal notice on 16.04.2022 indicating her willingness to sell the property and re-iterated that she needs some time for shifting. Even after the said reiterating, the defendant has not come forward to execute the sale deed. Hence, this suit.

3. The written statement is filed by the defendant admitting agreement executed on 04.12.2021 for sale of the suit property and receipt of Rs.50 lakhs towards advance of the sale consideration. It is the



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contention of the defendant that since the defendant is elderly person aged about 75 years, she is not in good physical condition. She had difficulty in locating new place and requested time for registering the sale deed. However, the plaintiffs refused the genuine request of the defendant and instead issued a legal notice on 28.01.2022. In the reply notice dated 01.02.2022, it is the stand of the defendant that that she is always ready and willing to complete the registration and was only seeking further time for registration in order to find out a suitable place. However, the plaintiffs caused a rejoinder dated 16.02.2022 indicating that they were not interested in extending the time for registration and sought return of advance of Rs. 50 lakhs within 15 days in order to settle the matter smoothly. Hence, it is the contention that the defendant that the plaintiffs have given up the sale agreement dated 04.12.2021 and the plaintiffs are not entitled to specific performance. The defendant was trying to sell the property only with a genuine intention and mobilizing the money to pay the advance to the plaintiffs. Hence, it is the contention of the defendant that the plaintiffs are not entitled to any relief.



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4. On the above pleadings, following issues have been framed for

trial:

(i) Whether the plaintiff refused to proceed with the transaction and instead called upon the defendant to refund the advance received under the agreement of sale?

(ii) Whether the plaintiff has established readiness and willingness to perform obligations under the agreement of sale dated 04.12.2021?

(iii) Whether the plaintiff is entitled to specific performance of the agreement of sale dated 04.12.2021?

(iv) Whether the plaintiff is entitled to a permanent injunction to restrain the defendant from alienating, encumbering or otherwise dealing with the suit schedule property?

(v) Whether the parties are entitled to any other relief?

5. On the side of the plaintiffs, Mr.Govindarajan, Power Agent of the plaintiffs was examined as P.W.1 and marked Exs.P1 to P19. On the side of the defendant, Mr. M.Rajasekaran, son of the defendant was examined as D.W.1 and marked Exs.D1 to D2.



6. The learned counsel for the plaintiffs would submit that the plaintiffs are ready and willing to pay the balance sale consideration from the inception, they have wherewithal to pay the entire sale consideration within a period of two months of agreed time they expressed the readiness and willingness, whereas, the defendant had delayed to complete the sale transaction and requested five more months time. Though the power agent of the plaintiff has requested return of amount if the delay is continuing, still the defendant pleaded that she will execute the sale deed provided five months time is granted. Even thereafter, she has not executed the sale deed. The plaintiffs are always ready and willing to perform the contract. Hence, prayed for decreeing the suit.

7. Whereas, the learned counsel for the defendant would submit that there was no dispute with regard to the execution of the agreement and receipt of advance amount. However, at this stage, plaintiffs cannot insist for specific performance. Their conduct itself shows that they are not ready and willing to perform the contract. It is the further contention that the only power agent of the plaintiffs has signed the document and not the party to



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the documents. Hence, on this ground also, specific performance cannot be granted.

8. I have perused the materials placed on record.

Issues Nos. (i) to (v)

9. The suit has been laid to enforce the contract entered into between the parties. The execution of the agreement for sale dated 04.12.2021 is not at all disputed in this matter. The defendant has admitted the execution of the document. The plaintiffs are the husband and wife, they are represented by power agent. The agreement is also entered on their behalf by the power agent. The power agent is none other than the father of the first plaintiff. These facts are also not in dispute. The defendant has executed the agreement for sale of property for a total consideration of Rs.1,58,00,000/-, the receipt of advance amount of Rs.50,00,000/- by the defendant is also not disputed. The parties at the time of agreement have agreed that the entire sale transaction shall be completed within two months from that day. These facts are also not in dispute.



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10. It is the case of the plaintiffs that within two months, they have issued a legal notice under Ex.P3 and shown their readiness and willingness to execute the sale deed by paying the balance sale consideration. Further, the defendant has issued a reply which is marked as Ex.P4 seeking further time for registering the sale deed, since, she had difficulty in locating new place. Thereafter, the plaintiffs, once again on 16.02.2022 issued a rejoinder indicating that since the defendant has already received a sum of Rs.50 lakhs and not co-operating with the same, requested to refund the amount within 15 days in order to settle the matter smoothly, which is marked as Ex.P5. Again, the defendant has issued a notice dated 16.04.2022 under Ex.P6, wherein, she has re-iterated her stand that she has no intention of delaying the registration and she is willing to execute the document provided that she is granted five months time. The plaintiffs have also shown the relevant deposit in their account to pay the balance sale consideration. In this regard, they have filed Exs.P11 to P17. The plaintiffs financial condition is not disputed, only the defendant took a stand that since the plaintiffs, in their reply dated 16.02.2022 sought for return of



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amount, they are not entitled for specific performance.

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11. It is relevant to note as per the evidence of PW1, the plaintiffs are in the U.S.A. P.W.1. is the father of the plaintiff and the father in law of the second plaintiff, has entered into General Power of Attorney with the plaintiffs to purchase the property within a period of two months. During the time of execution of the sale agreement, the plaintiffs were very much available in India. Despite, the readiness shown by the plaintiffs to pay the balance sale consideration within two months, as the defendant sought another five times, the plaintiffs have issued a legal notice dated 16.02.2022 requesting the refund of advance amount of Rs.50 lakhs which has been clearly explained by the P.W.1, in his evidence. The circumstances under which the refund is sought is only because of the delay caused by the defendant and the plaintiffs were about to leave India. Therefore, the defendant was requested to refund the advance amount within a period of 15 days in a rejoinder notice.



12. Therefore, this Court is of the view that the circumstances

under which the refund is sought justifies the action of the plaintiffs. When the parties are entitled to complete the sale within a period of two months and entered into an agreement, the defendant had received advance amount of Rs. 50 lakhs, however, she has not honored the contractual terms and sought five months time to execute the sale deed. It is normal for the parties who are residing outside the country and were about to leave the country, for at least to seek for return of amount to safeguard the amount paid. Therefore, merely, at one instance, the plaintiffs have sent a rejoinder, which is marked as Ex.P5. It cannot be said that the plaintiffs are not at all ready and willing to perform the contract and refused to proceed with the sale transaction. The plaintiffs have shown their readiness and willingness from the very inception, they had paid substantial advance amount on the date of agreement and thereafter, they also paid another 10 lakhs. This is also not disputed. Further within two months of agreed period, they had also issued a legal notice showing their wherewithal to pay. Even after rejoinder, Ex.P5, the defendant when insisted for registration of documents, the plaintiffs have also shown their readiness and capacity to mobilize the



funds.

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13. This aspect clearly shows that the plaintiffs have shown their willingness and wherewithal to pay the balance sale consideration from the very inception. On the other hand, the defendant had only not executed the document within the agreed period, i.e., two months from the date of agreement. However, having entered the appearance, the defendant herself had not appeared before the Court, only her son was examined before the Court as D.W.1. This aspect clearly shows that the defendant contention that the plaintiffs are not ready and willing cannot be accepted.

14. Considering all these aspects, since, the plaintiffs have shown their readiness and willingness to pay the balance sale consideration from the very inception, this Court is of the view that the plaintiffs are entitled to specific performance. Accordingly, all the issues are answered in favour of the plaintiffs. The suit is decreed for specific performance against the defendant to execute the sale deed in favour of the plaintiffs. The plaintiffs



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are directed to deposit the balance sale consideration to the credit of the above suit within a period of two months from today and on such deposit, the defendant is directed to execute the sale deed within a period of two months thereafter. In the event of failure on the part of the defendant, the Registry is directed to execute the sale deed in favour of the plaintiff.

15. In fine, the suit is decreed in the above terms with costs.

04.03.2024

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List of Witnesses examined on the side of the Plaintiffs:

P.W.1 Mr.Govindarajan

List of Exhibits marked on the side of the Plaintiffs :

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	General Power of attorney executed by the first plaintiff in favour of P.W.1	01.04.2019
2	Ex.P2	Agreement of sale between the plaintiffs and the defendant	04.12.2021
3	Ex.P3	Legal Notice issued by the plaintiffs to the defendant	28.01.2022



Sl. No.	Exhibits	Description of documents	Date
4	Ex.P4	Reply notice sent by the defendant through her counsel	01.02.2022
5	Ex.P5	Legal notice sent by the plaintiffs to the defendant's counsel	16.02.2022
6	Ex.P6	Reply notice sent by the defendant's counsel to the plaintiffs' counsel dispatched on 16.04.2022	16.04.2022
7	Ex.P7	Paper publication in the Hindu Newspaper regarding the sale of the property by the defendant	22.05.2022
8	Ex.P8	Paper publication in the Daily Thanthi Newspaper regarding the sale of the property by the defendant	29.05.2022
9	Ex.P9	Online print out copy of Encumbrance Certificate	25.11.2021
10	Ex.P10	Certified copy of the General Power of Attorney	13.06.2022
11	Ex.P11	Bank statement in the name of the first plaintiff for the period 02.12.2021 to 02.02.2023	16.02.2023
12	Ex.P12	Online print out copy of the Deposit confirmation/renewal advice	-
13	Ex.P13	Copy of the Deposit confirmation/Renewal Advice	-
14	Ex.P14	Online print out copy of the Deposit confirmation/renewal advice	-
15	Ex.P15	Online print out copy of bank statements	-
16	Ex.P16	Online print out copy of the Account summary of the second plaintiff	22.01.2023



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<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
17	Ex.P17	Online print out copy of the Fixed Deposit summary of the second plaintiff	
18	Ex.P18	Settlement deed in favour of the defendant registered as Doc.No.112 of 2010 at SRO, Konnur	11.01.2010
19	Ex.P19	Corporation Property Tax Assessment Order	30.11.2021

List of Witnesses examined on the side of the Defendant :

D.W.1 Mr.M.Rajasekaran

List of Exhibits marked on the side of the Defendant:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Notice sent by the plaintiffs' counsel to the defendant	13.07.2022
2	Ex.D2	Reply notice sent by the defendant's counsel to the plaintiffs' counsel	22.07.2022

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Internet : Yes

Index : Yes / No

Speaking order / Non Speaking order



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To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

N. SATHISH KUMAR, J.

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