



C.S.No.639 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	22.07.2024
PRONOUNCED ON	09.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.639 of 2019

OPG Business Centre Pvt. Ltd.,
Formerly called as OPG Wind Farms Pvt. Ltd.,
No.4, Thiru-vi-ka 3rd Street,
Mylapore,
Chennai – 600 004.
Represented by its authorized signatory
Mr.Vishal Keyal,

... Plaintiff

Vs.

Nasser Mohammed

... Defendant

Prayer : Complaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC to pass a Judgment and Decree against the defendant:

a).Directing the defendant to execute the sale deed of the suit schedule property in favour of the plaintiff company viz., OPG Business Centre Pvt., Ltd., represented by its authorized signatory Vishal Keyal after receipt of the balance sale consideration conveying the schedule mentioned property pursuant to the agreement for sale dated 03.05.2013 entered into between the



plaintiff and defendant registered as Document No.1286 of 2013 in the SRO Mylapore and in default, this Court may be pleased to execute the sale deed;

b).To grant permanent injunction restraining the defendant or his men, agent or any other person acting through him from alienating, encumbering or dealing with the schedule mentioned property.

c).To grant permanent injunction restraining the defendant or him men, agent or any other person from interfering with the plaintiff's peaceful possession and enjoyment of the property; and

d)To pay the costs of the suit.

For plaintiff	Mr.M.Sriram
For defendant	Mr.B.Ullasavelan

JUDGMENT

The Suit had been filed seeking a direction against the defendant to execute Sale Deed with respect to the suit schedule property in favour of the plaintiff after receiving the balance sale consideration pursuant to registered agreement of sale dated 03.05.2013 and in default for the Court to execute the sale deed. The plaintiff has also sought permanent injunction restraining the defendant from either alienating the property or from interfering with peaceful



possession of the plaintiff. The plaintiff has also sought costs of the suit.

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2.In the plaint, it had been stated that the defendant, Nasser Mohammed who is a permanent resident of France was the owner of land and building at Old Door No.4, New No.7, Thiru.V.Ka. 3rd Street, Royapettah High Road, Mylapore, Chennai. The plaintiff is a company registered under the Companies Act and is in the business of power generation, logistic and trading of steel. The plaintiff had taken the property initially for residential purposes and later used it as an office. The property had been taken on tenancy in the year 2005. In the year 2008, a lease deed was entered into between the plaintiff and the defendant for a period of 11 months for residential / office purpose. The monthly rent was determined at Rs.50,000/- and an advance of Rs.5,00,000/- had been paid. A further advance of Rs.5,00,000/- was also paid.

3.In the year 2008, the plaintiff expressed willingness to vacate the premises. However, the defendant offered to sell the suit premises. The defendant informed that he is a citizen of France holding French passport and is also running a restaurant under the name of Gandhi Opera. He had no intention to retain the suit premises. Consequent to such offer, on 25.07.2008,



a registered agreement of sale was entered into between the plaintiff and the defendant. This was registered as Document No.1755 of 2008 in the office of the Sub-Registrar, Mylapore. The total sale consideration was fixed at Rs.80,00,000/-. The defendant received a sum of Rs.40,00,000/- as advance. The defendant stated that he had executed a mortgage over the property and agreed to execute the sale deed after the mortgage is discharged. The period for such execution was fixed at five years.

4.The plaintiff further stated that the defendant handed over all the original title deeds of the property. The plaintiff also stated that from the year 2008, they were paying all the statutory dues like, Corporation Tax, Water Tax etc. The lease for the premises was also extended periodically. The plaintiff contended that they were ready and willing to pay the balance sale consideration and get the sale deed registered. But the defendant, a permanent resident of France was visiting this country only periodically. Thereafter, another agreement of sale deed dated 03.05.2013 was entered into between the parties and this was registered as Doc. No.1286 of 2014 in the Sub-Registrar Office at Mylapore. The sale consideration was now determined at Rs.2,00,00,000/-. The plaintiff also discharged the mortgage loan of



Rs.18,00,000/-. The discharge receipt, also dated 03.05.2013 was registered as Document No.1279 of 2013. The plaintiff stated that they had paid an advance of Rs.1,27,77,000/- as on 03.05.2013. Subsequently, a sum of Rs.12,23,000/- and another sum of Rs.6,00,000/- were paid by two separate cheques dated 07.05.2013 and 01.08.2017 respectively. The plaintiff had totally paid a sum of Rs.1,46,00,000/- towards the sale consideration. Again, the defendant pleaded that he had important businesses at France and stated that he would come back and the sale deed could be then executed. The period under the agreement was again fixed at five years.

5.The plaintiff then received a notice dated 30.04.2019 issued on behalf of the defendant stating that the amount of Rs.40,00,000/- paid under the first agreement was not towards the agreement of sale, but was a loan handed over by the plaintiff to the defendant. It had been contended that the plaintiff had unknowingly executed the agreement of sale under the impression that it was the mortgage document. It was also contended that though the plaintiff had entered into lease agreement dated 03.05.2013 promising to pay Rs.70,000/- per month as rent, he never paid the rent and also not paid the increase in the rental value. It had been contended that the defendant had admitted receipt of



Rs.1,25,00,000/-. In the notice, the defendant contended that he wants to sell the property to a third party and therefore, sought redelivery of the title deeds to enable him to sell the property and repay the sum of Rs.1,25,00,000/-.

6.The plaintiff issued a reply dated 28.05.2019 stating that the defendant is an educated person and could never have mistaken an agreement of sale for a mortgage deed. It had been further stated that the contention of the defendant that he had received a loan of Rs.40,00,000/- in the year 2008 and a further loan of Rs.79,00,000/- in the year 2013, cannot be believed. The plaintiff contended that the defendant is attempting to alienate the property to the disadvantage of the plaintiff. It is under those circumstances, seeking specific performance of the agreement dated 03.05.2013 registered as Doc. No.1286 of 2013 in the office of the Sub-Registrar, Mylapore, that the suit had been filed.

7.The defendant filed a written statement wherein, he stated that he is permanently residing at France. He had purchased the suit schedule property in the year 1984. He had developed the property and had rented it out to Mr.Rajesh Gupta, the Vice-President of Kanishk Steel Industries Limited, initially only for residential purpose. It was contended without getting consent



from the defendant, the premises was used for office and was also sublet.

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8.The defendant further stated that he requested Rajesh Gupta to maintain the property and to pay taxes since the defendant was busy with his business at France. It was contended that on several occasions, documents relating to renewal of lease agreement would be sent to France for his signature and he also used to send back typed stamp papers after affixing his signature in the same. The defendant stated that since the plaintiff had extended the loan without asking any questions, he trusted the plaintiff. It was further contended that on 25.07.2008, Rajesh Gupta had called over the defendant to the Sub-Registrar Office and a document was executed by the defendant in the belief that it was a mortgage deed. But however, it turned out to be an agreement of sale. It was contended that Rajesh Gupta had prepared the agreement of sale only for security purposes and not to be put into effect. The defendant stated that there it was agreed that the defendant would repay the loan together with interest at 12% pa and the rent to be paid would be adjusted towards the interest for the loan from 2008 to 2013. The plaintiff also agreed for increase of 5 % of the rent every month. It had been further stated that the defendant had earlier mortgaged the property and was paying interest



to the mortgagee. The defendant requested Rajesh Gupta to extend further loan to discharge the mortgage. Accordingly, on 03.05.2013, Rajesh Gupta discharged the mortgage and later obtained the signatures of the defendant in yet another sale agreement wherein, the total consideration was fixed at 2,00,00,000/-. It had been stated that the plaintiff had paid an advance of Rs.1,27,77,000/-. The defendant however denied this assertion.

9.It had been contended that the plaintiff had suppressed the agreement of lease and the renewals of the same. It had been contended that the defendant had never executed the agreements of sale but was mislead into thinking that the documents were only mortgage deeds and not agreements of sale. The defendant also stated that he was not very conversant with English language and therefore, stated that the suit seeking specific performance cannot be maintained and should be dismissed.

10.On the basis of the above pleadings, the following issues had been framed on 23.06.2021:

“1).Whether the Registered Agreement of sale dated 03.05.2013 is valid one and enforceable against the defendant?



2). *Whether the plaintiff was ready and willing to discharge his part of the Agreement?*

3). *Whether the Suit is barred under law of limitation?*

4). *Whether the plaintiff is entitled for the relief of injunction as claimed by them?*

5). *Whether the plaintiff can claim for execution of the sale deed in favour of them?*

6). *Whether the plaintiff can claim execution of sale deed based on the sale agreements dated 25.07.2008 and 03.05.2013?*

7). *Whether the plaintiff and defendant money transaction is mortgaged loan or sale consideration?"*

11. On behalf of the plaintiff, Vishal Keyal, authorised signatory of the plaintiff was examined as PW-1. He filed his proof affidavit and marked Exs.P1 to P26. Ex.P1 was the Sale Deed in favour of the defendant with respect to the suit property dated 04.12.1984. Ex.P2 was the first agreement of sale dated 25.07.2008. Ex.P3 was the receipt for discharging of mortgage loan dated 03.05.2013. Ex.P4 was the second agreement of sale dated 03.05.2013. Exs.P5 to P11 were E-mails and notices exchanged between the parties. Ex.P13 was the market value and guideline value for the property. Ex.P16 was the ledger of account showing payment made to the defendant. Ex.P19 was a copy of a banker's cheque for Rs.54,00,000/-. Exs.P21 and P22 were the

9/36



certificate of the auditor.

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12.The defendant, Mr.Nasser Mohammed, examined himself as DW-1 and marked Exs.D1 to D22. Exs.D1 to D4 and D6 to D8 were copies of the lease agreement between the plaintiff and the defendant. Ex.D9 was the acknowledgement of receipt by the defendant for Rs.2,54,00,000/-. Exs.D10 to D12 and D15 were notices exchanged between the parties. The guideline value of the suit schedule property was marked as Ex.D17. The E-mail correspondences were marked as Exs.D18 and D19.

13.Heard arguments advanced by Mr.M.Sriram, learned counsel for the plaintiff and Mr.B.Ullasavelan learned counsel for the defendant.

14.Mr.M.Sriram, learned counsel for the plaintiff took the Court through the pleadings and pointed out that the defendant was in possession of the suit property right from the time when they initially occupied the same as tenant, initially for residential purposes and later for office premises in the year 2005. The learned counsel stated that in the year 2008, the defendant, a permanent citizen of France had offered to sell the property to the plaintiff and



accordingly, a registered agreement of sale had been entered into between the parties on 25.07.2008. The total sale consideration had determined at Rs.80,00,000/- and an advance of Rs.40,00,000/- had been paid by the plaintiff to the defendant. Since the defendant was a permanent resident of France and would be coming over to this country only at irregular intervals, the time for execution of the sale deed was given as five years. Quite independent of this agreement of sale, the lease was also periodically extended.

15.The learned counsel stated that subsequently, on 03.05.2013, the plaintiff also discharged an existing mortgage of the property and on the same date, also entered into another agreement of sale with the defendant. But however, the sale consideration was enhanced to Rs.2,00,00,000/-. The learned counsel pointed out that the plaintiff had paid substantial amounts to the defendant. As a matter of fact, amounts over and above the sale consideration had been paid. The learned counsel stated that the plaintiff was not only in possession of the title deeds but also in physical possession and also paid statutory taxes every year from the year 2008 onwards. The learned counsel pointed out that when the suit was initially filed seeking specific performance, the plaintiff had, to express readiness and willingness offered to deposit a sum



of Rs.54,00,000/- which was the final balance payable by the plaintiff. It was contended that however, the said offer alone had been noted by the Court. The learned counsel stated that the plaintiff is always ready and willing to purchase the suit schedule property. The learned counsel insisted that the suit should be decreed.

16.Mr.B.Ullasavelan learned counsel for the defendant however, disputed all these facts. According to him, the defendant was the owner of the suit schedule property and did not know to read or write English. He was a permanent resident of France. Initially, one Rajesh Gupta alone had transactions with the defendant. The learned counsel stated that the defendant is not aware of the composition of the plaintiff. The learned counsel pointed out that the said Rajesh Gupta was not examined as witness on behalf of the plaintiff. The learned counsel stated that the said Rajesh Gupta had taken the property on lease and slowly took control over the entire property. He stated that very often the said Rajesh Gupta sent over typed stamp papers and the defendant, who did not know English language, in trust, signed the paper and sent them back to the plaintiff.

17.The learned counsel also stated that in the year 2013, when the



defendant came to India, he informed the plaintiff about the existing mortgage.

The plaintiff had agreed to discharge the mortgage and executed a mortgage deed in their favour. But however, again an agreement of sale had been registered. The learned counsel stated that the defendant had been misrepresented about the nature of the document. The learned counsel stated that the defendant never wanted to sell the property. The learned counsel also pointed out the two agreements of sale and stated that the period for specific performance was fixed at five years and wondered as to how such a long period could be fixed, particularly when it is contended on behalf of the plaintiff that substantial amounts had been paid towards advance.

18.The learned counsel also stated that the sale consideration was determined at a much much lower price than the market value or even the guideline value of that particular property, both in the years 2008 and 2013. The learned counsel further stated that if ever the plaintiff was interested in purchasing the property, there was no necessity to execute the second agreement of sale again keeping the period for performance as five years. The plaintiff could very well have purchased the property in the year 2013. The learned counsel pointed out these facts to show that the plaintiff was never



ready and willing to purchase the property.

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19.The learned counsel further stated that the defendant had issued a notice to produce the original lease agreements but the plaintiff had not produced the same. This required the defendant to file an application to mark secondary evidence and after obtaining permission had filed xerox copies of the renewal of the lease documents. The learned counsel pointed out that in none of the lease agreements or even extension of lease agreements was there any mention about the agreement of sale. The learned counsel stated that the defendant had been tricked into signing the agreement of sale and it was held out that it was a deed of mortgage. The learned counsel stated that the defendant never wanted to sell the property. The defendant did not have any dealing with the plaintiff but only with the said Rajesh Gupta. The learned counsel pointed out that the said Rajesh Gupta was not even examined as witness by the plaintiff. The learned counsel pointed out that the sale consideration was very low than the market rate. The learned counsel therefore stated that the plaintiff lacked bonafide and the suit should be dismissed.

Issues:



C.S.No.639 of 2019

Issue Nos.1, 2, 5, 6 and 7:

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20.All these issues surround the validity and enforceability of the agreement of sale dated 03.05.2013 registered as Document No.1286 of 2013 in the Sub-Registrar Office at Mylapore and whether the transaction between the plaintiff and the defendant was actually a transaction relating to sale of property or mortgage of property. The agreement of sale was with respect to the property at old Door No.4, New No.7, Thiru.V.Ka. 3rd Street, Royapettah High Road, Mylapore, Chennai, measuring one ground and 1662 sq.ft.

21.The defendant was the owner of the property having purchased the same by Ex.P1 dated 04.12.1984. The defendant is a permanent resident of France. He holds French passport. It is the case of the plaintiff that the plaintiff was originally inducted as a tenant in the year 2005 and had taken on lease the property for residential purposes. It is however, the case of the defendant that the defendant never knew the plaintiff but had granted lease of the property to one Rajesh Gupta. It is contended that without knowledge or consent of the defendant, Rajesh Gupta had commenced to use the property for business purposes also and had also sublet portions of the property to various offices.



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22.The lease agreement, between the Rajesh Gupta and the defendant dated 04.07.2004, had been marked as Ex.D2. A perusal of the said document reveals that it was actually entered into between the defendant and M/s.Kanishk Steel Limited represented by its Vice President Rajesh Gupta. The lessee, however, was M/s.Kanish Steel Industries Limited. The property was to be used for the residential purpose of Rajesh Gupta and his family. The defendant retained the right to terminate the lease at the end of the period of the lease. However, the lease was not terminated.

23.It is seen that Ex.D3 dated 04.07.2008 was yet another agreement of lease, again between Naseer Mohammed, the defendant and OPG Business Centre Pvt. Ltd, the plaintiff herein. The plaintiff was represented by its authorized signatory Vishal Keyal. Incidentally, the said Vishal Keyal had tendered evidence on behalf of the plaintiff. He thus acted on behalf of the plaintiff even earlier to the first agreement of sale dated 25.07.2008. This would belie the contention of the learned counsel for the defendant that the defendant always had transactions only with Rajesh Gupta and that Vishal Keyal was a stranger to such transactions.



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24.Be that as it may, the plaintiff and the defendant next entered into an agreement of sale dated 25.07.2008 which document was marked as Ex.P2. That agreement of sale was registered as Doc. No.1755 of 2008 in the office of the Sub-Registrar, Mylapore. Under the said agreement of sale, the total sale consideration for the property was determined at Rs.80,00,000/-. The document also reflected that an advance of Rs.40,00,000/- had been paid by the plaintiff to the defendant.

25.The plaintiff was already in possession of the property consequent to the earlier lease agreement dated 04.07.2008 in Ex.D3. The period for performance of the agreement of sale was fixed at five years. It is contended by the plaintiff that the defendant had handed over the original documents relating to the property to the plaintiff. It is also contended that on and from that particular date, the plaintiff has been paying the statutory taxes to the authorities. In this connection, the plaintiff had produced, Ex.P17.

26.It is the contention of the defendant that even in the year 2008, the guideline value of the property was much higher and in this regard, the

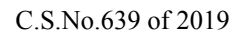


defendant filed Ex.D20. The plaintiff also filed Ex.P13, the guideline value.

But it must be mentioned that in the agreement of sale, the parties can determine the sale consideration but whenever the document is presented for registration, the stamp duty and registration charges should be paid in accordance with the guideline value as determined by the Government.

27.This agreement of sale, continued to be in force and the plaintiff also paid further amounts to the defendant. According to the plaintiff, during the subsistence of the agreement, the plaintiff paid a sum of Rs.7,20,000/- by cash on 16.04.2010. This payment is however disputed by the defendant. The plaintiff also claims that they had paid a sum of Rs.47,777/- by cheque to the Corporation of Chennai on 27.12.2011.

28.The contention of the defendant is that he was not conversant with English language and was a resident of France. It is further contended that the plaintiff used to send documents for signature and the defendant used to sign them and forward them back to the plaintiff. These were the extensions of the lease agreements.



29. The learned counsel for the defendant contended that the originals of

30. However, the parties had thought it fit to enter into a second

31.It is the contention of the learned counsel for the defendant that if the

32. However, it is the contention of the plaintiff that the property had



particular mortgage on the same day, on 03.05.2013. A discharge receipt executed by the mortgagee was also registered and the agreement of sale was also registered.

33.It had been contended on behalf of the defendant that even the sale consideration of Rs.2,00,00,000/- which had been determined in this particular agreement was much less than the market value.

34.Since the defendant did not come forward to execute the sale deed, even though the plaintiff contended that amounts towards the sale consideration had been paid and which had also been admitted by the defendant, the suit had been filed seeking specific performance of this agreement dated 03.05.2013.

35.The issues now are under consideration revolve around whether the Court should grant specific performance of this agreement.

36.It is the contention of the defendant that he was misled into signing that particular agreement of sale. He was under the impression that a mortgage



deed would be executed.

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37.This contention of the defendant is rejected.

38.The relationship among the parties had commenced in year 2005. The plaintiff had become a tenant in the year 2005. Thereafter, in the year 2008, an agreement of sale had been entered into between the plaintiff and the defendant. Even though it is contended on behalf of the defendant that he was misled into signing that particular agreement of sale, no steps had been taken by the defendant to treat that agreement of sale as a voidable document. It is a registered document and therefore, the defendant cannot claim ignorance of the same. He had merrily received the amounts paid under the agreement of sale. He had permitted the plaintiff to pay the property tax and other statutory taxes. He had permitted the plaintiff to continue to be in occupation. He had also legalized such occupation by entering into lease agreements and extension of lease agreements.

39.The agreements of lease had no connection whatsoever with the agreement of sale. The agreement of sale was to convey the property to the



plaintiff. The agreements of lease and the extension of such lease was to permit the plaintiff to continue to be in occupation. The original title deeds had also been handed over to the plaintiff. The plaintiff had also paid substantial amount towards the sale consideration of Rs.80,00,000/- which had been determined in the agreement of sale entered into in the year 2008. The plaintiff had also continued to pay the monthly rents in accordance with the lease agreements and the extension of lease agreements. There is no complaint by the defendant that the plaintiff had defaulted in the payment of rent. Therefore, the statement of the defendant that he was misled into signing the agreement of sale which was actually registered cannot be believed and has to be rejected.

40. The plaintiff had also mortgaged the property to Sivacojoundou Paul Paul. The plaintiff had redeemed the mortgage. The mortgagee had also executed a registered document indicating discharge. This was on 03.05.2013. On the same date, on 03.05.2013, an agreement of sale was entered into but the value of the property was determined at Rs.2,00,00,000/-. It is only appropriate that the plaintiff entered into an agreement of sale. The plaintiff could not have purchased the property since there was a subsisting mortgage.



The defendant found it convenient to permit the plaintiff to redeem the mortgage. The defendant had entered into a mortgage deed and therefore, he would know the difference between a mortgage deed and an agreement of sale.

41.The contention that the defendant was illiterate and did not know English language is rejected. He is a citizen of France. He is running a restaurant and other business enterprises in France. He cannot therefore claim ignorance about a lease deed, an extension of lease deed, a mortgage deed and an agreement of sale. He cannot claim ignorance particularly, after he had merrily signed those documents. Till date, he had not initiated any legal proceedings to claim that each one of the documents are voidable and that he had signed them under the mistaken impression that they were some other document.

42.The defendant had not even preferred a counter claim seeking a declaration that the agreement of sale should be declared as a void document incapable of being performed.

43.The very fact that the defendant had received the rents month after



month from the plaintiff would show that he was aware of the terms of the lease deed. He did not protest about the quantum of rent paid. The quantum was determined in the lease deed. If he had signed the lease deed without understanding the contents and had forwarded them to the plaintiff, then, every month he would have raised a doubt about the quantum of rent paid by the plaintiff. He had not raised any protest about that fact. He also mortgaged the property. He was thus aware about the consequence of a mortgage. He was not in a position to redeem the mortgage. He permitted the plaintiff to redeem the mortgage. Till that cloud of the property was hanging, the plaintiff was exploited and monthly rents were received, taxes were paid by the plaintiff and advance amounts also received towards the sale consideration.

44.The sale consideration had also increased substantially from Rs.80,00,000/- to Rs.2,00,00,000/-. The consideration agreed between two parties is determined on various factors including the monthly rents which had been paid by the plaintiff and the mortgage which subsisted over the property. Therefore, it cannot be comparable to the market value. The plaintiff had continued to pay part advances of the sale consideration to the defendant. The plaintiff had also paid the property tax and other statutory dues without any



default. The plaintiff had also continued to pay the monthly rental amounts.

Having received all these monetary benefits, it does not lie in the mouth of the defendant to claim innocence about the nature of document he had signed.

45.The agreement of sale is also a registered document. Having entered into a Registrar office and having affixed the signature in the agreement of sale, I hold that the defendant had not come to the Court with true facts when he claims that he was not aware about the nature of the document. I hold that he was very much aware about the nature of the document that he signed and now wants to escape from performing the terms of the agreement after having received substantial benefits from the plaintiff month after month for nearly about 20 years as on date.

46.The defendant had also actually signed the written statement which had been prepared in English. His evidence had been recorded in English. He had also signed them. He had filed affidavits in English language. If the defendant is permitted to plea that he does not know English language, then the entire Court proceedings should be termed as a nullity. This plea cannot and should not be permitted to stand. It is prevented.



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47. At the time of first hearing of the case, the plaintiff had also brought a demand draft for the balance sale consideration of Rs.54,00,000/- and had offered to deposit the same in Court deposit. However, it is stated by the learned counsel that the Court had felt that it was not necessary to deposit the said amount. But a tender had been made. The defendant could have even at that time at least come forward to receive the balance sale consideration and execute the sale deed. It is clear that the plaintiff had exhibited readiness and willingness at all points right from the execution of first agreement of sale.

48. The very fact that the plaintiff had paid the monthly rents would show that they were interested in the property and in retaining the possession of the property with intention to purchase the property. They had not only paid the rent but also paid the property tax and other statutory dues. This is obligation to be performed only by the owner of the property. If a lessee pays the property tax and the other statutory dues, it would only indicate that they were ready to purchase the property.

49. The fact that they continued to pay the rents has not been denied by



the defendant. The fact that the plaintiff paid the property tax has not been denied by the defendant. The fact that the plaintiff had redeemed the mortgage has not been denied by the defendant. The fact that the plaintiff had come forward to deposit the balance sale consideration in Court has not been denied by the defendant.

50.The defendant had put forward a lame excuse by claiming ignorance of the English language. He had signed written statement. He had signed his deposition. He had clearly understood the said documents which were in English and had affixed his signatures. I hold that the defendant knew about the agreement of sale and is under an obligation to execute the sale deed. I further hold that the plaintiff, having expressed readiness and willingness to purchase the property, is entitled to get the agreement of sale dated 03.05.2013 to be specifically performed by the defendant.

51.In view of these reasons, I answer issue Nos.1, 2, 5 and 6 in favour of the plaintiff and hold that the agreement of sale dated 03.05.2013 will have to be specifically performed by the defendant by executing the sale deed and that the plaintiff had expressed readiness and willingness at every stage. Issue



No.7 is answered that the money transaction is only a sale transaction and not a mortgage loan. it is also answered in favour of the plaintiff.

Issue No.3:

52.The issue surrounds the point of limitation and whether the suit is barred under law of limitation. The agreement of sale dated 03.05.2013 provided a covenant that the agreement should be performed within a period of five years. It is only when there is refusal to perform the agreement would a cause arise to one of the party to seek specific performance. On the date when the agreement of sale was entered into, the plaintiff was already in possession. The plaintiff had also paid substantial amounts towards the sale consideration. The plaintiff had also redeemed the existing mortgage. The plaintiff is also in possession of the original title deed. The plaintiff is also paying the monthly rents. The plaintiff is also paying the property tax and other statutory dues without default. It had been very specifically stated in the plaint that the defendant had issued a notice dated 30.04.2019, Ex.D10, calling upon the plaintiff to handover the original title deeds since the defendant wanted to sale the property to a third party. On that date, the cause for institution of the suit



arose. The suit had been filed within a period of three years from that particular date. The suit was presented on 12.12.2019.

53.In view of this fact, I hold that the suit is not barred by law of limitation. The issue is answered in favour of the plaintiff.

Issue No.4:

54.The issue is whether the plaintiff is entitled for the relief of injunction as claimed. This issue surrounds the claim for permanent injunction against the defendant from interfering with the possession of the plaintiff and from alienating the property.

55.The plaintiff is in possession of the property. He has been in lawful possession consequent to a lease agreement and extensions of the lease agreement. The lawfulness had been recognized by the defendant, since he permitted the plaintiff to pay property tax and other statutory dues. There is no complaint that the plaintiff had defaulted in payment of rent. The plaintiff also have in their possession the original title deeds. The business of the plaintiff is



carried on in the premises. Naturally, such possession will have to be protected. The plaintiff is also the agreement holder to purchase the property under a registered agreement of sale. It had already been held that the defendant will have to perform that particular agreement. Naturally, the defendant cannot either dispossess the plaintiff or alienate the property.

56.The balance of convenience is in favour of the plaintiff since they had paid the monthly rents and therefore, they are in lawful possession. They had paid the property tax and other statutory dues. They also have the original title deed. The defendant had also entered into a registered agreement of sale to sell the property to the plaintiff. This issue is answered in favour of the plaintiff and permanent injunction is granted both to protect possession and to restrain the defendant from dealing with or alienating the property.

57.In view of the above reasons, I hold that the plaintiff is entitled for a decree as prayed for with costs. In the result,

(i)The suit is decreed with costs.

(ii)The plaintiff is directed to deposit the balance sale consideration of Rs.54,00,000/- (Rupees Fifty Four Lakhs only) to the credit of the suit within a



C.S.No.639 of 2019

period of two weeks from this date.

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(iii)The defendant is directed to execute the sale deed on receiving the balance sale consideration within a period of two weeks from the date of deposit of balance sale consideration by the plaintiff.

(iv)If the defendant fails to come forward to execute the sale deed within the said time period, the Registry is directed to deposit the balance sale consideration to any fixed deposit in any nationalised bank and execute the sale deed in favour of the plaintiff within a period of two weeks from the date of expiry of time limit for the defendant to execute the sale deed.

smv

09.08.2024

Internet: Yes/No

Neutral Citation: Yes/No

Speaking Order : Yes/No

Plaintiff's side Witnesses:

P.W.1 – Mr.Vishal Keyal

Defendant's side Witnesses:

D.W.1 – Mr.Nasser Mohammed

31/36

Documents on the side of plaintiff:

Ex.P1	04.12.1984	Original Sale Deed in favour of the defendant.
Ex.P2	25.07.2008	Original Agreement of Sale entered into between the plaintiff and the defendant.
Ex.P3	03.05.2013	Original receipt for discharging the Mortgage Loan.
Ex.P4	03.05.2013	Original Agreement for sale
Ex.P5	25.03.2019	E-mail copy of correspondence from the defendant to the plaintiff (Affidavit filed under Section 65B of Evidence Act, 1872)
Ex.P6	22.04.2019	Print out copy of correspondence from the defendant to the plaintiff (Affidavit filed under Section 65B of Evidence Act, 1872)
Ex.P7	30.04.2019	Photocopy of the defendant Advocate Notice to the plaintiff.
Ex.P8	06.05.2019	Print out copy of letter and e-mail correspondence from the plaintiff to defendant (marked subject to objection of counsel for the defendant)(Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.P9	28.05.2019	Photocopy of the reply to the lawyer's notice to the defendant by the plaintiff advocate.
Ex.P10	06.06.2019	Print out copy of letter by defendant to the plaintiff (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.P11	21.08.2019	Photocopy of the rejoinder notice issued by defendant's advocate to the plaintiff's advocate.
Ex.P12	26.04.2007	1 st page photocopy and 2 nd page print out copy of Certificate of Incorporation of the plaintiff (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.P13	09.06.2019	Printout of market value and guideline value from 09.06.2017 for the suit property (Affidavit filed under Section 65B of Evidence Act, 1872).



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C.S.No.639 of 2019

Ex.P14	25.09.2019	Printout copy of encumbrance certificate dated (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.P15		Original statement of accounts issued by the State Bank of India for the period from 17.04.2013 to 03.05.2013 (marked subject to objection of the counsel for the defendant)
Ex.P16		Printout copy of Ledger of Account of the plaintiff from 2008 onwards (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.P17		Printout copy of payment to the Corporation of Chennai and Metro Water towards tax and charges made by the plaintiff (marked subject to objection of the counsel for the defendant) (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.P18	10.04.2019	Resolution of the plaintiff company authorizing Mr.Vishal Keyal deponent of the plaintiff.
Ex.P19		Printout copy of Banker's cheque for Rs.54,00,000/- bearing No.017615 (marked subject to objection of the counsel for the defendant) (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.P20		Printout copy of statement of account annexure to the plaint (marked subject to objection of the counsel for the defendant) (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.P21		Auditor certificate along with the cash book entry to show that a sum of Rs.7,20,000/- was paid to the defendant.
Ex.P22		Auditor certificate along with the cash book entry to show that a sum of Rs.13,81,453/- was paid to the defendant)
Ex.P23		Break up figure of payment of Rs.10,00,000/- and the payments were made by cheques which are reflected



		in the ledger printout of the plaintiff.
Ex.P24		Audited balance sheet of the plaintiff company for the year 2016-2017 along with the auditor certificate certifying the payment made to the defendant.
Ex.P25		Audited balance sheet of the plaintiff company for the year 2017 – 2018 along with the auditor certificate certifying the payment made to the defendant.
Ex.P26	18.12.2015	Copy of the complaint dated 10.12.2015 sent by the plaintiff to the Inspector of Police, E1 Police Station, Kacheri Road, Mylapore, Chennai and CSR.

Documents on the side of defendant:

Ex.D1	02.01.2017	Renewal of lease agreement between the plaintiff and defendant.
Ex.D2	04.07.2004	Photocopy of the lease agreement between Kanishk Steel Industries Limited and the defendant.
Ex.D3	04.07.2008	Photocopy of the agreement of sale.
Ex.D4	09.03.2010	Photocopy of the renewal of lease agreement.
Ex.D5	13.09.2012	Photocopy of the Certificate of Registration Overseas Citizen of India.
Ex.D6	01.04.2013	Photocopy of the renewal of lease agreement.
Ex.D7	01.05.2016	Photocopy of the renewal of lease agreement.
Ex.D8	01.08.2017	Photocopy of the renewal of lease agreement.
Ex.D9		Photocopy of the acknowledgement of receipt for Rs.2,54,00,000/-.
Ex.D10	30.04.2019	Office copy of the legal notice sent by the defendant's counsel to the plaintiff.
Ex.D11	06.06.2019	Office copy of the reply sent by the defendant to the plaintiff.
Ex.D12	21.08.2019	Office copy of the rejoinder notice sent by the defendant's counsel to the plaintiff's counsel.



C.S.No.639 of 2019

Ex.D13		Photocopy of the Passport No.04P173474 of Nasser Mohammed.
Ex.D14		Photocopy of the Passport No.14AT09461 of Nasser Mohammed.
Ex.D15	06.05.2022	Office copy of the legal notice sent by the defendant to the plaintiff along with postal receipt
Ex.D16		Original acknowledgement card.
Ex.D17		Printout of the guideline value of the suit schedule property for the period 01.04.2012 to 08.06.2017. (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.D18	25.03.2019	Printout of the e-mail sent by the defendant to the plaintiff. (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.D19	03.06.2019	Printout of the e-mail sent by the defendant to the plaintiff. (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.D20		Printout of the guideline value of the suit schedule property from the period 09.06.2017 to 09.06.2021. (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.D21		Printout of the company master data of Kanishk Steel Industries Ltd. (Affidavit filed under Section 65B of Evidence Act, 1872).
Ex.D22		Printout of the company master data of OPG Business Centre Pvt. Ltd. (Affidavit filed under Section 65B of Evidence Act, 1872).

09.08.2024



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C.S.No.639 of 2019

C.V.KARTHIKEYAN, J.
smv

Pre-Delivery Judgment made
in
C.S.No. 639 of 2019

09.08.2024