

BEFORE THE DISTRICT COURT OF THE NILGIRIS AT
UDHAGAMANDALAM

**Present : Thiru.A.Abdul Kadhar, B.A, B.L.,
District Judge, Udhagamandalam.**

Monday, the 29th day of January, 2024.

O.S. No.54 of 2023

CNR No.TNNS01-001081-2023

Vasanthi ... Plaintiff

/versus/

James.O.C ... Defendant

This suit was coming before me on 04.01.2024 for hearing in the presence of Thiru. Patel T. Srinivas, Counsel for the Plaintiff and the Defendant having called absent and set exparte and upon hearing the arguments of the plaintiff sides and upon perusing the relevant records, this court passes the following:

J U D G M E N T

This Suit for directing the defendant to execute the sale deed in respect of the suit schedule property infavour of the plaintiff and in the event of failure by the defendant to execute the sale deed, this court may execute the sale deed in favour of the plaintiff, or in the alternative, directing the defendant for refund of the sum of Rs. 10,00,000/- together with interest thereon at 18% p.a. from the date of

the sale agreement dated 12.01.2023 till realization with cost.

2. Brief averments of the plaint filed by the plaintiff as follows:-

The defendant has executed a sale agreement dated 12.01.2022 and registered as Doc. No.39 of 2022 on the file of the Joint-I, Sub Registrar, Udhagamandalam in favour of the plaintiff, the defendant agreed to sell the suit schedule property for a total sale consideration of Rs.12,00,000/-. On the date of the agreement the defendant as Vendor has received a sum of Rs. 10,00,000/- through a cheque bearing No.002663 dated 12.01.2022 drawn on the Union Bank, Udhagamandalam Branch and acknowledged the same under the said sale agreement dated 12.01.2022. The defendant has agreed to complete the sale within a period of Eighteen months and agreed to produce the title deed, obtain the necessary encumbrance certificate in respect of the property, revenue records and make out a marketable title under the said sale agreement dated 12.01.2022. The plaintiff contacted the defendant over phone on several occasions and requested him to complete the sale deed and the defendant was giving some lame excuses and postponing the completion of sale deed on

some pretext or other and inspite of the plaintiff's repeated requests and demands the defendant did not execute the sale deed though the plaintiff was ready with the balance sale consideration. The plaintiff has always been ready and willing and the plaintiff is ready even today to get the sale deed executed after paying the balance sale consideration. Since the defendant did not make the necessary arrangement to execute the sale deed, the plaintiff was forced to issue a legal notice on 14.06.2023 to the defendant by registered post, acknowledgement due calling upon the defendant to execute the necessary sale deed and also informing the defendant that in case of failure to execute the sale deed will result in filing the necessary suit for specific performance. Hence the suit.

3. The defendant remained exparte.

4. On the side of plaintiff, The plaintiff was examined as PW1 and Ex.A1 to Ex.A3 have been marked. The defendant remained absent and set exparte.

5. The point for consideration is as to whether the plaintiff is entitled for the reliefs as prayed for?

Point:-

6. According to the plaintiff, he having desire to purchase the suit property from the defendant and the defendant agreed to sell the suit schedule property for a total sale consideration of Rs. 12,00,000/- to the plaintiff. On the date of the agreement itself, the plaintiff had paid a sum of Rs.10,00,000/- by issuing a cheque bearing No.002663 dated 12.01.2022 drawn on the Union Bank, Udhagamandalam Branch to the defendant and the defendant had acknowledged the same under the said sale agreement dated 12.01.2022. It is agreed by both parties that the sale agreement has to be completed within a period of 18 months and agreed to produce the title deed, obtain the necessary encumbrance certificate in respect of the property, revenue records and make out a marketable title under the said sale agreement dated 12.01.2022. The plaintiff contacted the defendant over phone on several occasions and requested them to complete the sale deed and even on repeated requests made by the plaintiff and the defendant did not execute the sale deed though the plaintiff was ready with the balance sale consideration. On failure to perform the defendant's part of contract, the plaintiff had issued a legal notice dated 14.06.2023 to

the defendant by calling upon him to execute the sale and having failed to do so , the plaintiff has come up with the present case.

7. The plaintiff Mrs. Vasanthi has been examined as PW1. The facts found in the plaint has been narrated in her chief examination in the form of proof affidavit. Considering the averments in the plaint and evidence of PW1 and Ex.A1 is the Original Sale agreement dated 12.01.2022 and registered as Document No.39 of 2022 on the file of the Joint-I, Sub Registrar, Udhagamandalam, Ex.A2 is the original legal notice dated 14.06.2023 issued by the plaintiff, calling upon the defendant to execute the sale and Ex.A3 is Postal acknowledgement card. All the above oral and documentary evidences adduced on the side of the plaintiff remained unchallenged and the defendant remains absent and hence the claim of the plaintiff stands established.

8. Since the defendant having called absent and set exparte, the evidence of PW1 goes unrebutted and the plaintiff has made out her case that she is always ready and willing to get the sale deed registered already prepared under Ex.A1 and the plaintiff has already deposited the balance sale consideration of Rs.2,00,000/- into the court by way of a lodgment schedule to the credit.

9. Now coming to the other aspects having regard to the documents produced by the plaintiff were borne out of the sale transaction and after the Specific Relief Amendment Act, 2018 that has taken away the inadequacy test originally contemplated under the Act and has also taken away the discretionary power of the courts under Sections 10 and 20 of the Specific Relief Act and the amended Section 10 of the Act stipulates specific performance of contract shall be enforceable subject to provisions of 14 and 16 of the Act means thereby grant of specific relief is no more the subject discretion of the court and it becomes regular statutory remedy.

10. Now admittedly the amendment has come into force and having held that the sale agreement Ex.A1 prepared and pending registration, I have no other option except to grant the relief of specific performance in the absence of any rebuttal evidence. Hence, the suit is liable to be decreed of by granting the relief of specific performance of the pending registration of the prepared sale agreement under Ex.A1 dated 12.01.2022 by directing the defendant to register a sale deed in favour of the plaintiff within three months from today and the plaintiff is entitled to the relief of specific performance as prayed for.

11. In fine,

(i) The suit is decreed for the relief of specific performance as prayed for with cost.

(ii) The defendant is directed to register the sale deed already executed under Ex.A1 in favour of the plaintiff in respect of suit properties within three months from today.

(iii) In the event of failure on the part of the defendant to comply with the Clause No.(ii), the plaintiff may approach the court to get the sale deed executed in her favour through court of law within one month therefrom.

Directly dictated to the Steno-typist and typed by him in computer, corrected and pronounced by me in open court this the 29th day of January, 2024.

District Judge
Udhagamandalam.

Witness examined on the side of the plaintiff:

PW1 – Tmt. Vasanthi (Plaintiff)

List of the document marked on the side of Plaintiff:

Ex.A1 12.01.2022 Original sale deed

Ex.A2 14.06.2023 Office copy of the legal notice

Ex.A3 - Postal acknowledgement

Witness and documents marked on the side of the defendant:

Nil

District Judge
Udhagamandalam.

District Court,
Udhagamandalam
Copy of Judgment in
O.S. No.54 of 2023
Dated: 29.01.2024