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Arb. O.P. (Com. Div) No.83 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM

THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN

Arb. O.P. (Com. Div) No.83 of 2024

R.Murali

... Petitioner

Vs.

1. P.Padmavathy
2. P.Mahalakshmi
3. Menaka
4. Radhika
5. P.Surendhiran
6.S.Baskaran

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole independent arbitrator to arbitrate the disputes between the petitioner and the respondents as per the provisions of the Arbitration and Conciliation Act, 1996.

For Petitioner : Mr. S. Naveen Kumar
for Mr. S. Thankasivan

For Respondents : Ms. S. Selvakumari
for Mr. J. Abdul Hadi
for R1 to R5

Ms. S. Preethi
for Mr. E. Balamurugan
for R6

ORDER



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This petition has been filed to appoint a sole arbitrator to arbitrate the dispute between the petitioner and the respondents under the Arbitration and Conciliation Act, 1996.

2. The husband and father of the respondent No.1 and respondent Nos.2 to 4 respectively, one P.Pathirangam (Deceased) owned a property comprised in Survey No.158/3A to an extent of 35 cents and a property comprised in Survey No.158/3B to an extent of 65 cents situated at Pooyilupai village, Thiruporur Taluk, Cuddalore District. He had entered into an agreement for sale with the petitioner dated 25.10.2011 and agreed to sell the property for a total sale consideration of Rs.40,00,000/-.

3. According to the petitioner, the owner of the property also agreed to arrange for a sale of adjacent property including the land comprised in property Survey No.158/2 in the same village. As per the agreement, he received a sum of Rs.20,00,000/- as an advance and part of the sale consideration. The balance sale consideration to the tune of Rs.20,00,000/- agreed to be received during the execution and registration of the sale deed in favour of the petitioner. The said agreement also contains clause 19 which



provides for reference of all disputes which may arise under the agreement to arbitration under the Arbitration and Conciliation Act, 1996.

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4. On perusal of the agreement, there is no specific time fixed for execution of the sale deed. According to the petitioner, after the agreement on 10.12.2011, the owner of the property received a sum of Rs.5,00,000/- and also made endorsement on the reverse side of the agreement dated 25.10.2011. Likewise on 10.12.2011, he received another sum of Rs.5,00,000/- which is not covered under the agreement. On 09.01.2012, a sum of Rs.5,00,000/- was received by the fifth respondent on behalf of the original owner, by way of two cheques for a sum of Rs.4,50,000/- and Rs.50,000/- by way of cash for treatment of the petitioner. On 24.05.2012, further sum of Rs.50,000/- was paid and acknowledgment was also issued. Once again on 01.03.2013, the fifth respondent received a sum of Rs.25,000/- and on 26.04.2013 another sum of Rs.5,00,000/- by way of cash. On 07.09.2013, further sum of Rs.2,00,000/- was paid and a sum of Rs.25,000/- was paid on 14.01.2014. While being so, the owner of the property was seriously ill and died on 21.12.2018. However, the legal representatives viz., the respondent Nos.1 to 5 failed to execute the sale deed



in favour of the petitioner. Therefore, the petitioner filed this petition seeking appointment of arbitrator by invoking the clause 19 of the agreement for sale.

5. Since the agreement for sale does not contains specific limitation, the petitioner approached this Court, that too after a period of 13 years from the date of agreement, to appoint an arbitrator by invoking clause 19 of the sale deed dated 25.10.2011. Further, clause 11 of the agreement also provides for relief under the specific performance Act. However, the petitioner failed to invoke clause 11 of the agreement. Though, the petitioner paid more than 90% of the sale consideration, the petitioner did not take any steps to enforce the agreement for sale for nearly 13 years.

6. On perusal of the counter filed by the respondent Nos.1 to 5 herein, and also on the submissions made by the learned counsels appearing for the respondents, it is revealed that the owner of the property died on 21.12.2018 leaving behind the respondent Nos.1 to 5 as class I legal heirs. After demise of P.Pathirangam (Deceased)/ the owner of the property, they inherited the subject property. The respondent Nos.1 to 4 jointly executed release deed in



favour of the respondent No.5 by the release deed dated 29.05.2023 registered as Doc. No.3746 of 2023. Thereby, relinquished their four right to the subject property. Thereafter, on 05.06.2023, the fifth respondent herein sold the subject property in favour of the sixth respondent herein for valid sale consideration.

7. Infact, the respondents have also filed a suit as against the petitioner for injunction at Chengalpet and it is pending for trial. Therefore, the request made by the petitioner seeking appointment of arbitrator does not arise since the petitioner failed to invoke the said clause within a reasonable time. Infact, after filing the said suit by the respondents herein, the petitioner now filed this application to invoke clause 19 of the agreement of sale dated 25.10.2011.

8. In view of the above, this petition is dismissed. There shall be no orders as to costs.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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