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C.S.(Comm Div) No.310 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S.(Comm Div) No.310 of 2023

and

O.A.No.1063 of 2023

Nazrudeen

... Plaintiff

Vs.

Santha Rajabather

... Defendant

PRAYER: The Complaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Code of Civil Procedure, 1908 and Section 2(1)(c)(vii) & Section 12 of the Commercial Courts Act, 2015 and numbered as C.S.(Comm Div) No.310 of 2023, praying for judgment and decree against the defendant, as follows:

(a) Directing the Defendant to specifically perform the Agreement for Sale dated 08.06.2023 and the oral agreement with respect to Item No.2 of the Complaint schedule property by executing and registering a Sale Deed in favour of the Plaintiff thereby conveying Item Nos. 1 and 2 of the Complaint Schedule Property in favour of the Plaintiff and upon the Defendant's failure to do so authorize an Officer of this Honble Court to



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execute and Register the Sale Deed in favour of the Plaintiff conveying the Plaint Schedule Property in favour of the Plaintiff and in the alternative, in the event of this Honble Court not granting specific performance, direct the defendant to refund the advance amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to the plaintiff along with interest thereon at the rate of 18% per annum from 08.06.2023 till the date of refund;

(b) Grant an order of permanent injunction restraining the defendant and her men, agents and representatives, from alienating, encumbering or otherwise dealing with the plaint schedule property; and

(c) Direct the defendant to pay the costs of the suit.

For Plaintiff : Mr.K.Harishankar

For Defendant : Set exparte vide order dated 24.04.2024



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J U D G M E N T

The plaintiff has filed the suit to direct the defendant to specifically perform the Agreement for Sale dated 08.06.2023 and the oral agreement with respect to Item No.2 of the Plaint schedule property by executing and registering a Sale Deed in favour of the Plaintiff thereby conveying Item Nos. 1 and 2 of the Plaint Schedule Property in favour of the Plaintiff and upon the Defendant's failure to do so authorize an Officer of this Honble Court to execute and Register the Sale Deed in favour of the Plaintiff conveying the Plaint Schedule Property in favour of the Plaintiff and in the alternative, in the event of this Honble Court not granting specific performance, direct the defendant to refund the advance amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to the plaintiff along with interest thereon at the rate of 18% per annum from 08.06.2023 till the date of refund and also seeking order of permanent injunction restraining the defendant and her men, agents and representatives, from alienating, encumbering or otherwise dealing with the plaint schedule mentioned property.



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2. It is the case of the plaintiff that the defendant, through a real estate broker, had approached the plaintiff and represented that she is an absolute owner of the schedule property and she is looking for a buyer to sell her property. The plaintiff agreed to purchase the schedule property and entered into the agreement of sale, dated 08.06.2023 with the defendant. Later, it was found that access and essential amenities were inadvertently omitted in the abovesaid sale agreement dated 08.06.2024. The plaintiff had paid a sum of Rs.25,00,000/- as part consideration to the defendant and he is ready and willing to perform his part of contract. Though the plaintiff has made several attempts to the defendant to perform the obligations under the said agreement for sale dated 08.06.2023, the defendant has not responded to the same. Hence the plaintiff is constrained to file a present suit for specific performance.

3. The defendant has already been set ex-parte by this Court on 24.04.2024. Ex-parte evidence has been recorded on the side of the plaintiff. Mr.Nazrudeen was examined as PW1 on the side of the plaintiff. He has also filed a proof affidavit reiterating the contents of the plaint filed in support of this suit.



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4. The plaintiff has filed the suit for specific performance. In order to prove the case of the plaintiff, one witness was examined as P.W.1. He has also filed proof affidavit reiterating the contents of the plaint filed in support of his claim. Through PW1, 11 documents have been marked as Exs.P1 to P11. Ex.P1 is the Certified copy of the settlement deed dated 29.04.2002 in favour of the defendant vide Document No.953 of 2002 before the Sub Registrar, Adyar. Ex.P2 is the Original agreement for sale executed by and between the plaintiff and the defendant dated 08.06.2023. Ex.P3 is the office copy of the Demand Draft bearing No.501394 drawn in favour of the defendant dated 08.06.2023. Ex.P4 is the certified copy of the settlement deed dated 23.04.2003 in favour of the defendant vide Document No.917 of 2003 before the Sub Registrar, Adyar. Ex.P5 is the Original last Will and Testament of the defendant registered as Document No.12 of 2021 before the Sub Registrar, Adyar dated 19.01.2021. Ex.P6 is the original deed of revocation of the last Will and Testament dated 19.01.2021 executed by the defendant registered as Document No.17 of 2023 before the Sub



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Registrar, Adyar dated 06.06.2023. Ex.P7 is the photocopy of the sanction letter dated 21.06.2023 issued to the plaintiff by ICICI Bank, Mahalingapuram Branch. Ex.P8 is the photocopy of the draft agreement for sale between the plaintiff and the defendant signed by the plaintiff and shared with the defendant dated 20.06.2023. Ex.P9 is the photocopy of the draft sale deed signed and shared with the defendant dated 21.06.2023. Ex.P10 is the office copy of the Legal notice issued on behalf of the plaintiff to the defendant along with the photocopy of the postal receipt and acknowledgement card dated 07.08.2023. Ex.P11 is the original Balance certificate issued to the plaintiff by ICICI Bank, Mahalingapuram Branch, Chennai dated 30.10.2023.

5. On a perusal of the proof affidavit, it is clear that the plaintiff is ready and willing to perform his part of the contract, whereas, the defendant is not ready and willing to perform his part of contract. The plaintiff has proved that he has entered into an agreement with the defendant and as per terms of the contract, the plaintiff is always ready and willing to perform his part of the contract.



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6. On a perusal of the averments made in the plaint and the proof affidavit filed by the plaintiff and the documents annexed with the plaint, and also on a perusal of the sale agreement entered into between the plaintiff and the defendant, this Court finds that the plaintiff has proved his case and he is entitled for the decree for specific performance.

7. In the result, the suit is decreed as prayed for with costs. The plaintiff is directed to deposit the balance sale consideration to the credit of the C.S.(Comm Div) No.310 of 2023 before the Indian Bank situated in the High Court Campus within a period of 45 days from the date of receipt of a copy of this judgment. On such deposit, the defendant is directed to execute the sale deed in favour of the plaintiff, failing which, the plaintiff is entitled to get the sale deed executed through court. Consequently, connected application is closed.

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Plaintiff's witness: P.W.1 – Nazrudeen

Defendant's witness: Nil

Documents exhibited by the plaintiff:

Ex.P1	The Certified copy of the settlement deed dated 29.04.2002 in favour of the defendant vide Document No.953 of 2002 before the Sub Registrar, Adyar.
Ex.P2	The Original agreement for sale executed by and between the plaintiff and the defendant dated 08.06.2023.
Ex.P3	Office copy of the Demand Draft bearing No.501394 drawn in favour of the defendant dated 08.06.2023.
Ex.P4	The certified copy of the settlement deed dated 23.04.2003 in favour of the defendant vide Document No.917 of 2003 before the Sub Registrar, Adyar.
Ex.P5	The Original last Will and Testament of the defendant registered as Document No.12 of 2021 before the Sub Registrar, Adyar dated 19.01.2021 (subject to proof and relevancy)
Ex.P6	Original deed of revocation of the last Will and Testament dated 19.01.2021 executed by the defendant registered as Document No.17 of 2023 before the Sub Registrar, Adyar dated 06.06.2023.
Ex.P7	Photocopy of the sanction letter dated 21.06.2023 issued to the plaintiff by ICICI Bank, Mahalingapuram Branch. (Original with the Bank).
Ex.P8	Photocopy of the draft agreement for sale between the plaintiff and the defendant signed by the plaintiff and shared with the defendant dated 20.06.2023.
Ex.P9	Photocopy of the draft sale deed signed and shared with the defendant dated 21.06.2023
Ex.P10	Office copy of the Legal notice issued on behalf of the plaintiff



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	to the defendant along with the photocopy of the postal receipt and acknowledgement card dated 07.08.2023.
Ex.P11	Original Balance certificate issued to the plaintiff by ICICI Bank, Mahalilngapuram Branch, Chennai dated 30.10.2023.

Documents exhibited by the defendant: Nil

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