

BEFORE THE ADDITIONAL MASTER-II

HIGH COURT, MADRAS

C.S.No. 78 OF 2022

Date : 03.04.2024

Time: 11.40 A.M.

Name : S.Raghul (PW1)

PW1 Cross Examined by Learned counsel for the Defendant Mr.E.Prabu.

Solemnly affirmed:

Q1: Are you aware of the fact of this case?

A: Yes.

Q2: Have you read the contents of the Complaint and written statement in this suit?

A: Yes.

Q3: Who gave instructions for preparation of the complaint?

A: Myself.

Q4: Who has accompanied you today before this Court?

A: I am alone come here.

Q5: What is your nature of business?

A: I am doing business promoting and construction of building.

Q6: Are you having any company or concern in respect of your business?

A: Yes, Linga Homes.

Q7: Have you stated in your complaint and proof affidavit that you have floated a company by name Linga Homes?

A: No, since it was not started at the time of filing.

Q8: Whether your father also doing business on promotion and construction of buildings?

A: Yes. He is doing his business in the name of Sri Lakshmi Homes and earlier Bakiya builders.

Q9: I put it to you that you have not filed any documents in support of your statement that you and your father are doing construction business before this Hon'ble High Court?

A: Yes.

Q10: How do you come to know the defendant?

A: He was introduced by one Vishwanathan broker, who is doing land broker.

Q11: Whether the said Vishwanathan is known to you?

A: No, he is known to my father.

Q12: Have you approached the defendant only through the above said Vishwanathan?

A: Yes.

Q13: When did you approached the defendant?

A: On 25.12.2021

Q14: Where did you meet the defendant?

A: I met her at her house.

Q15: When did you finalized the terms of the sale agreement with the defendant?

A: That on 25.12.2021 concluded our sale agreement in oral and I paid an advance also on the same day.

Q16: On 25.12.2021 are you aware that the property is already under mortgage with the Cholamandalam Finance Limited?

A: Yes.

Q17: I put it to you that you are aware of the mortgage of the suit property even prior to meeting the defendant through Mr.Vishwanathan.

A: Yes.

Q18: I put it to you that you are in the habit of identifying the properties which are mortgaged by the owners and approaching them to purchase taking advantage of the situation of the property owners.

A: No. I have no advantage on that.

Q19: Ex.P1 is shown to the witness. You have said that you have finalized the terms of contract on 25.12.2021 itself and therefore when did the Ex.P1 agreement was prepared and by whom?

A: Ex.P1 was prepared by myself along with my father between 25.12.2021 to 01.01.2022

Q20: Where it was typed?

A: It was typed at my office which was situated at Choolaimedu, Chennai.

Q21: I put it to you that you have taken the Ex.P1 agreement to the defendant's house only on 01.01.2022.

A: Yes. Witness adds: The defendant signed in the same at my office.

Q22: When you have said that you met the defendant on 01.01.2022 whether the defendant signed the Ex.P1 sale agreement on the same day and where did she signed it?

A: She signed at my office after she had received the copy of Ex.P1.

Q23: On 01.01.2022 at what time you met the defendant and handed over the Ex.P1 copy and at what time she came to your office and signed the same?

A: I met the defendant in the morning and she signed Ex.P1 in the afternoon on the same day in my office. Witness adds: At that time it is my father's office.

Q24: Who are all accompanied the defendant on 01.01.2022 to your office?

A: The defendant was accompanied by Vishwanathan and Purushothaman, both are brokers.

Q25: Whether both the brokers were either known to you or to your father?

A: Vishwanathan alone was known to my father but we do not know who is Purushothaman.

Q26: Is Purushothaman friend of Vishwanathan?

A: Yes.

Q27: Have you gone through Ex.P1 agreement?

A: Yes.

Q28: Ex.P1 is shown to the witness. Is it stated in Ex.P1 that the suit property was under mortgage with the Chola Mandalam Finance?

A: Not mentioned.

Q29: Either in your plaint or your proof affidavit or in your notice is it mentioned that the copy of Ex.P1 was furnished to the defendant beforehand to enable her to go through the agreement and later sign the agreement by knowing the contents.

A: No. It is not mentioned.

Q30: At the time of signing the Ex.P1 agreement who were all present on your behalf?

A: Myself, my father and brokers.

Q31: Have you produced any document to show the market value of the property on the date of execution of Ex.P1 before this Hon'ble High Court?

A: No. We do not have any document regarding market value.

Q32: I put it to you that the market value of suit property at the time of execution of Ex.P1 is Rs.1.60 crores.

A: No. Witness adds: It's market value Rs.1.10 crore.

Q33: I put it to you that only of the condition that you will provide the flat in Indrani Lane, Aiyyavu Naidu colony Aminjikarai, Chennai – 23 the defendant had agreed to sell the suit property to you.

A: Yes.

Q34: I put it to you that since the property was under mortgage and by virtue of the offer made by you that the defendant upon bonafide belief that she get money and also get new flat for her residence as stated above had come forward to sell the suit property to you.

A: I only expressed my offer but I do not know the intention of the defendant.

Q35: I put it to you that you have agreed to pay the sale consideration by virtue of cash consideration on one part and new flat as mentioned above on the other part to the defendant.

A: Yes.

Q36: Ex.P1 is shown to the witness. Is it correct to state that in Ex.P1 under clause 2 separate agreements / deeds for purchase of the afore said flat will be made between the plaintiff and the defendant?

A: Yes.

Q37: What is the terms with respect to cash payment and value of the flat specified in the Ex.P1 sale agreement?

A: Cash Rs.50 lakhs and the rate of flat is Rs.60 lakhs.

Q38: In your Ex.P1 have you enclosed any document showing the specification of the building which was said to be allotted to the defendant for the value of Rs.60 lakhs as per Ex.P1 sale agreement?

A: No.

Q39: Have you anywhere in your plaint or proof affidavit or pre suit notice stated to have furnished the defendant either at the time of entering Ex.P1 sale agreement or subsequently that you have furnished the specification of the flat agreed to be allotted to the defendant by way of the written document?

A: No. It is existing building.

Q40: Have you specifically stated in your plaint and proof affidavit and pre suit notice that the flat which was agreed to be allotted is existing building?

A: It is not mentioned specifically.

Q41: I put it to you that have you specified in your plaint, proof affidavit or Ex.P1 or pre suit notice that you have handover the plan, planning permit and nature of construction by virtue of written document to the defendant?

A: Not mentioned since it was not handed over. But the defendant had checked it.

Q42: I put it to you that you have in your pleading, proof affidavit or in Ex.P1 or in the pre suit notice you have not specifically stated that you have shown the plan, planning permit and the other connected document in respect of alleged existing building to the defendant and she has perused and returned the document to you as was now deposed by you?

A: No.

Q43: I put it to you that you as an after thought improve your statements and giving false evidence.

A: I deny.

Q44: According to you there was existing building which was offered to the defendant on the date of Ex.P1. Have you produced any such document in support of existing building before this Hon'ble High Court in this case?

A: No.

Q45: Proof affidavit is shown to the witness. According to you at what time the flat which was proposed to be allotted to the defendant was made ready as per your statement in your proof affidavit?

A: It is mentioned as "it was made ready in the month of February 2022 and the same was conveyed to the defendant."

Q46: I put it to you that the agreement between you and the defendant in terms of Ex.P1 agreement that you will allot a new flat in Aiyyavu colony as mentioned above in terms of the Ex.P1 and that is why you have said the flat was made ready during February.

A: No.

Q47: How much amount have you paid to the defendant on the date of entering into the Ex.P1 sale agreement?

A: Prior to Ex.P1 sale agreement I paid to Rs.2 lakhs by way of cheque t and the execution Ex.P1, I have paid Rs.5,000/- to the defendant.

Q48: As per your statements in the recitals in Ex.P1 that on the date of signing this Ex.P1 as per the same you have stated you have paid Rs.5 lakhs to the defendant is incorrect?

A: Yes, it is incorrect. We transferred the amount through NEFT and it was reached her on the next day.

Q49: According to you when did you pay the remaining amount of Rs.3 lakhs as per Ex.P1?

A: I do not remember. Since we made several NEFT transfers.

Q50: According to you for what reasons you were not able to pay the balance Rs.3 lakhs to the defendant on 01.01.2022 itself as per the recitals in the Ex.P1?

A: Since the defendant was afraid to take away the amount by cash we did not hand over the amount by cash.

Q51: Have you stated the alleged reasons in your plaint, proof affidavit or notice?

A: No.

Q52: What is the reason for non payment of the balance amount of Rs.3 lakhs to the defendant as per your statement in Ex.P2 complaint given to the police?

A: It is mentioned as on 01.01.2022 itself through online transfer we have transferred the amount to the defendant however the said online transaction could not be completed and therefore I transferred Rs.3 lakhs on 03.01.2022. Witness adds: That both are correct. The defendant demanded NEFT transfer which was not forwarded and therefore we transferred the same by way of NEFT.

Q53: Are you aware what is the extent of the loan dues with the Cholamandalam Finance company in respect of suit property on the date Ex.P1 agreement?

A: I do not know.

Q54: Is it correct to state that the defendant apart from getting flat under Ex.P1 the cash part of consideration was required for her towards discharge of the mortgage created with Cholamandalam Finance?

A: I am not aware.

Q55: On what basis you have said in your Ex.P2 complaint that the defendant demanded Rs.50 lakhs towards cash component for discharging the mortgage while entering Ex.P1 sale agreement on 01.01.2022 when you have said that you are not aware of the loan dues?

A: I do not know why the defendant wanted Rs.50 lakhs but I am aware she is in debt and facing the problems.

Time : 12.55 P.M.

Time : 03.20 P.M.

Q56: In your pleadings and proof affidavit you have stated that the amount of Rs.50 lakhs being portion of sale consideration was paid between 01.01.2022 to 16.01.2022 by way of several piece meal payments, what is the reason for such piece meal payment?

A: It was received from my parents bank account and therefore it could not be paid in lump sum.

Q57: According to your statement you did not have cash in hand but the resources only available at the bank?

A: Yes.

Q58: According to you, you did not take any efforts to withdraw the cash and make payment and you made only transfers through NEFT ?

A: Yes.

Q59: What is the reason for not withdrawing the amount from bank and make a payment?

A: Since NEFT was convenient for us.

Q60: Ex.P1 is shown to the witness. Is it correct to state that as per Ex.P1 the sale transaction should be completed within 3 months as agreed between parties?

A: Yes.

Q61: Is it correct to state that time is the essence of contract as per the agreement?

A: Yes.

Q62: Is it correct to state that as per the sale agreement you have to perform your part of obligation of providing a flat by furnishing photocopies of title document, encumbrance certificate, documents in respect of construction of flat and completion certificate of the flat in Aiyavu Colony to the defendant so as to enable her to verify encumbrance free title and legally valid property rights for the flat agreed to be conveyed to the defendant as per Ex.P1.

A: Yes.

Q63: Is it correct to state that you have paid Rs.50 lakhs as on 18.01.2022 and the defendant agreed to handover the original title document of the suit schedule property within 15 days after releasing the same from the mortgagee according to your claim.

A: Yes.

Q64: Is it correct to state that when the defendant was called upon to produce the original title document as part of your contractual obligations simultaneously you should handover all the documents mentioned in the earlier question to the defendant with respect to the flat and also prepare agreement of sale and construction agreement and forward it the defendant?

A: Yes.

Q65: Is it correct to state that in your plaint, proof affidavit and pre suit notice you have stated that after payment of Rs.50 lakhs on 18.01.2022 the defendant failed to handover the original title deed in respect of the suit schedule property and dragged time without complying with her promise however nowhere in the above plaint, proof affidavit and in pre suit notice you have stated that you have offered or ready to furnish all the title documents and other documents mentioned above in respect of the flat in question to the defendant and also called upon her to enter into the sale agreement and construction agreement with respect to the flat agreed to be provided to her as per Ex.P1 sale agreement?

A: Yes.

Q66: You have said in your pleading and proof affidavit that you have visited the defendant at her house on 31.01.2022, whether you alone have visited the defendant or anyone accompanied you?

A: Myself and my father visited the defendant at her house.

Q67: Is it correct to state that on 31.01.2022 when you visited the defendant at her house you have stated that you have demanded the original title document with respect to the suit schedule property from the defendant and nothing else?

A: Yes.

Q68: Is it correct to state that even on 31.01.2022 when you visited the defendant at her house, you have not stated that you were having all the documents mentioned above in respect of the flat in question in your hands and it was offered to the defendant or called upon the defendant to sign agreement of sale in respect of the flat either in your plaint, proof affidavit and pre suit notice?

A: Yes.

Q69: On 31.01.2022 when you and your father visited the defendant at her house the defendant alone was available in her house. Is it correct?

A: Yes.

Q70: Is it correct to state that in your plaint you have stated that the defendant refused to give the original title document and shouted at you?

A: Yes.

Q71: Is it correct to state that you have not stated in your plaint, proof affidavit and pre suit notice any reason as to why the defendant refused to give the title document of the suit schedule property or for shouting at you?

A: Yes.

Q72: Have you read the written statement filed by the defendant?

A: No.

Q73: Is it correct to state that on 31.01.2022 you have barged into the house of the defendant along with rowdies and threatened her to handover the original title documents of the suit schedule property and warned her of your influence with the police as stated by her in her written statement?

A: I deny.

Q74: Are you fully aware of the fact that the transaction that you had with the defendant is purely a civil transaction with specific legal remedies?

A: Yes.

Q75: I put it to you that even after the incident allegedly took place on 31.01.2022 you did not issue any notice or letter to the defendant stating that you are ready and willing to perform your part of the contractual obligation in respect of flat agreed to be allotted to the defendant and in performance of the same you are ready and willing to give the photocopies of title documents in respect of the flat agreed to be allotted to the defendant and also the draft sale agreement and construction agreement in respect of the flat offered to the defendant.

A: Yes.

Q76: Then why did you approach the police on 02.02.2022 though you are aware that it is only a civil issue?

A: Since the defendant informed there was murder case registered against her son fearing for this we went to the police.

Q77: Have you stated the alleged criminal case registered against the defendant's son or alleged claim made by the defendant regarding her son's criminal complaint in your plaint, proof affidavit and pre suit notice?

A: No.

Q78: Ex.P2 is shown to the witness. Have you stated about that allegation regarding criminal complaint and threat made in that respect, in the criminal complaint Ex.P2?

A:No.

Q79: I put it to you that now you have as an afterthought, invented false allegation as if the defendant threatened that her son is already holding a criminal case for murder as alleged by you now.

A: I deny.

Q80: Is it correct to state that even by lodging Ex.P2 complaints before the police you have demanded the defendant to handover the original title document?

A: Yes.

Q81: Is it correct to state that you have not stated anything about the happenings before the police or the result of the police complaint after the police enquired both the parties?

A: No action was taken by the police hence i have not stated anything.

Q82: Have you met the defendant after Ex.P2 and if so on which date?

A: Thereafter we went to meet the defendant at her house during 2nd week of March 2022, but the defendant is not available only her daughter is available. Witness adds: We went again to the house of defendant on the request of daughter of defendant and after that we met the defendant.

Q83: Whether the previous statement made by you in answer to question no.82, during 2nd week of March you have visited the defendant is correct or the statements you have made in the plaint and proof affidavit that you allegedly visited the defendant on 09.04.2022 and she was not available and as allegedly instructed by her daughter therefore you have visited again on 10th April, 2022. Which of these statement is correct?

A: Since 2 years was passed, I forget. It is only during April 2022 we visited and not in March as was now stated in answer to question no.82.

Q84: Is it correct to state that after Ex.P2 you have made an attempt to visit the defendant only on 09th and 10th of April 2022 as per the allegation made in the plaint.?

A: No, even prior to that we tried to contact the defendant through phone but she is not available in her house.

Q85: I put it to you that you have not stated that you have attempted to contact the defendant over the phone and she allegedly not available in her house and therefore you could not visit her, either in your plaint, proof affidavit or pre suit notice?

A: No.

Q86: I put it to you that it is only as an afterthought that you are making the statement as if you have taken efforts to meet her from 02.02.2022 till 09.04.2022.

A: I deny.

Q87: Is it correct to state that you did not take any legal steps to issue notice to the defendant seeking for specific performance expressing your readiness and willingness as per the terms of the contract from 02.02.2022 till the alleged attempt to meet the defendant on 09.04.2022?

A: No.

Q88: Have you filed any document before this Hon'ble High Court that you have prepared any sale agreement or construction agreement favoring the defendant in respect of the flat agreed to be given to the defendant?

A: No. But we have prepared.

Q89: Have you stated the details as to whether you have prepared the construction agreement and sale agreement and if so on which date, in the plaint and proof affidavit?

A: NO.

Q90: I put it to you that it is a false statement made by you as an after thought?

A: I deny.

Q91: Have you stated in your plaint, proof affidavit and pre suit notice that at any point of time you have asked the defendant to visit and see the alleged flat agreed to be given to her in Aiyyavu colony as per terms of Ex.P1.

A: No. It was not stated.

Q92: You are fully aware of the fact that the agreement is valid only for the period 90 days. Is it correct?

A: Yes.

Q93: I put it to you that at the time of negotiating and entering into the Ex.P1 you have informed the defendant that you are constructing an apartment in Aminjikai and induced the defendant that you will give a luxurious apartment in Flat no.F2 in the 1st floor 10/20, 1st floor, Indrani Nagar, Aiyyavu colony with built up area of 630 sq.ft together with 263 UDS with proper title and litigation free?

A: No.

Q94: Whether you are denying all the statement made in question no.93 or part of it?

A: Part of it. I am not stated as it is luxurious apartment and it is a building under construction and it is existing building.

Q95: according to you is it your case that you wanted to provide the defendant only a 2nd hand flat?

A: Yes.

Q96: Have you stated so in Ex.P1 agreement that what was agreed to be allotted to the defendant was only a 2nd hand flat

A: I have not stated so.

Q97: I put it to your that from your statement now it seems that you have attempted to cheat the defendant and refused to give flat to her as per the Ex.P1 agreement and you have allegedly offered only a 2nd hand flat.

A: No. Witness adds: I was even willing to offer Rs.60 lakhs through DD.

Time : 04.35 P.M.

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be true and correct and signed before me.

ADDITIONAL MASTER-II