

**IN THE COURT OF I-ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUVALLUR, TAMILNADU**

Present: Mr.**M.A.Kabeer**, M.L.,
I-Additional District and Sessions Judge, Tiruvallur

26.02.2025

O.S.No.452/2022

J. Rajendran

... Plaintiff

/Vs/

1. M. Ravi (*Died*)

2. M. Jebadoss

... Defendants

This suit has been brought before me for final hearing today in the presence of Mr.N. Udayachandar, Advocate for the Plaintiff, the 1st defendant having died and the 2nd defendant remaining ex parte, upon hearing the arguments of the plaintiff's side and perusing the case records, and the matter having stood over for consideration till this day, this Court delivers the following:

JUDGMENT

This suit has been filed for specific performance, seeking a direction to the defendants to execute the sale deed in favor of the plaintiff based on the registered agreement for sale dated 30.10.2019, upon receipt of the balance sale consideration of Rs.10,22,813/-. The plaintiff also seeks possession of the suit property and costs.

2. According to the plaintiff, the 2nd defendant is the owner of the suit property, having purchased it through a registered sale deed dated 02.04.2007. From the date of purchase, he has been in possession and enjoyment of the property. As the owner, he executed a registered general power of attorney deed in favor of the 1st defendant on 17.10.2007. Acting as the power agent of the 2nd defendant, the 1st defendant entered into and executed a registered agreement for sale with the plaintiff on 30.10.2019, under Doc No.2857/2019, on the file of the SRO, Perambakkam, for a total consideration of Rs.17,22,813/-. On the date of the agreement, the plaintiff paid an advance of Rs.7,00,000/- and agreed to pay the balance amount at the time of execution and registration of the sale deed by the 1st defendant. The 1st defendant also undertook to fulfill his obligations under the agreement within 11 months.

3. The plaintiff further contends that he insisted on several occasions that the 1st defendant complete the transaction, as he has always been ready and willing to perform his part of the contract. Despite repeated requests and demonstrations of readiness to pay the balance sale consideration, the defendants failed to execute and register the sale deed as per the agreement. This prompted the plaintiff to issue an advocate's notice dated 22.12.2020, calling upon the 1st defendant to fulfill his obligations under the agreement. The 1st defendant, after receiving the notice, orally

requested time due to health reasons. Even after a year, when the plaintiff approached the 1st defendant again with the balance sale consideration, the 1st defendant sought further time on flimsy grounds. Finally, on 30.06.2022, the plaintiff sent another legal notice to the 1st defendant, which was returned as "unclaimed" despite several delivery attempts. The plaintiff alleges that the 1st defendant willfully evaded his contractual obligations. The plaintiff further asserts that the time for performance was not the essence of the contract and that the suit has been filed within three years from the date of the sale agreement.

4. On perusal of the case file, it is found that the 1st defendant, through counsel, filed a written statement and subsequently died during the pendency of the case. The 2nd defendant remained ex parte.

5. In his written statement, the 1st defendant while acknowledging that the 2nd defendant is the owner of the suit property and that he was appointed as a power agent, the 1st defendant denied executing a registered sale agreement dated 30.10.2019 or receiving any advance amount. He further denied that the plaintiff was ever ready and willing to perform his part of the contract. He also refuted the issuance of legal notices by the plaintiff.

6. The 1st defendant further stated that in October 2019, a friend of him borrowed Rs.7,00,000/- from the plaintiff, for which interest was regularly paid at 24% per annum. When the plaintiff lodged a police complaint, the 1st defendant stood as a guarantor and agreed to execute a mortgage deed as security. He further stated that he handed over the original sale deed for the suit property as security but did not receive any amount from the plaintiff.

7. According to the 1st defendant, instead of a mortgage deed, the plaintiff fraudulently created a sale agreement. The 1st defendant, being illiterate, relied on the plaintiff's assurances and signed the document without understanding its contents. He contended that the suit property was worth Rs.75,00,000/- at the time of the alleged agreement for sale, and no one would sell such valuable property for a meager amount. He further stated that the plaintiff initially offered Rs.45,00,000/- for the suit property, but when the 1st defendant refused, the plaintiff fabricated the sale agreement.

8. The 1st defendant also asserted that after receiving notice dated 22.12.2020, he confronted the plaintiff, who agreed to cancel the sale agreement upon repayment of

the amount. However, the plaintiff remained silent for one and a half years and then filed this suit after a lapse of 34 months. The 1st defendant further stated that the current market value of the suit property exceeds Rs.1.5 crore and that the suit has been filed solely to usurp the property. He further contended that even assuming the agreement was genuine, time was the essence of the contract, and the suit is barred by limitation.

9. During the pendency of the suit, the 1st defendant died on 21.12.2023. Since he was merely a power agent of the 2nd defendant, who is already on record as the owner of the property, the plaintiff contends that there is no necessity to implead the legal heirs of the 1st defendant. The plaintiff argues that the 2nd defendant remains bound by the sale agreement dated 30.10.2019 and is therefore liable to execute the sale deed.

10. The primary point for consideration before this court is whether the plaintiff has established his right to enforce the agreement for sale dated 30.10.2019 and, consequently, whether he is entitled to the reliefs as prayed for.

11. To succeed in a suit for specific performance, the plaintiff must demonstrate (i) the existence of a valid and enforceable agreement, (ii) his readiness and willingness to perform his part of the contract, and (iii) the failure or refusal of the defendants to fulfill their contractual obligations.

12. To substantiate his claim, the plaintiff examined himself as PW1 and produced documentary evidence marked as Ex.A1 to Ex.A7. Ex.A1 is the registered agreement for sale dated 30.10.2019 executed by the 1st defendant, acting in his capacity as the power agent of the 2nd defendant. This document forms the foundation of the plaintiff's claim and establishes the contractual obligation undertaken by the 1st defendant to convey the suit property to the plaintiff. Ex.A2, the sale deed dated 02.04.2007, evidences the title of the 2nd defendant over the suit property, confirming that he is the lawful owner. Ex.A3, the registered general power of attorney deed dated 17.10.2007, establishes the authority conferred by the 2nd defendant upon the 1st defendant, empowering him to deal with the suit property.

13. The plaintiff further relied on Ex.A4 to Ex.A7 to demonstrate his continuous efforts to enforce the agreement and the defendants' failure to respond. Ex.A4 is the suit notice issued by the plaintiff to the 1st defendant on 22.12.2020, calling upon

him to execute the sale deed by receiving the balance consideration. The acknowledgment of this notice by the 1st defendant, evidenced through Ex.A5, indicates that he was duly informed of the plaintiff's demand. However, despite receiving the notice, the 1st defendant failed to respond, which raises an adverse inference against him. Subsequently, the plaintiff issued a further legal notice dated 30.06.2022, marked as Ex.A6, which was returned unclaimed. The returned postal cover has been produced and marked as Ex.A7, indicating that the 1st defendant deliberately avoided service of notice.

14. The unchallenged evidence of PW1, coupled with the documentary proof, establishes that the 1st defendant, acting on behalf of the 2nd defendant, had indeed executed the registered agreement for sale in favor of the plaintiff. The plaintiff has further established his readiness and willingness by depositing the balance sale consideration amount of Rs.10,22,813/- into the account of this court vide lodgement schedule filed on 04.08.2022. This unequivocally demonstrates his bona fide intention to complete the transaction in accordance with the agreement.

15. Given these facts, this court finds that the plaintiff has successfully discharged his burden of proof through cogent oral and documentary evidence. The agreement

for sale is valid and enforceable, and the defendants have failed to perform their obligations under the contract. Accordingly, this court concludes that the plaintiff is entitled to the reliefs sought, and the suit is liable to be decreed as prayed for.

16. In the result, this suit is decreed with costs, directing the 2nd defendant to execute the sale deed in favor of the plaintiff in accordance with the agreement dated 30.10.2019 by conveying the suit property within a period of three months from the date of the decree. The execution shall be carried out upon completion of formalities, considering the amount already deposited by the plaintiff into this Court's account. The 2nd defendant shall be entitled to the said amount along with any interest accrued thereon, if any.

Dictated to typist, directly typed by her in the computer, corrected, and then pronounced by me in the open court on this the 26th day of February, 2025.

Sd/-M.A.Kabeer/-
I -Additional District and Sessions Judge, Tiruvallur

Annexures:-

Plaintiffs' side Witness:

PW1 : Rajendran

Plaintiffs' side Exhibits:-

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| Ex.A1 | Registered Agreement for sale dated 30.10.2019 |
| Ex.A2 | Registered sale deed dated 02.04.2007 |
| Ex.A3 | Registered power of attorney deed dated 17.10.2007 |
| Ex.A4 | Copy of suit notice dated 22.12.2020 |
| Ex.A5 | Postal Acknowledgment card |
| Ex.A6 | Copy of suit notice dated 30.06.2022 |
| Ex.A7 | Returned postal cover |

Defendants side witnesses and exhibits: -Nil-

Sd/-M.A.Kabeer/-
I -Additional District and Sessions Judge, Tiruvallur