

IN THE COURT OF SUB JUDGE, AVINASHI.

Present: Tmt.R.Arulmozhiselvi.M.L.,

Sub Judge, Avinashi.

Wednesday, the 6th day of June 2018

Tiruvalluvar Aandu 2048, Sri Vilambi Varudam, the 23rd day of Vaikasi

O.S.No.:1/2018(Sub Court, Avinashi)

1. A.P. Shanmugaraj

2. Marathal

Plaintiff

//Vs//

1. Akkammal @ Pappathi

2. C.V. Raghupathy

3. C.V. Pasupathy

Defendant

This suit is taken on 02.01.2018 and numbered as O.S.No.1/2018 and coming on today for final hearing before me, and in the presence of Advocate Thiru.L. Prakash, for the Plaintiff and the Defendants being set exparte; upon perusing the plaint, and connected material papers and on hearing the arguments adduced by the learned counsel for the plaintiff and having stood over for consideration of this court till today this court delivers the following

JUDGEMENT

This suit is filled seeking the relief of Specific performance and for the cost of the suit.

2) The brief content of the plaint is as follows: The plaintiff contents that the 1st defendant is the mother of defendants 2 and 3. The suit schedule properties

are originally belong to S.R. Venkatachalagounder. Out of his free will and volition he had executed a Registered Will in-favour of his wife and children namely infavour of defendants 1 to 3 on 7.11.1989, and it was registered as document No.31/1989. The said will was come into force after the demise of late S.R. Venkatachala gounder and thus the defendants 1 to 3 became the absolute owners of the said properties and they were in peaceful possession and enjoyment of properties.

3) The plaintiff submits that the defendants 1 to 3 agreed to sell their proeperty. The plaintiffs are agreed to purchase the same. Therefore, the plaintiffs and defendants were entered into an agreement for sale on 17.12.2015. As per the agreement the defendants agreeing to sell their property, namely the suit mentioned property herein to the plaintiff for a sum of Rs.7,00,000/- (Rupees Seven Lakhs only)and on the same day the defendants 1 to 3 and the plaintiffs entered into a registered written agreement, and the defendants 1 to 3 have received a sm of Rs.5,50,000/- (Rupees Five lakh fifty thousand only) as advance from the plaintiffs. The said agreement was registered as document No.3724 on the file of Office of Sub-registrar, Kunnathur and they have delivered possession and enjoyment of the said property to the plaintiffs. In the document itself the defendant had produced the death certificate of S.R. Venkatachala gounder as document.

4) The plaintiffs states that, as per the terms of agreement, the period for payment of balance sale price was fixed at two years. Since the property is of immovable property, time is not an essence of contract.

5) The plaintiffs states that, they were always ready and willing to purchase the suit schedule mentioned property by paying the remaining part of sale consideration.

6) The plaintiffs herein several times, met the defendants and ask them

to execute the sale deed in their favour. But the defendants failed to do so. Hence finally the plaintiffs herein caused legal notice on 24.11.2017 calling the defendants to execute the sale deed in favour. The office copy of the notice is produced herewith. The defendants 1 and 2 refused to receive the notice and 3rd defendant received the notice. The returned cover and the served acknowledgement card is produced herewith. The plaintiffs state that, even after that the defendants are failed to execute the sale deed by receiving the balance sale price. Hence the plaintiffs have no other go except to approach this court for the relief of specific performance of contract.

7) The plaintiffs states that, they are in possession of the property as per the agreement. They paid the sale advance price to the defendants. Hence the time is not an essence of contract. The plaintiffs are always ready and willing to perform their part of contract. The plaintiffs are always ready and willing to perform their part of contract as per the sale agreement.

8) The defendant remained exparte. On the side of the plaintiff PW1 was examined and Ex.A1 to A7 were marked and no oral and documentary evidence on the side of the defendant.

9) To establish the plaintiff case the plaintiff has examined PW1 who has categorically spoken about the execution of the Ex.A1 by the defendant and has produced the following documents for proof of the same: (i.e) Ex.A1 Xerox copy of the sale deed of Will executed by late.S.R. Venkatachala gounder, late 07.11.1989; Ex.A2 Original of the sale agreement stands between the plaintiffs and defendants, dated 17.12.2015; Ex.A3 Office copy of the advocate notice issued by the plaintiff, dated 24.11.2017; Ex.A4 Original returned cover of the 1st defendant, dated 26.11.2017; Ex.A5 Original returned cover of the 2nd defendant, dated 26.11.2017; Ex.A6 Original served acknowledgement card of 3rd defendant, dated 26.11.2017; Ex.A7 Computer chitta extract of suit property, dated 28.12.2017. PW2

the attesor of Ex.A2 is examined by the plaintiff who has corroborated the evidence of PW1 and the due execution of the sale agreement Ex.A2. Hence, the above oral evidence of PW1 and PW2 read with the documentary evidence Ex.A1 to A7 establishes the plaintiffs case and there is no contra evidence on the side of the defendants to disprove PW1 evidence and Ex.A1 to Ex.A7. Hence, this court concludes that the plaintiff has established his case and the plaintiff is entitled to the relief of Specific Performance as prayed for,

10) In the result, the suit is decreed, i) Directing the defendant to execute the sale deed infavour of the plaintiff as per the sale agreement Ex.A2 within a month after receiving the balance sale consideration amount of Rs.1,50,000/-. For payment of sale consideration. Time one month.

ii) The plaintiff is also entitled to the cost of the suit.

Dictated to the Typist and typed by her directly in the laptop corrections were carried out by me, and the Judgement was pronounced by me in open court, on the 6th day of June 2018.

Sd.R.Arulmozhiselvi/-
Sub Judge,
Avinashi.

Plaintiff side Witness:-

PW1. A.P. Shanmugaraj
PW2. Eswaran

Plaintiff side documents:-

- | | | | |
|----------|------------|--|--------------|
| 1) Ex.A1 | 07.11.1989 | The deed of Will executed by late.S.R.Venkatachala gounder | - Xerox copy |
| 2) Ex.A2 | 17.12.2015 | The sale agreement stands between the plaintiffs and defendants. | - Original |
| 3) Ex.A3 | 24.11.2017 | The advocate notice issued by the plaintiff | - Original |

- 4) Ex.A4 26.11.2017 Returned cover of the 1st defendant - Original
- 5) Ex.A5 26.11.2017 Returned cover of the 1st defendant - Original
- 6) Ex.A5 26.11.2017 Served acknowledgment card of 3rd defendant - Original
- 7) Ex.A5 28.12.2017 Computer chitta extract of suit property - Original

Defendants side witness and documents: Nil

Sd.R.Arulmozhiselvi/-
Sub Judge,
Avinashi.

Compared with Original by Typist N.Nandhakumar.