

IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C, KOLLEGALA

Present: Smt. GEETHANJALI G., B.A., LL.B,
Prl. Civil Judge and J.M.F.C.

This the 19th day of June 2014.

O.S.142/2012

Plaintiff: Smt. Bhagya w/o late Muniyappa, 34 years,
Hoogyam village, Kollegala taluk.
(Rep. By S.Devaraju, Advocate)

V/s

Defendant: N. Palaniswamy s/o Mylaswamy, 34 years,
24 mane Telugu setty,
r/o Hoogyam village, Kollegala taluk.
(Exparte)

Date of Institution of Suit : 16-04-2012

Nature of the suit (suit on pronote, : Specific performance
Partitio n, declaration, possession of Contract.
for injunction etc.)

Date of the commencement of recording: 5.8.2013
of the evidence

Date on which the Judgment was : 19.6.2014
pronounced

	Years	Months	Days
Total Duration	02	02	03

(GEETHANJALI.G.)
Prl. Civil Judge and J.M.F.C.,
Kollegala.

JUDGEMENT

This is the suit for Specific performance of Contract filed by the plaintiff against the defendant.

2.The brief facts of the plaintiff bank is given below:

Originally the suit property owned by one Mylaswamy and he purchased the same through a registered Sale deed dated 27.6.2001 and all the khatha and revenue records stands in the name of defendant. The defendant for his personal needs and to protect his family, agreed to sell the same to the husband of the plaintiff namely, Muniyappa for a sum of Rs.1,60,000/-. Accordingly on 19.7.2007 received cash of Rs.1,40,000/- before the witnesses and executed the sale agreement and handed over the possession of the suit property. Further, agreed to execute the regular sale deed within 6 months from the date of sale agreement.

3.Further submitted that the defendant has taken time to get the sketch and other relevant documents which are compulsory for registration and during the life time of her husband, he always pressing the defendant to get the sketch prepared and get the sale deed registered by receiving the balance amount of Rs.20,000/- and in the meanwhile the husband of the plaintiff has been died.

Further on 15.12.2010 on the back of sale agreement dated 19.7.2007 the defendant extended the same and received balance amount of Rs.20,000/-. Now, the defendant did not come forward to perform his part of contract, even after expressing ready and willingness by the plaintiff and he started avoiding and postponing the execution of sale deed. Therefore, on 1.3.2012 the plaintiff got issued legal notice demanding him to execute the reg. sale deed and fails to comply the same. So, the cause of action arose for the suit on 19.7.2007,15.12.2010 and 1.3.2012. Therefore prays to pass judgment and decreed in her favour seeking direction to the defendant to execute the reg. Sale deed with respect to the suit property in her favour and such other relief.

4. In pursuance of summons the defendants remain absent hence, placed as exparte. Matter was posted for plaintiff's evidence. The plaintiff in order to prove his case the plaintiff examined as PW2 and Ex.P1 to P6 got marked. He also examined one witness as PW1.

5. Heard the arguments from plaintiff's counsel.

6. On perusal of the pleadings, the following points arise for my consideration:

5. Whether the plaintiff proves that the defendant executed a sale agreement dated 19.7.2007 and

extended sale agreement dated 15.12.2010 by agreeing to sell the suit property for the sale consideration of Rs.1,60,000/- and received the entire sale amount before the presence of witnesses?

6. Whether plaintiff proves that the defendant fails to execute the reg. Sale deed as agreed by him?
7. Whether the plaintiff shows her ready and willingness to perform her part of contract?
8. Whether the plaintiff is entitled for suit claim?
9. What order?

6. My answers to the above points as under;

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In the Affirmative.

Point No.4 : In the Affirmative.

Point No.5 : As per the final order.

REASONS

7. Point No.1 to 4: These points are inter-linked to each other, taken up together for discussion to avoid repetition in appreciation of evidence.

8.The plaintiff in order to prove her case firstly examined the document writer as PW1 and during his chief examination, he enlighten about writing of sale agreement

on 19.7.2007 on the wish of defendant for the sale consideration of Rs.1,60,000/- and payment of major portion of sale amount i.e., Rs.1,40,000/- which made by the plaintiff's husband before the witnesses and also enlighten about execution of extended sale agreement dated 15.12.2010 and receiving balance consideration of Rs.20,000/- from the plaintiff. Further gave evidence about possession by the plaintiff since from the date of execution of both sale agreements. During his chief examination the sale agreement dated 19.7.2007 including the extended sale agreement written on the back page of the same also marked as Ex.P1. PW1 has identified the signatures of the defendant.

9. Ex.P1 discloses that on 19.7.2007 the defendant received part of the sale consideration of Rs.1,40,000/- from the husband of the plaintiff before the witnesses and executed the sale agreement and handed over the possession of the suit property. Further agreed to execute the regular sale deed within 6 months from the date of sale agreement and again on 15.12.2010 received the balance sale consideration amount of Rs.20,000/- from the plaintiff and agreed to execute the sale deed in her favour.

10. PW2 being plaintiff also gave evidence by filing an affidavit and reiterated the plaint averments. During her chief examination Ex.P2 to P6 got marked. Ex.P2 is the certified copy of the sale deed dated 27.6.2001 which discloses that the title of the suit property has been passed to defendant by one Salamma, Murugan and Sharavana for the sale consideration of Rs.5405/- and Ex.P3 to P6 are the RTCs pertaining to the suit property stands in the name of the defendant.

11. In this case, the plaintiff though relied upon Ex.P1, which is unregistered and under stamped document wherein the plaintiff had paid the stamp duty and penalty with respect to the same and got marked the same in the evidence. As such, Ex.P1 to P6 reveals that the defendant had agreed to sell the suit property to the husband of the plaintiff and received major portion of sale consideration of Rs.1,40,000/- and after the death of husband of plaintiff he received Rs.20,000/- the balance sale consideration from the plaintiff and executed the extended sale agreement. Therefore, the plaintiff by relying upon the aforesaid documents she made out her case and the defendant in pursuance of summons refused the service and placed as

exparte. Therefore, I do not feel any constrain to decree the suit. Hence, I answer point No.1 to 4 in the Affirmative.

12. Point No.4: For the above discussion, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed.

The defendant is directed to execute the sale deed and get registered the same within two months from the date of judgment at the cost of plaintiff.

In further, in case the defendant fails to get registered the sale deed as per the order of this Court, the plaintiff is at liberty to get the sale deed registered in her favour through Court Officer appointed by this Court.

Draw decree accordingly.

(Dictated to the Stenographer directly on the system, revised, corrected and then pronounced by me in the open Court on this the 19th day of June, 2014)

(GEETHANJALI.G)
Prl. Civil Judge & JMFC,
Kollegala.

ANNEXURE

List of witnesses examined on behalf of plaintiff:

PW1-Chandrashekar	5.8.2013
PW2-Bhagya	12.11.2013

List of documents marked on behalf of plaintiff:

Ex.P1- Unregistered Sale agreement
Ex.P2-C.C. of sale deed
Ex.P3 to P6-RTCs.

List of witnesses examined on behalf of defendant/s: NIL

List of documents exhibited on behalf of defendant/s: NIL

(GEETHANJALI.G)
Prl. Civil Judge & JMFC,
Kollegala.

Mksr/*