



A.S.Nos. 39 & 40 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

A.S. Nos.39 & 40 of 2021

and

C.M.P.No.2682 of 2021

S.Ramalingam
S/o. Sadayapan

... Appellant in
both A.S.s

Vs

C.Pushpakesh,
S/o. Chengalvarayan

.. Respondents in
both A.S.s

Prayer in A.S.No.39 of 2021 :- This First Appeal has been filed under Section 96 read with Order 41 Rule 1 of C.P.C., against the judgment and decree dated 26.08.2020 made in O.S.No.11 of 2016, on the file of learned II Addl. District Court, Ranipet, Ranipet Dt.

Prayer in A.S.No.40 of 2021 :- This First Appeal has been filed under Section 96 read with Order 41 Rule 1 of C.P.C., against the judgment and counter claim decree dated 26.08.2020 made in O.S.No.11 of 2016, on the file of learned II Addl. District Court, Ranipet, Ranipet Dt.



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For Appellant
in both A.S.s

: Mr.R.Baskaran
Senior Advocate for
Mr.R.Rajaramani

For Respondent
in both A.S.s

: Mr. R.Ravichandran
for Mr.G.Gowri Shankar

COMMON JUDGEMENT

The appellant herein is the defendant in the suit in O.S.No.11 of 2016 on the file of II Addl. District Court, Ranipet and a counter claim filed by him under Order 8 Rule 6-A of C.P.C. along with written statement in the said suit.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The said suit in O.S.No.11 of 2016 was filed by the respondent/plaintiff for the relief of specific performance directing the defendants to execute the sale deed as per the Sale Agreement dated 17.10.2014 along with permanent injunction. Before the trial court, both



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parties adduced oral and documentary evidence. On considering the same, the trial judge decreed the suit in favour of plaintiff granting the relief of specific performance directing the defendant to execute the sale deed in favour of plaintiff and dismissed the counter claim filed by the defendant. Aggrieved over the same, the defendant preferred this appeal against the suit decree as well as counter claim.

4. The learned counsel appearing for the appellant/defendant would submit that the trial judge failed to take note of the fact that the plaintiff, who was an advocate for P.W.2, appellant's vendor and sailing with her, he created a document and claimed right over the property belongs to the defendant. But, without appreciating the evidence of P.W..2, the trial judge decreed the relief as prayed for in favour of plaintiff, as such is totally unfair and the same is liable to be set aside. He would also submit that the trial judge erroneously concluded that there cannot be any oral evidence belittling the documentary evidence and upheld the validity of alleged sale agreement forgetting the settled law that an enquiry can be conducted into the reality of written deed and oral evidence is admissible in order to prove the real transaction between the parties and the same was also proved by the



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defendant. Without appreciating the same, the trial judge decreed the suit based on the agreement as such is totally illegal and the same is liable to be set aside.

5. The learned counsel for defendant would further submit that the trial judge failed to observe the conduct of plaintiff and also not appreciated the legal proposition that the plaintiff, who approached the court has to prove his case and he cannot fall upon the weakness of defendant. Without appreciating the said legal proposition and relying the weakness of defendant's case, the trial judge decreed the suit in favour of plaintiff as such is totally perverse and liable to be set aside. Further, he would also submit that the defendant proved that the signature obtained by the plaintiff in the agreement by giving false representation and the same was proved by oral and documentary evidence. Therefore, he prayed to accept his counter claim by declaring the said sale agreement as null and void and not binding the defendant.

6. The points to be decided are as follows :-

- (i) whether the plaintiff is entitled for the relief of specific performance as he prayed for?



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(ii) Whether the plaintiff approached the court with clean hands?

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(iii) Whether the defendant is entitled for the counter claim?

(iv) Whether the sale agreement was obtained fraudulently by the plaintiff under the guise of power of attorney?

(v) Whether the sale agreement is to be declared as null and void.

The suit property as described in the plaint schedule is situated in Survey No.680/A1, Brahmin Street, a vacant site measuring an extent of 1935 sq.ft.

7. Brief facts of the case is as follows :-

According to the plaintiff, he entered into a sale agreement to purchase the suit property belonging to the defendant on 27.10.2014 for the consideration of Rs.10,15,000/- and paid a sum of Rs,9,00,000/- as advance and the remaining sum of Rs.1,15,000/- is to be paid within three months and time is the essence of the contract. Though the plaintiff was ready and willing to perform the contract, the defendant was not cooperating. Hence, he issued notice on 07.01.2016, but no reply was given by the defendant. Hence, the suit.



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8. By filing written statement, the defendant would content that the plaintiff is a practicing advocate and the suit property along with residential building bearing Door No.28, Brahmin Street, Ammoor Village, Walajapet with a total extent of 3510 sq.ft. originally belong to one Padmavathi, who was a retired Government servant and out of the said vacant land excluding the house, measuring an extent of 2250 sq.ft. is the subject matter of the suit property and the same was purchased by the defendant from the power agent of Padmavathi viz., Ramesh on 05.07.2013. Before that, Padmavathi agreed to sell the suit property to the defendant's wife for a sum of Rs.21,50,000/- and paid a sum of Rs.19,50,000/- as advance. Thereafter, his wife assigned her rights in favour of defendant. Accordingly, the defendant purchased the suit property from Padmavathi through her power agent. Thereafter, Padmavathi agreed to reside in the property as a tenant, but she refused to vacate and hand over possession and she also planned to sell the property in order to defraud the defendant. She sent legal notice and she also sent caveat petitions. As the plaintiff is residing nearby the property, he approached him in good faith and requested him to amicably solve the entire issue, he seems to be counsel for the said



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Padmavathi. For that, the plaintiff has assured and insisted the defendant to execute power of attorney and believing that, he signed in the document, which was not read over at the time of registration of document on 27.10.2014. Subsequently, on 07.01.2016 he received a notice and came to know that plaintiff manipulated the document as if the defendant agreed to sell his property, thereby he claimed that the alleged agreement is created by the plaintiff by abusing his position as if he is not aware of the contents of document and forced to sign in the document without going through the contents. Hence, he prayed to set aside the agreement as null and void and dismiss the suit.

9. The learned counsel for plaintiff argues that before the trial court, the plaintiff proved the sale agreement as well as his readiness and willingness to perform his part of agreement and the same was rightly appreciated by the trial judge by granting the relief of specific performance, which needs no interference and prayed to dismiss the appeal as no merits. Further, he would also submit that the validity of sale agreement also proved, on the other hand, the defendant failed to establish that the signature in the agreement was fraudulently obtained from him and the trial



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judge also analysed all the evidence and records and granted the decree in favour of plaintiff, thereby, he prayed to dismiss the appeal as no merits.

10. Heard and considered rival submissions made by learned counsel for appellant as well as respondent and perused the records.

11. On perusal of records, the entire facts reveal that originally the suit property along with RCC Building with a total extent of 3510 sq.ft. belongs to Padmavathy, PW.2, a retired Government Teacher. The defendant claims that he purchased the suit property from the said Padmavathi for a valid consideration on 05.07.2013 and permitted her to reside in the property as a tenant for a monthly rent, but she failed to pay rent. Hence, he approached the plaintiff, who appeared as counsel for the said Padmavathi and also requested him to settle the issue, for that, he agreed, but insisted him to give a power of attorney and to get his signature in the document. Believing that, this defendant signed in the in the power of attorney, but only after receipt of notice, he came to know that the plaintiff misrepresented and fraudulently obtained signature in a sale agreement by abusing his position, thereby he denied the sale agreement.



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12. It is an admitted fact that the plaintiff is an advocate by profession and also he was a counsel for the said Padmavathi. According to plaintiff, the defendant agreed to sell vacant suit of property for a sum of Rs.10,15,000/- and a sale agreement was executed by the defendant, in which, Padmavathi, the original owner, is also one of the witness. Now in order to avoid the execution of sale deed, the defendant made a false allegation against him as if he misrepresented and obtained signature in the document fraudulently. As the plaintiff approached the court for the relief of specific performance, the initial burden is casted upon him to prove the sale agreement as genuine one and the same was executed by the defendant by receiving the advance amount on 27.10.2014. The said sale agreement was marked as Ex.A1 on the side of plaintiff. The contention of defendant is that he is an illiterate person and without knowing the recitals of document, he was made to sign in the said document. To disprove the same, the plaintiff examined one Bharathi, School Headmaster as P.W.3 and as per her evidence, he was studied upto 5th Std. in Ammoor Panchayat Union Primary School. Apart from that, the plaintiff is bound to prove the terms of sale agreement between parties. At the time of signing the document in



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Ex.A1, he alone was present in the advocate office of plaintiff and no witness was present. But, to prove the execution of agreement, one of witness viz., Padmavathi, original owner of the property was examined as P.W.2 on the side of plaintiff. As per her evidence, she has stated as follows:-

“வா.சா.ஆ.1 பத்திரம் பதிவு செய்யப்பட்டதா பதிவு செய்யப்படாததா என்ற விவரம் எனக்கு தெரியாது. நான் கையெழுத்து போடும்போது நானும் என்னுடைய சகோதரியும்தான் இருந்தோம். புஷ்பகேஜ் என்னுடன் இருந்தார். என்னையும் என் சகோதரியும் தவிர வேறு யாரும் சாட்சி கையெழுத்து போடவில்லை. அதை நானும் பார்க்கவில்லை.”

Therefore, the evidence of P.W.2 would support the case of defendant rather the plaintiff would support the contention of defendant that while obtaining signature in Ex.A1 document, he alone was present and no witness was present. Therefore, the plaintiff failed to prove that the defendant signed in the agreement in the presence of witness of Ex.A1.

13. P.W.2 is the attestor of Ex.A1 agreement and she was examined in order to prove the execution of document by the plaintiff. But, considering the evidence of P.W.2, it clearly reveals that she was the original owner of entire property and she is a retired Government Teacher,



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living alone along with her disabled sister without male support and she was cheated not only by the plaintiff, but also by the defendant. The evidence of P.W.2 is extracted below, which would clearly establish that she was cheated by all these persons:-

“நான் என் சொத்தை மீட்டெடுப்பதற்காக வழக்கை தாக்கல் செய்துள்ளேன். அந்த வழக்கை புஜ்பகேஜ் தான் தாக்கல் செய்தார், அவர்தான் எனக்கு வக்கீல். வா.சா.ஆ.1 ஒப்பந்த பத்திரம் கையில் எழுதப்பட்டதா தட்டச்சு செய்யப்பட்டதா என்று எனக்கு தெரியாது. எத்தனை மணிக்கு நாங்கள் கையெழுத்து போட்டோம் என்று ஞாபகம் இல்லை. உங்கள் சொத்தை திருப்பி வாங்கி கொடுக்கிறேன் என்ற உத்திரவாதத்தின் பேரில் நீங்கள் அவர் தயார் செய்த பத்திரத்தில் சாட்சி கையெழுத்து போட்டுள்ளீர்கள் என்று சொன்னால் சரிதான். என்னையும் இராமலிங்கத்தையும் கூப்பிட்டு சுழுகமாக முடித்து தருகிறேன் என்று புஜ்பகேஜ் பேசியுள்ளார். என்னுடைய வழக்கறி”ர் புஜ்பகேஜ் தான் முன்னின்று பஞ்சாயத்து பேசினார். பஞ்சாயத்தில் இராமலிங்கம் முப்பத்திரண்டு லட்சம் ரூபாய் கொடுத்தால் மீண்டும் எனக்கு கொடுத்து விடுகிறேன் என்று சொன்னார். நான் தற்போது முப்பத்திரண்டு லட்ச ரூபாயை கொடுக்கவும் தயாராக உள்ளேன். கிரைய ஒப்பந்தம் வா.சா.ஆ.1 போட்டபிறகு சொத்தை என்னிடம் திருப்பி தருகிறேன் என்ற உத்திரவாதத்தை என்னிடம் சொன்னார். வா.சா.ஆ.1 ஆவணத்தை அவர்தான் தயார் செய்திருப்பார் என்று சொல்லமுடியுமா என்றால் அவர்தான் என்று எனக்கு ஒரு வியூகம். அவர்கள் எப்பொழுதாவது பேசுவார்களா என்றால் எனக்கு திட்டமாக தெரியாது. வழக்கறிஞர் புஜ்பகேஜை எங்கள் தெருவில் இருந்ததால் 2013 ஆம் ஆண்டிலிருந்து தெரியும். அவரை வழக்கறிஞராகத்தான் தெரியும். அவருடைய குடும்பம் பற்றி மற்ற விவரங்கள் எனக்கு எதுவும் தெரியாது. அவர் எங்கள் வீட்டிலிருந்து ஒரு கி.மீ. தூரம் இருக்கிறார். புஜ்பகேஜ் வழக்கை பற்றி பேசுவதற்கு எங்கள் வீட்டிற்கு வருவார் போவார். நீதிமன்றத்திலிருந்து சம்மன் வரவில்லை என்றால் நான் சாட்சி சொல்ல வந்திருக்க மாட்டேன். புஜ்பகேஜ் அவராகவே என்னை அழைத்திருந்தால் நான் சாட்சி சொல்ல வந்திருக்க மாட்டேன்.



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நீதிமன்ற சம்மன் இல்லாமல் என்னால் சாட்சி சொல்ல முடியாது. என்னுடைய சொத்தை எப்படி ஏமாற்றினார்கள் என்று சொல்வதற்காகத்தான் நான் தற்போது நீதிமன்றத்தில் சாட்சி சொல்ல வந்துள்ளேன்.”

So, entire evidence of P.W.2 clearly reveals that she was cheated by not only plaintiff, being advocate for plaintiff, but also by the defendant and both of them colluded together. Her evidence reveals that plaintiff being her advocate promised her that he would get the property from the defendant, thereby, she was forced to sign as a witness in Ex.A1 agreement. On the other hand, defendant was cheated by this plaintiff by giving assurance that he would vacate the said Padmavathi from the premises and with that assurance, he obtained signature in Ex.A1 agreement, thereby the defendant also cheated. Hence, the conduct of plaintiff would clearly reveals that by abusing his profession, he fraudulently created a document and obtained signature from the defendant as well as he abused his position and gave false promise to Padmavathi. Without disclosing the real facts to her, he used to give wrong legal advice to her as such he committed total breach of trust, which is mandate one in the advocate profession. Thereafter, in the year of 2016, P.W.2 sent a letter to the Land Grabbing Cell stating that the defendant Ramalingam and his family members cheated her by grabbing her property by giving false representation and also taking advantage of loan



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transaction. Therefore, the sale agreement stands in the name of defendant also caused suspicious in the minds of this court that it was not voluntarily executed by the said Padmavathi in favour of defendant, but her alleged power agent Ramesh, who is not a good person and even as per the evidence of P.W.2, till date, she wanted to get her property. Therefore, in all aspects, P.W.2, being a single lady, was cheated by the plaintiff as well as by the defendant and one Ramesh, who is said to be her power agent. Therefore, the plaintiff has not approached the court with clean hands. Hence, he is not entitled for the relief of specific performance. So also, the defendant also not approached the court with clean hands. But, the trial judge not appreciated the evidence of P.W.2, since because she is residing in the house of defendant and decreed the suit in favour of plaintiff as such is totally unfair, because the plaintiff not approached the court with clean hands and he is not entitled to the get relief of specific performance as he prayed for. Accordingly, the issue Nos. 1 and 2 is answered.

14. In respect of counter claim, as observed earlier, the defendant also not approached the court with correct facts, in fact, he purchased the property from the original owner P.W.2 Padmavathi also not in a fair



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manner, since because as per the evidence of P.W.2, she is still claims that her property was grabbed by the defendant and his family members.

Therefore, the counter claim made by the defendant as such is also not maintainable, because based on the counter claim, he claimed right over the property. However, though the sale agreement is not valid one, at the same time, the sale deed also not confer any right as it is tainted with illegality on the defendant for the aforesaid reasons.

15. Therefore, this Court found that the plaintiff being an advocate by profession has abused his position and attempted to grab the property of original owner Padmavathi, who is said to be his client. So, through the Legal Services Authority, Ranipet, learned legal secretary is directed to give proper legal assistance to the said Padmavathi to get her property and to that effect, through Legal Services Authority or through letter or through notice, she may be directed to appear before the Legal Services Authority and enlighten her about the legal aspect in respect of her property and if she need, appoint an advocate from the Legal Service Authority and give proper legal assistance to her. Further, the plaintiff also directed not to appear on behalf of the said Padmavathi in any of the



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proceedings pending before the court hereafter for the reason that he abused his position and he gave false assurance to the said Padmavathi, who is his client by committing breach of trust. Therefore, the findings rendered by the trial judge in O.S.No. 11 of 2016 is set aside and the suit is dismissed as the plaintiff not approached the court with clean hands and the counter claim is also dismissed as the defendant not approached the court with clean hands. Accordingly, these Appeal Suits are disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.09.2023

Index:Yes/No
Internet:Yes/no
Speaking Order/Non Speaking Order
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To

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Vellore at Ranipet.



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