

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUVANNAMALAI  
TIRUVANNAMALAI DISTRICT.

PRESENT: Tmt. **C. THIRUMAGAL, M.L.**,  
Principal District Judge, Tiruvannamalai.

Friday, the 4th day of January 2019

**ORIGINAL SUIT No.23/2018**

K. Pormannan

... Plaintiff

-Versus-

1. Balaji

2. Sudhakar

3. Kamini

4. Suganya

... Defendants

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This suit is coming for hearing before me on 04.01.2019 in the presence of Thiru.V.G. Murali, Advocate and Thiru. V.G. Ravichandiran, Advocate for the Plaintiff, Defendants were called absent and set exparte and upon perusing the plaintiff side evidence, exhibits and other relevant records, and having been stood over for consideration of this court, till this day, this court has delivered the following:

**JUDGMENT.**

Suit for directing the defendants to refund the advance amount of Rs.11,00,000/- paid by the plaintiff to the father of the defendants namely P.Ravindra chettiyar on 08.01.2015 under the suit agreement of sale duly entered in to by the plaintiff with the above said P. Ravindra chettiyar at Tiruvannamalai with interest at the rate of 12% P.A from the date of the suit agreement of sale dated 08/01/2015 till the date of the actual payment. For creation of charge over the suit property for the due repayment of the advance amount with subsequent interest.

2) **The averments contained in the plaint are briefly stated as follows:**

The defendants are the children of late P. Ravindra chettiar son of

Padmanaba chettiar of door no.76/283, Tiruvoodal street, Truvannamalai Town and the said Ravindra chettiar died intestate about 11-1/2 years back leaving behind his children namely the defendants herein as his legal heirs to succeed to his estate as per Act 30 of 1956. The said Ravindra chettiar during his lifetime represented to the plaintiff that the suit property morefully detailed in the schedule hereunder was allotted to the above said P. Ravindra chettiyar in the partition suit in O.S.No.92/1992 on the file of the learned Sub ude, Tiruvannamalai and the above said P. Ravindra chettiyar also represented that he was the absolute owner of the suit property and he was in exclusive possession and enjoyment of the suit property.

The above said P. Ravindra chettiyar requested the plaintiff to purchase the suit property at the rate of Rs.12,500/-per square foot and the said P. Ravindra Chettiyar further requested the plaintiff to pay advance amount of Rs.11,00,000/- for which the plaintiff obliged. The said P. Ravindra chettiyar further represented to the plaintiff that his daughters namely the defendants 3 and 4 have instituted a suit against the said P. Ravindra chettiyar with regard to the suit property and in that suit the said Ravindra chettiyar has got fir chances of success and the said legal proceeding is nearing completion and after the passing of the decree in favour of the said Ravindra chettiyar and also on discharge of the loans availed off by the said Ravindra chettiyar from Tamil Nadu Mercantile Bank to the extent of Rs.25,00,000/- on various dates namely Rs.5,00,000/- on 08.03.2006 and Rs.20,00,000/- on 25.10.2012 by means of equitable mortgage deed by deposit of title deeds pertaining to the suit property executed by the said P.Ravindra chettiyar in favour of the above said bank, the said

P.Ravindra chettiyar will receive the balance sale consideration from the plaintiff and execute the sale deed and register it and will deliver possession of the suit property to the plaintiff free of and free from encumbrances. The said P.Ravindra Chettiyar further represented to the plaintiff that he need 06 months time for completing the above tasks because of which the said P. Ravindra Chettiyar requested the plaintiff to enter in to an agreement of sale recording the above facts.

The plaintiff believing in the above said representation of the aboves said P. Ravindra chettiyar paid a sum of Rs.11,00,000/- as advance on 08.01.2015 and entered in to an agreement of sale dated 08.01.2015 with regard to the suit property at Tiruvannamalai to the knowledge of the defendant and the said suit agreement of sale dated 08.01.2015 was duly entered into by the above said P. Ravindra chettiyar and the plaintiff at Tiruvannamalai and apart from incorporating the above terms and conditions, the said suit agreement of sale contains other usual default clauses as well and it has been specifically convenedated by the above said P. Ravindra chettiyar that he will not encumber the suit property in any manner in favour of anyone to the detriment to the interest of the plaintiff, in view of the above task to be accomplished by the said Ravindra chettiar, it has been mutually agreed that "Time is not the essence of the Contract" and though the period for the performance of the contract has been fixed as 06 months commencing from 08.01.2015 and ending on 07.07.2015 neither the said Ravindta chettiyar nor his legal heirs i.e., the defendant herein till date have not performed their part of the contract to the commitment of the plaintiff has not commenced. As neither the said P. Ravindra chettiyar nor the

defendants fulfilled any of the promises made in the said suit agreement of sale despite the fact that the plaintiff has always been ready and willing to perform his part of the contract, the period fixed for payment of balance sale consideration has not commenced.

The said P. Ravindra chettiyar was evading to perform his part of the contract and had been giving evasive replies. To add insult to the injury, the plaintiff understands that the above said P. Ravindra chettiyar had preferred a vexatious complaint to the Tiruvannamali Town Police against the plaintiff as if he was offering threats. As a matter of fact event to the knowledge of the above said P. Ravindra chettiyar and the defendants, the plaintiff never offered any threats at any point of time and on the contrary the said P. Ravindra chettiyar tried to walk away with the advance amount of Rs.11,00,000/- paid by the plaintiff to the P. Ravindra chettiyar as above. The plaintiff appraised the Tiruvannamalai Town Police of the above facts and through them only. the plaintiff came to know that the above said P. Ravindra chettiyar has preferred the above vexatious complaint to the police suppressing the factum of the suit agreement of sale date 08.01.2015. Since the above said P. Ravindra chettiyar indulged in intimidating tactics by preferring false and vexatious complaints suppressing the factum of entering in to the suit agreement of sale dated 08.01.2015, the plaintiff issued legal notice dated 24.06.2015 narrating all the above facts calling on the above said P. Ravindra chettiyar to perform his part of the contract as ordained under the suit agreement of sale dated 08.01.2015. The said notice dated 24.06.2015 was evaded by the said P.Ravindra chettiyar knowing about

the contents of the said notice dated 24.06.2015.

the plaintiff knowing about the evading nature of the above said P. Ravindra chettiyar and also the fact that the said P. Ravindra Chettiyar attempted to alienate the suit property to the third parties, has issued paper publication dated 21.08.2015 in Dinamalar Daily eliciting the true events detailed above and the above said P. Ravindra chettiyar on seeing the same has issued reply notice dated 31.08.2015 with full of false allegation. The allegation made in the reply notice dated 31.08.2015 that the above said P. Ravindra chettiyar did not enter in to the suit agreement of sale and never received advance amount of Rs.11,00,000/- from the plaintiff and he did not know who the plaintiff is and he did not know who the plaintiff is and branding the suit agreement of sale as forged one are totally false. It is also equally false to allege that the said P. Ravindra chettiyar never received the above said notice dated 24.06.2015 as he was taking medical treatment in Chennai in his relatives house. The said P. Ravindra chettiyar in order to cheat the plaintiff and to run away with the advance of amount of Rs.11,00,000/- has made all possible vexatious allegations in the said reply notice date 24.06.2015 and the same was countered by the fitting reply issued as rejoinder notice dated 22.09.2015 to the counsel of the said P. Ravindra chettiyar.

3) On behalf of the defendants, defendants were called absent and set exparte.

4) The point for consideration in this suit is "**Whether the suit is to be allowed or not?**

5) **Point:** Heard. It was the case of the plaintiff that the suit being filed for specific performance on the basis of sale agreement dated 08.01.2015. The defendants were called absent and set exparte. To substantiate the plaintiff's claim, plaintiff was examined as PW1 and the Exhibits Ex.A1 to Ex.A6 have been marked. Ex.A1 is the Original Sale agreement deed dated 08.01.2015 executed between the plaintiff and the P. Ravindra chettiyar. Ex.A2 is the Legal notice dated 24.06.2015 issued by the plaintiff's Counsel to the above said P. Ravindra chettiyar Ex.A3 is the Returned postal cover. Ex.A4 is the Paper publication. Ex.A5 is the Reply notice dated 31.08.2015. Ex.A6 is the Legal notice dated 22.09.2015 issued by the plaintiff's counsel to the Ravindra Chettiar.

6) On behalf of the defendants, defendants were called absent and set exparte. A cumulative reading of the evidence of P.W.1 coupled with Ex.A1 to Ex.A6, the court decided on a considered view that the case of the plaintiff was established. Hence, the point is answered in favour of the plaintiff and against the defendants.

**7) In the result, the suit is hereby decreed with costs directing the defendants 1 to 4 to refund the advance amount of Rs.11,00,000/- to the plaintiff with the subsequent interest of 12% P.A to Rs.11,00,000/- from the date of suit sale agreement dated 08.01.2015 till the date of this judgment and the defendants 1 to 4 are further directed to pay the subsequent interest of 6% PA. to Rs.11,00,000/- from the next date of**

**this judgment till the date of realization.**

This Judgment directly dictated by me, typed by the steno-typist, corrected and pronounced by me in the open court, on this the 4th day of January 2019.

sd/ C. Thirumagal,  
Principal District Judge,  
Tiruvannamalai

**Plaintiff's side witness:-**

P.W.1. Thiru. Pormannan (plaintiff)

**Plaintiff's side exhibits:-**

Ex.A1	08.01.2015	Original Sale agreement deed executed between the plaintiff and the P. Ravindra chettiyar.
Ex.A2	24.06.2015	Legal notice issued by the plaintiff's counsel to the said P. Ravindra chettiyar
Ex.A3	--	Returned postal cover
Ex.A4	21.09.2015	Paper publication
Ex.A5	31.08.2015	Reply notice
Ex.A6	22.09.2015	Legal notice issued by the plaintiff's counsel.

**Defendants' Side witnesses and exhibits:-** Nil

sd/ C. Thirumagal,  
Principal District Judge,  
Tiruvannamalai

