

IN THE COURT OF THE I ADDITIONAL DISTRICT JUDGE, SALEM

Present: Thiru.L. Abraham Lincoln, B.Sc., LL.M.,

I Additional District Judge,

Salem.

Monday, the 03rd day of January 2022

O.S.No.143/2021

(CNR.No: TNSA010018382021)

R.Subramaniam

... Plaintiff

/Vs/

A.Senthilkumar

..... Defendant

This suit is coming before me for final hearing on 22.12.2021 in the presence of Thiru.S.A.Gnanaseelan Advocate for the Plaintiff and the defendant is called absent and set exparte and upon perusing the documents on records and on hearing the plaintiff side and having stood over for consideration till this day, this court has passed the following:

Judgment.

Suit is filed for Specific Performance, Permanent Injunction or return of advance amount and directing the defendant to receive the balance sale consideration amount of Rs.3,00,000/- from the plaintiff and execute a sale deed in respect of the suit property in favour of the plaintiff or his order with free of encumbrances and in default permit the plaintiff to deposit the balance sale consideration amount into this court within a period stipulated by this court and get sale deed from this court and in default and alternative relief direct the defendant to return the advance amount with interest of Rs.56,61,000/- to the plaintiff with interest of 12% per annum of Rs.32,00,000/- from the date of suit till the date of realization and pass an order of permanent injunction by restraining the defendant and his family members from in any way alienating or encumbering the suit property to anybody in any manner

except to the plaintiff with cost of the suit.

2. The suit property absolutely belongs to defendant by virtue of registered sale deed dated 15.9.1995 Registered as Doc.No.1494/1995 before the Ayothiyapattanam Sub Registrar Office. That on 13/10/2016 the defendant and plaintiff have entered into an agreement for sale of the under mentioned property of defendant more fully described hereunder for Rs.35,00,000/- and on the same day itself the defendant has received a sum of Rs.30,00,000/- towards the advance amount from the plaintiff and reduced the sale agreement registered at Sub Registrar office Ayothiyapattanam as Document No.3328/2016 on 13/10/2016 and on the same day the defendant has handed over possession of the suit property to the plaintiff. As per the agreement for sale, the plaintiff has to pay the balance sale price of Rs.5,00,000/- to the defendant within twenty four months and get the sale deed from the defendant in his favour at his cost. The defendant not executed the sale deed to the plaintiff in time.

3. From the date of sale agreement the plaintiff is always ready and willing to perform his part of contract and capable to pay the balance amount to the defendant and get the sale deed from the defendant. The defendant is bound to receive the balance amount from the plaintiff and execute the sale deed with free of encumbrances. But the defendant postponing the days by saying lane excuses. So on 9.10.2019 the plaintiff herein has issued a legal notice to the defendant by demanding him to execute the sale deed in terms of the said registered sale agreement. The same was acknowledged by the defendant on 12/10/2019. The defendant did not issue any reply notice to the plaintiff. After that the plaintiff is

waiting before Sub Registrar Office, Ayothiyapattanam on 18/10/2019 morning 10.00 A.m. to till evening 5.30 p.m. But the defendant not come to the Registrar Office and not execute the sale deed in favour of the plaintiff. That on 19.10.2019 the defendant received a sum of Rs.2,00,000/- as additional advance from the plaintiff and accepted to execute the sale deed within January 2020 in the name of the plaintiff, the same was written on the 1st page back side of the sale agreement. Totally the plaintiff has paid an advance amount of Rs.32,00,000/- to the defendant. The same day the defendant handed over original sale deed to the plaintiff, registered as Doc.No.1494/1995. The plaintiff is always ready and willing to perform his part of contract as per registered sale agreement dated 13/10/2016 and endorsement dated 19.10.2019. The defendant is evading to execute sale deed after receiving Rs.32,00,000/- out of total sale price of Rs.35,00,000/-. Now the plaintiff is reliably learnt that the defendant is trying to alienate the suit property to 3rd party in order to cheat and defraud the plaintiff. The defendant is not entitled to alienate or encumber the suit property to anybody except to the plaintiff. Hence the suit.

4) On the side of Plaintiff, the plaintiff was examined as P.W.1 and the plaintiff's wife Tmt.Dhanabakiam who signed in Ex.A1 as a witness was examined as P.W.2 and Ex.A1 to A3 are marked.

5) The Point for consideration is:

Whether the Plaintiff is entitled for the relief as prayed for?

6) **Point:-**

The suit is filed for Specific Performance, Permanent Injunction or return of advance amount and directing the defendant to receive the balance sale consideration amount of Rs.3,00,000/- from the plaintiff and execute a sale deed in respect of the suit property in favour of the plaintiff or his order with free of encumbrances and in default permit the plaintiff to deposit the balance sale consideration amount into this court within a period stipulated by this court and get sale deed from this court and in default and alternative relief direct the defendant to return the advance amount with interest of Rs.56,61,000/- to the plaintiff with interest of 12% per annum of Rs.32,00,000/- from the date of suit till the date of realization and pass an order of permanent injunction by restraining the defendant and his family members from in any way alienating or encumbering the suit property to anybody in any manner except to the plaintiff with cost of the suit.

7) In order to prove the Plaintiff case, the Plaintiff was examined as P.W.1 and the plaintiff's wife Tmt.Dhanabakiam who signed in Ex.A1 as a witness was examined as P.W.2 and to substantiate his case through P.W.1 Ex.A1 to Ex.A3 were marked. Ex.A1 is the Sale agreement entered into between plaintiff and defendant in Doc.No.3328/2016 dated: 13.10.2016, Ex.A2 is the Legal notice issued by the plaintiff to defendant, Ex.A3 is the Acknowledgement card. To strengthen the case of the Plaintiff, the plaintiff's wife Tmt.Dhanabakiam who signed in Ex.A1 was examined as P.W.2 who has acquainted with the facts of the case.

8) The defendant was not appeared before this court and remaining exparte.

9) To disprove the case of the Plaintiff admittedly the defendant has not appeared before this court. Even though there is no contra evidence available to disprove the case of the Plaintiff, in the considered opinion of this court, the defendant is not willing to sell the suit property to the plaintiff. Hence, the Plaintiff is entitled for the alternative relief. Accordingly, the suit is decreed in respect of the alternative relief is concerned. Thus, the point is answered in favour of the Plaintiff.

In the result, the suit is decreed with cost in respect of the alternative relief is concerned. The defendant is directed to pay the suit amount of Rs.56,61,000/- to the plaintiff with interest at the rate of 9% per annum on the Advance amount of Rs.32,00,000/- from the date of suit till the date of decree and thereafter at the rate of 6% per annum till the date of realization. The suit is dismissed with respect of the relief of Specific performance and permanent injunction.

Dictated to the Steno-typist directly and computerized by her, corrected and pronounced by me in the open court, this the 03rd day of January 2022.

(Sd/-L.Abraham Lincoln)
I Additional District Judge,
Salem.

Plaintiff Side Witness:-

P.W.1 –Thiru.R.Subramaniam

P.W.2 –Tmt.Dhanabakiam

Plaintiff side Exhibits:-

Ex.A1	13.10.2016	Sale agreement between plaintiff and defendant Doc.No.3328/2016	Original
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Ex.A2	09.10.2019	Legal notice issued by the plaintiff to defendant	Office copy
Ex.A3	12.10.2019	Acknowledgement card	Original

(Sd/-L.Abraham Lincoln)
I Additional District Judge,
Salem.