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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11-09-2025

PRONOUNCED ON : 13-10-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

CS No. 639 of 2012

1. D.Rajesh

S/o.Deva Irakkam, No.9/29,
Sorannmal Street, Koodangulam,
Nellai Dt

Plaintiff(s)

Vs

1. C.JONES CHELLIAH

(DECEASED)

S/o.Late J.D.Chelliah, Plot No.20, Door
No.47, 1st Main Road, Ram Nagar,
Peravallur, Chennai 82

2.MRS. SHEILA JONES,

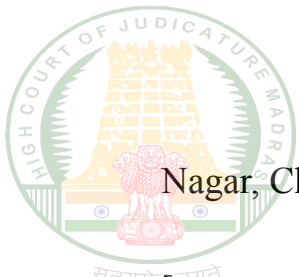
(DECEASED)

W/o.Mr.C.Jones Chelliah, Plot No.20,
Door No.47, 1st Main Road, Ram
Nagar, Peravallur, Chennai 82

3.Mr. Timothy Jones,

S/o. Late C.Jones Chelliah, Rep by its
his guardian Pamela Thomas and

C.R.Thomas, No.101-B, 3rd Street, Gill



Nagar, Choolaimedu, Chennai 600 094

[3rd defendant is brought on record as legal heir of the deceased defendant 1 and 2 as per order dt 24.11.2021 in A.No.2595/2021]

Defendant(s)

PRAYER

The suit is filed under Order II Rule 1 of O.S.Rules r/w Order VII Rule 1 of CPC, praying a decree of specific performance directing the Defendants 1 and 2 to execute the sale deed in favour of the plaintiff in accordance with the sale agreement dated 16.07.2012 in respect of the schedule mentioned property on receipt of the balance sale consideration of Rs.2,15,00,000/- within the time frame as may be fixed by this court and another reliefs.

For Plaintiff(s): M/s. K. Shanmugakani

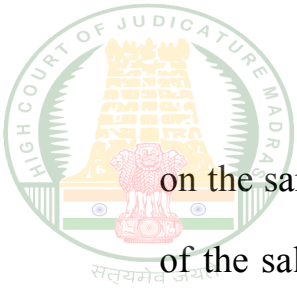
For Defendant(s): M/s.Lita Srinivasan

ORDER

This suit has been filed for the relief of specific performance along with the relief of permanent injunction against the defendant.

2. The averments in the plaint in brief:

On 16.07.2012 the plaintiff and the first and second defendants have entered into an agreement of sale in respect of the suit property for a sale price of Rs.2,15,00,000/- and the plaintiff has paid an advance amount of Rs.5,000/-

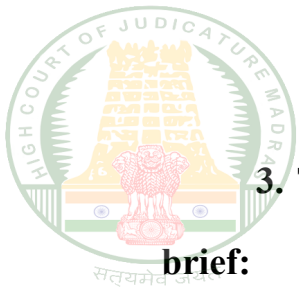


on the same day and the same was received by the defendants. As per the terms of the sale agreement the sale shall be completed on or before 17.08.2012 and the balance sale consideration of Rs.2,14,95,000/- shall be paid by the plaintiff to the defendant at the time of registration by way of Rs.74,95,000/- as cash and remaining sum of Rs.1,40,00,000/- by way of Demand Draft.

2.1 The plaintiff verified the original title deeds of the suit property from defendants 1 and 2 and subsequently the plaintiff inspected the suit property and found it in occupation by the tenants.

2.3. Since the defendants did not evince any interest to come forward and execute the sale deed, the plaintiff issued a legal notice on 22.08.2012. After receiving the legal notice, the defendants did not send any reply. Hence the plaintiff has filed the suit for the relief of specific performance along with the relief of permanent injunction.

2.4 The defendants 1 and 2 died leaving behind the third defendant as the legal heir and even when the defendants 1 and 2 were alive an application has been filed under the National Trust Act 1999 to appoint the guardian for the third defendant. The sister of the second defendant and her husband have been appointed as the guardian of the third defendant.



3. The averments in the written statement of the third defendant in brief:

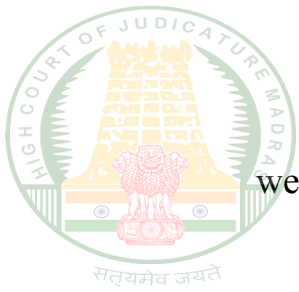
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The first and second defendants who are the parents of the third defendant died due to burn injuries at K.M.C. Hospital on 13.05.2018. The third defendant is under the custody of the sister of the second defendant. The plaintiff is a broker who has no means to purchase the property of this value. As the defendants 1 and 2 were blind, the defendant fabricated a document in the year 2012 by giving a token amount. He had fabricated the documents in his handwriting by showing a paltry sum of Rs.5,000/- as advance. Defendants 1 and 2 had executed a power of attorney in favour of their brother in law Mr. Stephen Danial, as every document needed to be read by a trusted person before the defendants could affix their signature. There were tenants in the suit property and eviction petitions have already been filed under the Rent Control Act and they were evicted. The agreements are forged one. Hence the suit has to be dismissed.

4. On perusal of both side pleadings, the following issues are framed:

(i) Whether the plaintiff and defendants 1 and 2 had entered into a sale agreement on 16.07.2012 in respect of the suit property wherein the defendants 1 and 2 have agreed to sell the suit property for a sale consideration of Rs.215,00,000/- (Rupees Two Crores Fifteen Lakhs Only);

ii) Whether the sale agreement was fabricated by the plaintiff taking advantage of the fact that the defendants 1 and 2



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were almost blind even in the year 2012;

iii) Whether the signature of the first witness is fabricated;

iv) Whether the plaintiff is a broker and he has no legal means to purchase the property;

v) Whether the defendants 1 and 2 had executed a registered Power of Attorney in favour of their brother-in-law Mr.Stephen Daniel;

vi) Whether the plaintiff is entitled for the relief of specific performance of the contract;

vii) Whether the plaintiff is entitled for the relief of permanent injunction against the defendants as prayed for in the plaint;

viii) Whether the plaintiff is entitled for the relief of possession as claimed in the plaint;

ix) To what other reliefs, plaintiff is entitled for?

5. During the course of trial on the side of the plaintiff, P.W.1 was examined and Exs.P1 to P6 were marked. On the side of the defendants D.W.1 was examined and no document was marked.

6. The learned counsel for the plaintiff submitted that the plaintiff was all along ready and willing to purchase the suit property but the defendant has not come forward to sell the same. The agreement of sale was not denied by the defendants in their written statement.



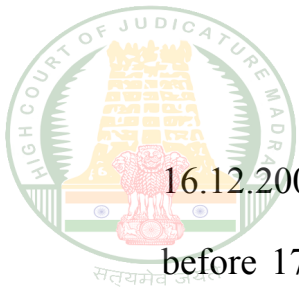
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6.1. The plaintiff submits that the execution of the sale agreement (Ex.P1) is duly proved. The defendants have neither denied the execution of Ex.P1 in their pleadings nor during the evidence. They have not responded to the legal notice sent by the plaintiff. They have also not denied receiving the advance amount of Rs. 5,000/- the verification of the original title deeds carried out by the plaintiff, or the draft sale deed sent to them. Although the witness to Ex.P1 did not appear to give evidence, his wife was examined as D.W.1. The plaintiff has further established his readiness and willingness to perform his obligations under the agreement.

7. The learned counsel for the 3rd defendant submitted that the plaintiff has not even signed the sale agreement and the sale agreement does not contain any date; the plaintiff, along with a group of people, has formed a cartel and they admitted to taking possession of the suit schedule property by giving enormous trouble to the defendants 1 and 2; the sale agreement itself is fabricated and concocted and hence, the plaintiff is not entitled to get the relief as prayed.

DISCUSSION:

8. It is a categorical admission of the plaintiff that the defendants 1 and 2, who are the parents of the 3rd defendant, had executed the sale agreement Ex. P1 by agreeing to sell the suit property to the plaintiff for a sum of Rs. 21,500,000/-. The plaintiff is said to have paid Rs.5,000/- as an advance on



16.12.2007. As per the terms of the sale agreement, the sale has to be completed before 17.8.2012 and the balance sale consideration of Rs.21,495,000/- has to be paid by the plaintiff to the defendants at the time of registration. The very existence of the sale agreement is disputed by the 3rd defendant. In fact, the 3rd defendant is the daughter of defendants 1 and 2. It is an autistic child who has been represented through her guardians, Pamela Thomas and C.R. Thomas.

9. The learned counsel for the 3rd defendant submitted that the above persons have been appointed as guardians under section 14 of the National Trust Act 1999. One of the guardians, Pamela Thomas, is the sister of the 2nd defendant, and C.R. Thomas is the husband of Pamela Thomas. The 1st and 2nd defendants are visually impaired, and they have executed a power of attorney in favour of the relative Mr Stephen Daniel. The plaintiff, who was examined as PW.1 during his cross-examination, stated that he did not affix any signature in the sale agreement. When a question was put to PW1 that the defendants 1 and 2 had diminished vision in the year 2012 and they could not even read any document, the plaintiff denied the same. The sale agreement has been marked as Ex.P1. On perusal of the said document, it is seen that it is not written on any stamped paper, but it is on plain paper in a blue ink pen. The signatures of defendants 1 and 2 are said to have been made on a revenue stamp affixed at the bottom of the agreement, but the signature does not have any dates.

10. The contents of the above sale agreement have been marked as Ex.P1,



and the contents have been written in English. When PW.1 was faced with the question about the person who had written the same, he answered that he did not know. He has stated that one of the guardians, by name C.R. Thomas, also stood as one of the witnesses in the sale agreement. But PW.1 has stated that he has not written the agreement. As the execution was in English, PW.1 has sought a Tamil translated copy, saying that he did not know English. The said fact was also admitted by PW.1 during his evidence. However, he has been studying law at Babu Jagjeevan Ram College in English between the period from 2006 and 2011. So the conduct of PW.1 asking for a Tamil translated copy of Ex.P1 is something not compatible. In fact, the defendant has been enrolled as an advocate, and he is a practising lawyer.

11. The learned counsel for the 3rd defendant submitted that the defendant has sought a cartel with Rajesh, Maradhanayagan and Anadhakuamar and is filing cases just to steal the property from the autistic child. Even though Jhonson Thomas is not involved in the case, PW.1 is said to have taken him into master court, and he has admitted the said fact in his evidence as well. Marudhanayagam is a person who has filed a suit against them in a similar fashion just in order to grab the suit property from the defendants 1 and 2, who are visually challenged. Ex. P6 would show that there is another agreement of sale dated 28.8.2012 which is said to have been executed by the defendants 1 and 2 in favour of one Marudhanayagam.

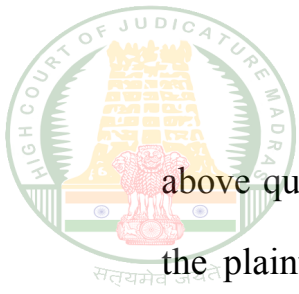


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12. According to the 3rd defendant, the genuineness of the said agreement executed in favour of the Marudhanayagam is also not proved, and the plaintiff, Maruthanayagam, and Johnson act like a group just in order to grab the suit property from defendants 1 and 2. Though the defendant denied the genuineness of the agreement and that too by contending that the defendants 1 and 2 themselves have visual impairment and that they can not read a document, the plaintiff has not chosen to examine any witnesses to prove the genuineness of Ex.A1.

13. However, it is claimed by the learned counsel for the plaintiff that the defendants 1 and 2 did not deny the execution of the sale agreement, and they did not even choose to send any reply to the legal notice sent by the plaintiff. It is further stated that the attesting witness to Ex.P1, namely C.R. Thomas, was not examined, and that DW1 was examined as a witness on behalf of the defendants.

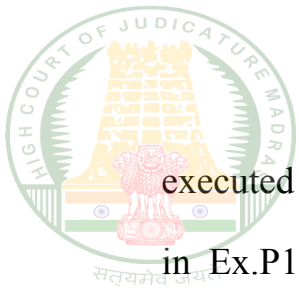
14. According to the learned counsel for the 3rd defendant, the notice itself has been sent to Pervallur, knowing pretty well that the defendants 1 and 2 were actually residing at Gill Nagar. It is submitted that the acknowledgement is a stage management as though the 1st defendant had received the notice served at Ram Nagar, Pervallur. DW.1, who is the sister of the 2nd defendant and one of the guardians of the 3rd defendant has stated in her evidence that the 1st and 2nd defendants have been residing in Gill Nagar at Sulaimedu. In fact, the



above question was asked to DW.1 during the examination by the plaintiff. So the plaintiff knew that the defendants 1 and 2 were residing at Gill Nagar, Sulaimedu. But the notice has been sent to the Peravallur address. So it's doubtful whether the notice has been actually received by the first defendant by affixing his signature on the acknowledgement. As the notice itself has not been actually served on D1 and D2, they did not send any reply.

15. The defendants 1 and 2 are the persons affected due to diminishing eye vision and helplessness. They have executed a power of attorney in favour of this Stephen Daniel and only through him, they used to have the transactions involving documents. It is quite possible and natural for persons who do not have optimal eyesight to engage any of their trusted persons to assist them. In such circumstances, it is difficult to believe that they have executed Ex.P1 in favour of the plaintiff. In fact, the plaintiff himself is not clear as to the author of the document Ex. P1. The plaintiff is an advocate practising in Thirunelveli and he is a member of the Thirunelveli Bar Association. He is a permanent resident of Thirunelveli.

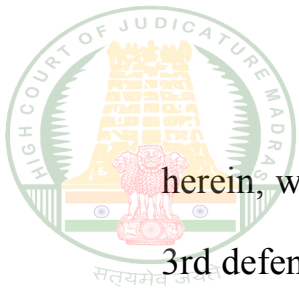
16. One of the contentions raised by the plaintiff is that while DW1 has deposed before the Court that her husband, C.R. Thomas, who is the attesting witness to Ex.P1 had avoided the witness box. If the plaintiff claims that C.R. Thomas stood as one of the witnesses to the sale agreement, it is his duty to call him and examine him as a witness for proving the genuineness of the Ex. P1 document. PW.1 has not discharged his burden to prove that Ex.P1 has been



executed as claimed by him. In fact PW.1 has not even subscribed his signature in Ex.P1. On this aspect the learned counsel for the plaintiff relied on the judgement of the Hon'ble Supreme Court held in *Aloka Bose v. Parmatma Devi and Others* reported in **2009 (2) SCC 582**. In the said judgement, it is held that in India, an agreement of sale signed by the vendor alone and delivered to the purchaser and accepted by the purchaser has always been considered as a valued contract. But even then it is for the proposed purchaser to prove that the agreement has been actually signed by the vendors.

17.As stated already, the plaintiff has not proved the same as acceptable evidence. Even according to the plaintiff, the defendants 1 and 2 are not the persons who have got good eyesight. In such case, the burden is heavily placed on the shoulders of the plaintiff to prove that the sale agreement was very much true and valid. During the course of PW.1 cross-examination he has stated that he had heard about Marudhanayagam and that he had also taken one Jhonson Thomas to court while he was deposing evidence. So the above evidence of PW.1 would show that he is also aware that a similar suit has been filed by Maruthanayagam and the same has also been dismissed.

18.So a set of persons including Maruthanayagam, have created documents as though defendants 1 and 2 have executed a sale agreement in their favour and started to give them trouble by inviting them into litigation in the court. Unfortunately, the defendants had only one child, the 3rd defendant

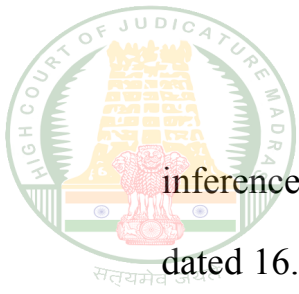


herein, who is autistic. Defendants 1 and 2 also died in an accident, leaving the 3rd defendant alone. The 3rd defendant became helpless. After being impleaded as the legal heir of the deceased defendants 1 and 2, the 3rd defendant filed the written statement.

19. The unfortunate circumstances of defendants 1 and 2, coupled with the tactful way in which the legal notice was sent Peravalur could have been the reason for D1 and D2 not being aware of this suit. Even in the cause title of the suit, the address for service has been shown as Peravallur instead of Gill Nagar.

20. It is unfortunate that the defendants 1 and 2 died, leaving the 3rd defendant, who is an autistic child. Only after their death that 3rd defendant could file a written statement denying the very execution of the sale agreement. So the plaintiff cannot take any advantage by saying that the defendants 1 and 2 did not deny the sale agreement. Though it is true that defendants 1 and 2 appeared to have engaged a counsel, it is not known whether the said counsel was engaged by them or whether it is just another hand work of the plaintiff.

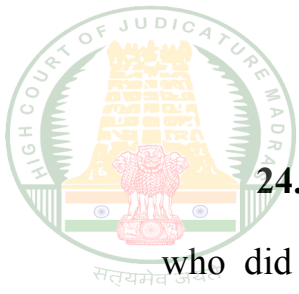
21. It is unbelievable that a plaintiff had advanced only Rs.5000/- for a property worth a few crores. So the agreement Ex.P1 is seen found to be similar to the type of agreement claimed by Marudhanayagam, who filed a similar suit against the defendants and got it dismissed. The plaintiff, who is a practising advocate, has also played the delay-making tactics by claiming ignorance of the death of the defendants 1 & 2 and seeking a Tamil-translated copy of the Ex. P1 agreement. The cumulative analysis of the above evidence will only leave an



inference that the plaintiff has not proved the execution of the sale agreement dated 16.12.2012 to the satisfaction of the court. Thus, **Issue No. 1 is answered against the plaintiff.**

22. Issues 2, 3 and 5 are framed in such a way that it shifts the burden on the defendant. The burden would shift if the plaintiff had proved the execution of the sale agreement, Ex.A1. As the plaintiff has failed to prove the execution of the Ex.A1, **Issues 2, 3 and 5 are answered against the plaintiff.**

23. As regards issue no. 4, the learned counsel for the plaintiff submitted that the plaintiff was all along ready and willing to perform his part of the contract, and hence he had sent a legal notice. But on perusal of the plaint, it is seen that the plaintiff has not made any averments as to his readiness and his willingness as per Sec. 16(c) of the Specific Performance [prior to amendment] Act. As per the old Act, the relief of specific performance cannot be enforced in favour of a person if he fails to aver and prove that he has performed or has been ready and willing to perform the essence of the contract which is to be performed by him. In the case in hand the very genuineness of the Ex.P1 has not been proved, and it is also not pleaded in the plaint that he has always been ready and willing to perform his part of the contract. Neither he has proved to show that he had sufficient means to purchase the suit property worth a few crores.



24. The learned counsel for the plaintiff submitted that DW.1 is a person who did not have the facts within her personal knowledge and she cannot represent the party who has the knowledge about the facts involving this suit.

The defendants 1 and 2 died during the pendency of the suits and the 3rd defendant is an autistic child and she is the legal representative of the deceased defendants 1 and 2. Hence, the guardian of the third defendant alone can enter into the box and depose the evidence on behalf of the third defendant. Though DW.1 may not have the knowledge about the transaction, it is the duty of the plaintiff to prove in the place that there was a transaction as alleged by him.

25. When the genuineness of Ex.P1 itself has not been established, it is immaterial who deposes evidence on the side of the defendant. The plaintiff has not placed any evidence to show that he was the man of sufficient means during the relevant point in time to purchase the suit property. Even in the sale agreement, only an advance amount of Rs.5000/- has been shown to have been paid for doubt about the alleged transaction involving the suit property property worth a few crores of rupees. So the **issue No. 4 is also answered against the plaintiff.**

26. It is needless to state that relief of a specific performance is a relief that can be granted only on equitable consideration. In other words, refusing the above relief would cause more damage to the plaintiff, and even the compensation cannot be an adequate relief. In the instant case, without placing any solid evidence, the alleged agreement is said to have been executed by two



blind people, who died leaving the third defendant, who is an autistic child. If the relief of the specific performance is granted, that will grossly affect the interest of the defendants.

27. The plaintiff has neither proved the genuineness of the agreement nor his means, and not even the fact that the advance money has been actually paid on the alleged day of the agreement. And further, the plaintiff has not even pleaded that he was all along ready and willing to perform his part of the contract, beside his liability to prove the genuineness of the transaction. So all these factors would only tilt the balance of equitable consideration in favour of the defendants. **So the plaintiff is not entitled to the relief of specific performance; thus, issue No. 6 is answered.**

28. As the suit property is in the occupation of the tenants and the defendants have initiated proceedings to evict them. The plaintiff has not proved any interest in the suit property and hence, he is not entitled to the relief of permanent injunction as prayed for. **Accordingly, Issue No. 7 is also answered against the plaintiff.**

29. In the circumstances of the case, the plaintiff is not entitled to the relief of possession or to any other relief. **Accordingly, Issue Nos. 8 and 9 are answered against the plaintiff.**



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In the result, the civil suit stands **dismissed**. No costs. The connected miscellaneous petitions, if any, are also closed.

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Index: Yes

Speaking order

Neutral Citation: Yes

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