

IN THE COURT OF SUBORDINATE JUDGE, OMALUR,
SALEM DISTRICT.

Present : Thiru. K.Dhayanithi, M.A., B.L.,
Subordinate Judge, Omalur.

Tuesday, the 20th day of November 2018.
O.S.No.3/2018

Sujatha ... Plaintiff
Subramani ... Defendant
//VERSUS//

This Suit coming on before me today for hearing in the presence of Thiru.M.Gurunathan, Advocate appeared for the Plaintiff, Defendant called absent, set exparte hence upon having stood over for consideration, this court delivered the following:

JUDGMENT

To directing the defendant to execute a sale deed in favour of the plaintiff in respect of suit properties within the period, failing which the plaintiff entitled to get the sale deed on execution of the defendant and alternative relief that direct the defendant to pay of Rs.3,00,000/- towards advance amount with interest at the rate of 12% p.a. from the varies dates of advance paid by the plaintiff from 08.04.2013 till the realization and directing the defendant not alienating or encumbering the suit property till the disposal of the suit and costs of the suit.

2. Heard plaintiff's side arguments. Records perused. On perusal of material records available in the bundle, it is seen that the plaintiff has filed the suit for specific performance against the defendant as per the sale agreement dated 08.04.2013. Summons was not duly served upon the defendant. Hence, paper publication was order and effected on 23.10.2018. After effecting the paper publication defendant called absent and set exparte.

3. After passing the exparte order, in order to prove the plaintiff's claim, she has been examined herself as PW1 and ExA1 to A4 were marked. It is the case of the plaintiff is that the defendant is absolute owner of the suit property. Whereby the defendant agreed to sell the suit property for a total sale consideration amount of Rs.5,00,000/-. The plaintiff also agreed to purchase the

suit property for a total sale consideration amount of Rs.5,00,000/-. The plaintiff has paid an advance amount of Rs.5,00,000/- on the date of agreement itself. The balance sale consideration amount to be paid within 30 months from the date of sale agreement. The defendant also agreed to receive the balance sale consideration amount within 30 months from date of sale agreement. As per the terms and conditions, the sale agreement was reduced into writing and the plaintiff and defendant were signed in the sale agreement in presence of the witnesses. After executing the sale agreement, the plaintiff has paid an additional advance amount of Rs.2,00,000/- on 12.04.2013. Subsequently, the plaintiff has paid an additional advance amount of Rs.50,000/- on 12.02.2016. The plaintiff has paid totally Rs.3,00,000/- towards a part of sale consideration amount. After that the plaintiff has approached the defendant to execute the sale deed in her favour by receiving balance sale consideration amount of Rs.2,00,000/-. The defendant wantonly evaded to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration amount. More over, the plaintiff is making arrangements to sell the suit property in favour of third parties. Hence, the plaintiff has issued a legal notice to the defendant on 12.07.2017. The said notice has been returned due to unserved. Eventually, the plaintiff has been filed for suit for specific performance against the defendant and seeking alternative relief to refund of advance amount with subsequent interest.

4. While the facts of being so, it is made to clear that the defendant is the absolute owner of the suit property. The defendant had agreed to sell the suit property for a total sale consideration amount of Rs.5,00,000/- to the plaintiff. Subsequently, the plaintiff and defendant had entered into an agreement of sale with respect of the suit property dated 08.04.2013. As per the sale agreement, the plaintiff has to pay the balance sale consideration amount within 30 months from the date of sale agreement. After executing the sale agreement, the plaintiff has been paid an additional advance amount of Rs.2,00,000/- on 12.04.2013. Subsequently, the plaintiff has paid an additional advance amount of Rs.50,000/- to the defendant. After that the defendant has also extended, the further period of six months to execute the sale deed from the date of last endorsement dated 12.02.2016. It is seen that after, the last endorsement dated 12.02.2016 the plaintiff has approached the defendant to

execute the sale deed by receiving the balance sale consideration amount of Rs.2,00,000/-. But the defendant wantonly evaded to execute the sale deed infavour of the plaintiff by receiving the sale consideration amount. After that the plaintiff had issued a legal notice to the defendant to execute the sale deed by receiving the balance sale consideration amount. The legal notice has been marked as ExA.2. On careful reading of ExA.2, it is found that after the sale agreement, the plaintiff was always ready and willing to perform her part of the contract. But the defendant failed to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration amount. From the above records the plaintiff has proved that the plaintiff and defendant had entered into an agreement of sale with respect of the suit property dated 08.04.2013. The plaintiff has paid a part of sale consideration amount of Rs.3,00,000/- to the defendant. As per the sale agreement, the defendant miserably failed to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration amount. Hence, the plaintiff has issued a legal notice to the defendant. The said notice has been returned due to unserved. Hence, the plaintiff is entitled to specific performance of the contract as per the sale agreement. Since, the defendant is entitled to specific performance of the contract, she is not entitled to return of the advance amount.

5. The plaintiff states that the defendant is making arrangements to sell the suit property in favour of third parties. But the plaintiff has not proved that the defendant is making arrangements to sell the suit property in favour of third parties. Hence, the plaintiff is not entitled to permanent injunction as prayed for.

In the result, suit is partly decreed and the defendant is directed to execute and register the sale deed in favour of the Plaintiff with respect of the suit property by receiving the balance sale consideration and deliver the possession of the suit property to the plaintiff. The Plaintiff is directed to deposit the balance sale consideration amount of Rs.2,00,000/- into the court within a month from this date. The suit is dismissed with respect of permanent injunction and alternative relief. No costs.

Dictated to the Steno Typist, typed by him directly, corrected and pronounced by me in the Open Court, on this day the 20th Day of November, 2018.

**Sd./-K.Dhayanithi,
Subordinate Judge,
Omalur.**

List of Witness on the side of Plaintiff:

PW1. Sujatha

List of Exhibits on the side of Plaintiff:

Ex A1	08.04.2013	:	Registered sale agreement between the plaintiff and the defendant in respect of the suit property with endorsements original
Ex A2	12.07.2017	:	Legal notice issued by the plaintiff to the defendant office copy
Ex A3	15.07.2017	:	Two returned covers originals
Ex A4	25.07.2017	:	Encumbrance certificate certified copy

List of Witnesses and exhibits on the side of Defendant: NIL

**Sd./-K.Dhayanithi,
Subordinate Judge,
Omalur.**