

**IN THE COURT OF THE SUBORDINATE JUDGE AT ARNI,
TIRUVANNAMALAI DISTRICT**

Present : **Tmt. A.Daoudh Ammal, B.A., M.L.,**
Subordinate Judge, Arni

Tuesday, the 21st day of March, 2023

Original Suit No.166/2020
(CNR No.TNTM03-000268-2020)

K.Sadaiyandi ... Plaintiff

-Vs-

A. Udaiyakumar ... Defendant

This suit coming on 22.02.2023 before me for final hearing in the presence of Tr.K.Narayanan, Advocate for the Plaintiff and Tr.D.Thirugnanam, Advocate for the Defendant and thereafter the Defendant called absent and set exparte on 23.01.2023 and having stood over for consideration till this date, this court delivered the following

JUDGEMENT

Suit for Specific Performance directing the Defendant to execute and register the Sale Deed in favour of Plaintiff in respect of the suit schedule property after receiving the balance consideration amount Rs.50,000/- from the Plaintiff as per the Sale Agreement dated 21.08.2019 within such time as may be fixed by this court or else through the process of this court and in the alternative, directing the refund of the advance amount of Rs.4,00,000/- from the Defendant under the Sale Agreement with the interest at the rate of 12% per annum from the date of agreement till the date of realization with the cost as damages to the Plaintiff and for costs.

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2. Plaint Averments:

The Plaintiff has stated that on 21.08.2019, the Defendant had offered to sell away the schedule mentioned property to the Plaintiff and he also agreed to purchase the same and Sale Agreement was executed and duly registered under the Doc.No.5949/2019 between the Plaintiff and Defendant before the Sub Registrar, Arni and as per the agreement, the sale consideration was fixed as Rs.4,50,000/- and an Advance amount of Rs.4,00,000/- was paid to the Defendant by the Plaintiff on the date of Agreement. The sale should be completed within 3 years, but the time is not the essence of contract, such time formerly given to the Defendant for change of Patta from his father, but he did not take any kind of attempt to change the Patta till now and he is having intention to prolong the matter. But the Plaintiff is always ready and willing to perform his part of contract and called the Defendant on several occasion to receive the balance consideration amount of Rs.50,000/- to execute the Sale Deed and register the same infavour of the Plaintiff, but the Defendant was neither ready nor willing to perform his part of contract to receive the balance consideration to execute the sale deed and register the same. Aggrieved over the act of the Defendant, the Plaintiff had issued the Legal Notice on 16.06.2020 in which the date was fixed for registration. The Legal Notice was duly received by the Defendant on 22.06.2020 and the Plaintiff was present but the Defendant did not come on 24.06.2020 to the Sub Registrar office to receive the balance amount to execute and register the Sale Deed in favour of Plaintiff. So the Defendant has neither performed his part of contract nor issued any Reply till this date. Hence the Plaintiff has filed this suit for Specific Performance as against the Defendant before this court. In case if the court does not grant the relief of Specific Performance of contract in favour of the Plaintiff, alternative relief of directing the Defendant to refund the advance amount with interest at the rate of 12% per annum along with the cost the suit to the Plaintiff as damages since the inception of the said agreement and for costs.

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3. Written Statement Averments filed by the Defendant in brief:

The suit filed by the Plaintiff is improper, unjust, untenable in law and unsustainable on the facts. The Plaintiff is put to strict proof of all the allegations made in the plaint save those that are specifically admitted. The Defendant is an illiterate person. The Defendant had requested for a loan of Rs.4,00,000/- from the Plaintiff in the year 2019 and in consideration of the loan, the Defendant had sought to mortgage the suit schedule property in the name of Plaintiff. The Defendant being an illiterate person had consented for execution of Mortgage Deed and went to the office Sub Registrar, Arni and the Plaintiff had forced the Defendant to sign in the document. The Defendant got suspicious over this and brought his friend to read over the contents of the document and thereafter the Defendant was shocked after he came to know that the said document is a Sale Agreement and requested the Plaintiff to cancel the Sale Agreement. Immediately the Plaintiff had cancelled the Sale Agreement and handed over the same to the Defendant. Later the Plaintiff had brought another document being the Mortgage Deed and handed over Rs.4,00,000/- to the Defendant. The interest was fixed as 2% per annum. The Defendant had accepted the same and signed in the Mortgage Deed and paid the interest at the rate of 24% per annum till March 2020. The Defendant was unable to pay the interest thereafter due to Corona surge in the March 2020. Thereafter the Plaintiff had issued a Legal Notice to the Defendant and then only the Defendant came to know that the document signed by him is a Sale Agreement instead of Mortgage Deed. Immediately the Defendant approached the Plaintiff and enquired him for which the Plaintiff had stated that the Sale Agreement was executed only for security purpose and after payment of interest, the Plaintiff will cancel the Sale Agreement. The Defendant has stated to the Plaintiff that he is not having sufficient funds due to lock down and he will settle the loan amount after the lock down which was accepted by the Plaintiff. Hence the Defendant had not issued any Reply Notice to the Legal Notice issued by

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the Plaintiff. The value of the suit schedule property is Rs.25,00,000/- and the said property cannot be sold for Rs.4,00,000/-. The Defendant does not have any intention to sell the suit schedule property at any point of time. Further the Plaintiff was receiving interest at the rate of 24% P.A. The Defendant is ready to repay the loan amount to the Plaintiff if sufficient time is granted to the Defendant. But the Plaintiff has filed the suit against the Defendant only with an intention to grab the suit schedule property worth several lakhs of Rupees for only Rs.4,00,000/-. Hence this suit has to be dismissed with costs.

4. Issues No.1 to 4:

1. Whether the Plaintiff is ready and willing to perform his part of contract as per suit Sale Agreement?

2. Whether the Plaintiff is entitled for the relief of Specific Performance as prayed for?

3. Whether the Plaintiff is entitled for the alternative relief of Refund of Advance Amount as prayed for?

4. To what other relief the Plaintiff is entitled?

5. Heard. Records Perused. The Plaintiff Tr.K.Sadaiyandi is examined as PW1 on the side of Plaintiff. PW1 has adduced evidence by filing Proof Affidavit and Ex.A1 to Ex.A3 marked as Exhibits on the side of Plaintiff. Sale Agreement (original) dated 21.08.2019 is marked as Ex.A1, Copy of Legal Notice dated 16.06.2020 is marked as Ex.A2, Acknowledgment Card is marked as Ex.A3.

6. Issues No.1, 2 and 4:

It is pertinent to note that the Plaintiff has filed this suit against the Defendant for Specific Performance directing the Defendant to execute and register the Sale Deed in favour of Plaintiff in respect of the suit schedule property after receiving the balance consideration amount Rs.50,000/- from the Plaintiff as per the Sale

Agreement dated 21.08.2019 within such time as may be fixed by this court or else through the process of this court and in the alternative, directing the refund of the advance amount of Rs.4,00,000/- from the Defendant under the Sale Agreement with the interest at the rate of 12% per annum from the date of agreement till the date of realization with the cost as damages to the Plaintiff and for costs. It is to be noted that on hearing the learned counsel for the Plaintiff and on perusal of the Proof Affidavit of PW1 and Ex.A1 to Ex.A3 and on considering the fact that eventhough the Defendant had filed his written statement, later the Defendant had been set exparte on 23.01.2023, it is very clearly evident that the Plaintiff has stated that in accordance with the Sale Agreement dated 21.08.2019, he approached the Defendant with the balance sale consideration of Rs.50,000/- and asked the Defendant to register the Sale Deed in favour of the Plaintiff after receipt of the balance sale consideration but the Defendants refused to register the Sale Deed in accordance with the terms of Sale Agreement and therefore the Plaintiff had issued a Legal Notice to the Defendant to receive the balance sale consideration and register the Sale Deed in favour of the Plaintiff. Further the Plaintiff has stated that he is always ready and willing to perform his part of the contract by depositing the balance sale consideration of Rs.50,000/- before this Court as per the Sale Agreement dated 21.08.2019 and the Plaintiff had deposited the balance sale consideration of Rs.50,000/- before this court to show his ready and willingness, which clearly reveals that the Plaintiff has proved that he is always ready and willing to perform his part of the contract. Therefore this Court considers that the Plaintiff had proved his claim for Specific Performance with regard to the suit schedule property satisfactorily before this court. Hence this court considers that Issues No.1, 2 and 4 are decided in favour of the Plaintiff and the Plaintiff is entitled for the relief of Specific Performance as per Ex.A1 Sale Agreement with regard to the suit schedule property in favour of the Plaintiff with costs.

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7. Issue No.3:

It is to be noted that since Issue No.2 is decided in favour of the Plaintiff and the Plaintiff is entitled for the relief of Specific Performance as per Ex.A1 Sale Agreement with regard to the suit schedule property in favour of the Plaintiff, the Issue No.3 is decided as against the Plaintiff and the Plaintiff is not entitled for the alternative relief of refund of the Advance amount of Rs.4,00,000/- with future interest at 12% per annum from the date of the Plaint till realisation from the Defendant.

8. In fine, Issues No.1, 2 and 4 are decided in favour of the Plaintiff and Issue No.3 is decided as against the Plaintiff.

9. In the result, the suit is decreed as follows:

(i) The Plaintiff is entitled for the relief of Specific Performance as per the registered Sale Agreement dated 21.08.2019 and the Defendant shall register the Sale Deed in the name of Plaintiff after receipt of the balance sale consideration of Rs.50,000/- deposited before this court within 3 months from the date of Judgement and the Defendant shall deliver possession of the suit schedule property to the Plaintiff and in default the Plaintiff shall do so through due process of the Court.

(ii) The Plaintiff is not entitled for the alternative relief of refund of the Advance amount of Rs.4,00,000/- with future interest at 12% per annum from the date of the Plaint till realisation from the Defendant.

(iii) The Defendants shall pay the costs of the suit to Plaintiff.

Directly dictated by me to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court, on this, the 21st day of March, 2023.

(Sd/-A.Daoudh Ammal),
Subordinate Judge,
Arni.

Subordinate Judge, Arni.

Plaintiff Side Witnesses :

PW1 - Tr. K.Sadaiyandi

Plaintiff Side Documents.

Ex.A1 - Sale Agreement (original) dated 21.08.2019

Ex.A2 - Copy of Legal Notice dated 16.06.2020

Ex.A3 - Acknowledgment Card of Defendant

Defendant Side witnesses : NIL

Defendant Side Documents: NIL

(Sd/-A.Daoudh Ammal),
Subordinate Judge,
Arni.

Subordinate Judge, Arni.