



S.A.(MD).No.175 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.07.2024

PRONOUNCED ON: 05.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.175 of 2017

and

C.M.P.(MD)Nos.3100 of 2017 and 1036 of 2021

1.Nalini

2.Manoranjani

... Appellants

/Vs./

Selvadhas @ Mani

...Respondent

(Cause title accepted vide Court order, dated
15.02.2017, made in C.M.P.(MD)No.1402 of
2017 in S.A.(MD)SR.No.22391 of 2015)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 18.02.2015, made in A.S.No.55 of 2012 on the file of the II Additional Sub Judge, Camp Court at Kuzhithurai, reversing the Judgment and Decree, dated 19.06.2012, made in O.S.No.142 of 2007 on the file of the I Additional District Munsif Court, Kuzhithurai.

For Appellants	: Mr.K.P.Narayanakumar
For Respondent	: Mr.C.Godwin



S.A.(MD).No.175 of 2017

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JUDGMENT

The present second appeal is preferred by the plaintiff against the Judgment and Decree dated 18.02.2015, passed in A.S.No.55 of 2012 on the file of the II Additional Sub Court, Camp Court at Kuzhithurai, reversing the Judgment and Decree, dated 19.06.2012, passed in O.S.No.142 of 2007 on the file of the I Additional District Munsif Court, Kuzhithurai.

2. The plaintiffs are the appellants herein and the defendant is the respondent herein. For the sake of convenience, the ranking stated in the suit as plaintiffs and defendant are referred in the judgment.

3. The suit is filed to direct the defendant to execute and register the sale deed in favour of plaintiffs 1 and 2 without receiving any sale consideration from the plaintiffs, failing which the Court may execute a sale deed as per Order 21 Rule 34 (5 and 6 of Civil Procedure Code).

4. The brief facts are that the suit schedule property is comprised in R.S.No.



S.A.(MD).No.175 of 2017

194/19 of Palukal village to an extent of 6 cents and the building in Door No. 16/26A. The 2nd plaintiff is the daughter of the 1st plaintiff and the defendant is the 1st plaintiff 's own brother. The 1st plaintiff had married one Manoharan on 02.09.1991 and on 04.11.1991 the 1st plaintiff 's husband went to Saudi Arabia. The 1st plaintiff and her husband intended to purchase the suit property for Rs. 90,000/- and the 1st plaintiff's husband had sent the amount and the 1st plaintiff had paid the sale consideration of Rs.90,000/- to her father namely, Chellan and another Rs.4,000/- was spent by the 1st plaintiff for registration purpose. The plaint schedule property was purchased on 26.08.1994 in the name of the defendant, i.e., the brother of the 1st plaintiff. Since the husband of the 1st plaintiff was working at Saudi Arabia at the point of execution of document, all the arrangements for purchasing the property were done by Chellan. The consensus between the 1st plaintiff and the defendant at that point of time was that the defendant had to execute a sale deed in favour of the 1st plaintiff and her husband, when the husband of the 1st plaintiff returns back to India. As the owner of the plaint schedule property the 1st plaintiff got possession of the property, then when the 1st plaintiff's husband returned back to India, they put up compound wall surrounding the plaint schedule property, dug well and constructed a toilet.



S.A.(MD).No.175 of 2017

WEB ROOM

Thereafter, they started residing in the suit schedule property. Though the sale consideration stated in the sale deed dated 25.08.1994 was only Rs.19,000/-, the actual sale consideration was Rs.90,000/-. In the meantime, the defendant also went to Saudi Arabia for job on the visa sent by the 1st plaintiff's husband. Since the defendant did not get leave from his company, the execution of sale deed in favour of the 1st plaintiff and her husband was dragged for more than a year. Hence, the 1st plaintiff and her husband sent a notary attested drafted sale deed to Saudi Arabia as required by the defendant, but the defendant did not send the signed document. The husband of the 1st plaintiff accused the 1st plaintiff and her father as the suit property was purchased in the name of defendant unnecessarily and beat the wife stating that the whole earnings were destroyed by the 1st plaintiff by purchasing the property in the name of the defendant. Because of the same reason, her husband deserted the 1st plaintiff and the 2nd plaintiff who was only four months old at that time. Thereafter, the defendant came to India after three months. Hearing the arrival of the defendant, the 1st plaintiff's husband came back but the defendant purposely quarrelled with the him, beat him and sent him out, thereafter, the husband of the 1st plaintiff did not return back. The 1st plaintiff was affected mentally due to the mental torture caused by her husband and her brother,



S.A.(MD).No.175 of 2017

WEB COPY

hence she was admitted in Sree Krishna Hospital, Sasthamangalam, for some time. Citing the mental illness, the defendant further dragged executing the sale deed for some more years. In the meantime, the defendant had taken loan from the bank by pledging the document, which was in possession of the 1st plaintiff. Now, the 1st plaintiff fully recovered from her mental illness and is living on her own by doing tailoring work and residing in the building, after renovating the same. The defendant is protracting the execution of sale deed by citing one reason or other. On 08.09.2006, the defendant's wife Padmakumari demanded the plaintiffs to vacate the building stating the sale deed stands in her husband's name for more than 12 years and hence, she has got absolute title as the period is already over and barred by limitation. They are claiming to be absolute owner of the suit property. Thereafter, the defendant and his wife are repeatedly torturing the plaintiffs to surrender the suit property to them. The defendant has no right to claim to the plaintiffs to surrender the property. Though the sale deed stands in the name of the defendant, the plaintiffs are the authorized owners and the 1st plaintiff was in possession from the date of sale deed onwards. The defendant is only a name lender but the plaintiffs are the absolute owners and the defendant is bound to execute the sale deed in favour of the 1st plaintiff and her husband. The



S.A.(MD).No.175 of 2017

WEB COPY
suit property was purchased from the amount sent by the 1st plaintiff's husband.

Hence, the defendant ought to execute the sale deed without getting any amount from the plaintiffs. The plaintiffs orally demanded the defendant to execute the sale deed several times but the defendant was evading by saying lame excuses. Finally, on 19.08.2007, the plaintiff requested to execute the sale deed. If the plaintiff sent a lawyer notice for such execution, the defendant would become vigilant and would take extreme steps. Hence the plaintiffs avoided issuing lawyer notice. The plaintiffs are ready and willing to perform their part of contract and they are ready to meet all the expenditures for registration. Hence the suit is filed with the above prayer.

5. The defendant had filed a written statement denying all the allegations and stated that there is no bonafide in the claim of the plaintiff, the suit is filed only on experimental basis, there is no cause of action and the plaintiff has no right. The address of the plaintiffs shown in the plaint is incorrect which was done purposefully and falsely using the defendant's address for the sake of filing the suit, since the plaintiffs never resided in the said address. After the marriage, the 1st plaintiff resided with her husband in Melpali and now they are residing in



S.A.(MD).No.175 of 2017

WEB COPY

Tharavilai Veedu, Elancahari, which is the family house of both the plaintiffs and the defendant. The defendant purchased the scheduled property by his own money and now he is residing with his family in the building. The plaintiffs were not in possession and enjoyment of the scheduled property at any point of time. The averments that the 1st plaintiff's husband sent visa is totally false. The defendant went to Saudi Arabia through a Mumbai based agency. The averment of dragging of execution of sale deed by defendant's is false and the averment of sending notary attested draft sale deed to Saudi Arabia is denied. The allegations of beating and desertion by the 1st plaintiff's husband is also denied and they are residing together in their house. The defendant had no knowledge about the mental illness of the 1st plaintiff. The averment that the defendant had pledged the scheduled property is true and by taking loan, the defendant had established an engineering work shop styled as 'Padma Industries' and it was approved by the government, which is the only source of income for the defendant's family. The defendant is paying taxes and the mutation was also effected in favour of the defendant. There is no agreement between the 1st plaintiff and the defendant as alleged and the plaintiffs have no possession and enjoyment at any point of time, hence the pleading regarding limitation is false and the suit is barred by limitation.



S.A.(MD).No.175 of 2017

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The allegation of demand to execute the sale on 19.08.2007 is false. The excuse of the plaintiffs for not sending legal notice cannot be accepted and the defendant strongly object the claim of the plaintiffs that they are in possession of the property and the same is false. There is no agreement between the 1st plaintiff and defendant on 25.08.1994 or any other date as alleged. The plaint scheduled property is the only property available to the defendant for his residence and his daily bread, so the defendant would not intend to sell the property to anybody. The reliefs sought in the plaint are not true and the suit ought to be dismissed.

6. After considering the pleadings, evidences and depositions, the Trial court has allowed the suit and directed the defendant to execute a sale deed on or before 19.08.2012 without receiving any amount from the plaintiff. Aggrieved over the same, the defendant had preferred the first appeal and the same was allowed. Aggrieved over the same, the plaintiffs had preferred the second appeal. The present second appeal is admitted for the following substantial questions of law:

"1. Whether allegation of breach of trust made out and whether Benami Prohibition Act to have the application?"



S.A.(MD).No.175 of 2017

WEB COPY

2. *Was the findings of the First Appellate Court applying Section 91 and 92 of the Indian Evidence Act would apply to the evidential circumstances of the case?*

3. *Whether the Judgment of the Lower Appellate Court is perverse in ignoring the evidential value of Exhibit A3 to A5 and Exhibit C1?"*

7. As far as the first part of 1st substantial question of law regarding “Breach of Trust” is concerned, the PW2, who is the father of both the 1st plaintiff and the defendant had deposed that the 1st plaintiff's husband sent the money and based on that money, he had purchased the suit scheduled property in the name of the defendant. And the reason stated is since the 1st plaintiff's husband was staying abroad, he was having an apprehension that the 1st plaintiff's husband may not like the property. If the 1st plaintiff's husband expresses his unwillingness, PW2 father was intending to retain the same for his son, i.e., the defendant herein. The Appellate Court did not accept the plea of the 1st plaintiff for the sole reason that the sale deed states the consideration as Rs.19,000/-, whereas the 1st plaintiff stated that she had paid the sale consideration of Rs.90,000/- and the depositions of PW1 and PW2 is totally the contents of the documents, thereby against Sections 91 and 92 of the Indian Evidence Act, hence the Appellate Court



S.A.(MD).No.175 of 2017

disbelieved the PW2 father's deposition in entirety. In order to consider the same, the deposition of the father is extracted hereunder:

“இந்த வழக்கு எனது மகள் நளினி எனது மகன் செல்வதாசை பிரதிவாதியாக்கி தாக்கல் செய்துள்ளதாகும். இந்த வழக்கை பற்றிய அனைத்து விவரங்களும் எனக்கு தெரியும். பளுகல் கிராமத்தில் புதிய புல எண்:194/19-ல் சென்று சொத்தும் அதிலிருந்தும் 16/26A எண் கொண்ட பளுகல் டவுண் பஞ்சாயத்திற்கு உட்பட்ட கட்டிடமும் நாள் 25.08.1994-ல் எனது மகளின் கணவர் மனோகரன் அனுப்பி தந்த பணத்தில் என் மகன் பிரதிவாதியின் பெயரில் வாங்கினேன். மேற்படி கிரையம் நடக்கும் காலத்தில் எனது மகனும் பிரதிவாதி மற்றும் 1-ம் வாதியின் கணவர் மனோகரன் ஆகியோர்கள் சவுத் அரேபியாவில் ஒரே கம்பெனியில் தான் வேலை பார்த்து வந்தார்கள். மருமகள் வெளிநாட்டில் இருக்கும்போது என் மகள் எங்கள் வீட்டில் தான் வசித்து வந்தார். அவர்களுக்கு தனியாக வசிக்க ஒரு வீடு தேவைப்பட்டது. ஆகவே, நான் தான் முன்னின்று வீடு வாங்க முயற்சி செய்தேன். அதன்படி 1-ம் வாதியின் கணவர் மனோகரன் அனுப்பிய 94இ000/- ரூபாயில் 90இ000/- ரூபாய் கிரையத் தொகையாக கொடுத்தேன். 4இ000/- ரூபாய் கிரையம் செய்ய சிலவானது. ஆனால் கிரயம் செய்யும் போது நான் அன்று வெளிநாட்டில் வேலை பார்த்து வந்த பிரதியின் பெயரில் வாங்கினேன். ஒரு வேளை மருமகனுக்கு தாவா பட்டிகை சொத்து விரும்பவில்லை யென்றால் அதை மகன் பெயரில் வைத்துக் கொள்ளலாமென்றும் மருமகனுக்கு விருப்பப்பட்டால் மகனை வைத்து மருமகள் பெயரில் எழுதிக் கொடுக்கலாம் என்று நினைத்தேன். அப்போது பிரதிவாதிக்கும் திருமணமாகவில்லை. ஆனைவரும் ஒற்றுமையாகயிருந்ததால் அதில் பிரச்சனை ஒன்றும் ஏற்படவில்லை. ஒன்றிரண்டு மாதத்தில் மருமகன் வெளிநாட்டிலிருந்து வந்தார். தாவா சொத்தை பார்த்தார் அவருக்கு



S.A.(MD).No.175 of 2017

WEB COPY

விருப்பப்பட்டது உடனே தாவாபட்டிகைச் சொத்தைச் சுற்றி மதில் சுவர் அமைத்து குடிநீர் கிணறு வெட்டி, கக்கூஸ் ஆகியவை அமைந்தும், வீட்டை பணிகள் செய்து 1-ம் வாதியும், கணவரும் குழந்தையும் தாவா பட்டிகைச் சொத்தில் குடிபெயர்ந்தனர். பின் 1-ம் வாதியின் கணவர் இனி வெளிநாடு செல்லவில்லை என்று கூறி தாவா பட்டிகை வீட்டின் முன் பகுதியில் ஒரு Hardwares கடையும் ஆரம்பித்தார். வாதியின் கணவருக்கு விரும்பப்பட்டதால் உடனே பிரதிவாதியும் வந்தவுடன் வாதியின் பெயரில் சொத்தை எழுதி கொடுக்கலாமென்று சம்மதித்தார். எனக்கு பல கடிதங்கள் மூலம் தெரியப்படுத்தினார். இந்நிலையில் சொத்திற்கு போக்குவரைவு செய்ய கிரைய பத்திரம் தேவைப்பட்டது. ஆகவே பிரதிவாதி வாதியின் கணவர் பெயரில் எழுதிக் கொடுப்பது போல் ஒரு கிரைய ஆவணம் தயார் செய்து அதை செளதி அரேபியாவின் எம்பசி முன்கையொப்பம்போட்டு அனுப்ப பிரதிவாதிக்கு அனுப்பி கொடுத்தோம். அதை பிரதிவாதி கையொப்பம் போட்டு அனுப்பவில்லை. அதற்கு பிரதிவாதி பல காரணங்கள் சொல்லி நழுவி விட்டார். இந்நிலையில் பிரதிவாதியின் செயல்பாட்டில் சந்தேகம் ஏற்பட்டு என் மருமகன் என் மகளிடம் சண்டை போட்டார். அவரை நாங்கள் ஏமாற்றி விட்டதாக நினைத்தார். அதில் பிரச்சனை ஆகி என் மருமகன் எனது மகளை பிரிந்து சென்றுவிட்டார். பின் மூன்று மாதத்திற்கு பிறகு எனது மகன் பிரதிவாதி வெளி நாட்டிலிருந்து வந்ததை அறிந்து மருமகன் வந்தார். மருமகன் வந்தவுடன் எனது மகன் காரணமில்லாமல் என் மருமகனை அடித்து விரட்டிவிட்டார். அதன்பின் எனது மருமகன் 13 வருடங்களாக வரவில்லை. இப்போது ஒரு வருடத்திற்கு முன் தான் திரும்பி வந்தார். இதனிடையில் வாதிக்கு மனநோய் ஏற்பட்டும் மருத்துவமனையில் அனுமதித்தேன். அதை காரணம் காட்டியும் பிரதிவாதி வாதியின் பெயரிலும் கிரையம் செய்யாமல் காலம் தாழ்த்தி வந்தார். பின் எனது மகளுக்கு தெரியாமல் தாவா பட்டிகைச் சொத்தின் மேல் வங்கி கடன்



S.A.(MD).No.175 of 2017

WEB COPY

பெற்றுள்ளார். இப்போது தாவா சொத்தில் எனது மகள் தனியாக ஒரு வீடு வைத்தும், பிரதிவாதி, வாதியின் அனுமதியோடு வேறு ஒரு வீடு வைத்தும் வசித்து வருகின்றனர். இப்போது பிரதிவாதி வாதியை ஏமாற்றும் நோக்கத்துடன் பொய் கூறி கிரையம் செய்து கொடுக்க மாட்டேன் என்று பிடிவாதம் செய்கிறார். இந்த வழக்கில் பிரதிவாதி வாதிகளின் பெயரில் தாவா பட்டிகை சொத்தை கிரையம் செய்து கொடுக்க முற்றிலும் கடமைப்பட்டவர் என்று இந்த நீதிமன்றத்தில் சாட்சியம் அளிக்கிறேன்.”

The PW2 father had clearly admitted that the property was registered in the name of the son since the 1st plaintiff's husband was residing aboard and if the 1st plaintiff's husband disliked the property, the father was intended to retain the property in the name of his son. When the PW2 father had admitted and clearly stated the reason for registering the sale deed in the name of the son, the 1st Appellate Court has erred in not appreciating the said evidence. Infact the Appellate Court had cited an irrelevant reason for rejecting the said fact. The father had categorically stated that he believed his son and hence he registered the document in the name of his son and when the son had turned around against the belief of the father the same would amount to breach of trust by the defendant. Therefore, this Court is of the considered opinion that the deposition of PW2 clearly exposes the breach of trust committed by the defendant. Therefore, the first



S.A.(MD).No.175 of 2017

part of 1st substantial question of law is answered in favour of the plaintiffs.

8. The second part of 1st substantial question of law is whether the transaction is hit by the Benami Transactions (Prohibition) Act. The 1st plaintiff and her husband were not intended to purchase the property in the name of the defendant. It is the 1st plaintiff's father, who had received the amount and purchased the property in the name of the defendant and complicated the issue. It is the mischief created by the father of the plaintiff. For any benami transaction, the circumstances of the transaction ought to be taken into account as stated by the Hon'ble Supreme Court in the case of **Valliammal (d) by LRs Vs. Subramaniam and others** reported in **2004 (5) CTC 60**. The Hon'ble Supreme Court had held that,

“The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Referred to Jaydayal 13oddar Vs. Bibi Hazra, 1974 (1) SCC 3; Krishnanand Vs. State of Madhya Pradesh, 1977 (1) SCC 816; Thakur Bhim Singh Vs. Thakur Kan Singh, 1980 (3) SCC 72;



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His Highness Maharaja Pratap Singh Vs. Her Highness Maharani Sarojini Devi & others, 1994 (Supp. (1) SCC 734; and Heirs of Vrajlal J. Ganatra Vs. Heirs of Parshottam S. Shah, 1996 (4) SCC 490. It has been held that in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out following six circumstances which can be taken as a guide to determine the nature of the transaction.

- a. Source of purchase money*
- b. Nature and possession of property after purchase*
- c. Motive for benami*
- d. The relationship of parties*
- e. Custody of title deeds after purchase*
- f. Conduct of parties in dealing with property after purchase*

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.”



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9. In the present case, the source of income is from the 1st plaintiff's husband which is evident through Ex.C1, which is the bank accounts of the 1st plaintiff's and the same is marked by the Court. On perusing the transaction, it is evident that the money is sent by the 1st plaintiff's husband to the 1st plaintiff for purchase of the property. On the other hand, the defendant had not submitted any iota of evidence that the property was purchased from his money. The defendant had marked Ex.B1 to Ex.B7, wherein the sale deed is Ex.B1, property tax receipts Ex.B2 and B3 dated 15.07.2010, Ex.B4 is patta dated 05.10.2007, Ex.B5 property tax receipt dated 24.09.2007, Ex.B6 property tax receipt dated 12.12.2007 and Ex.B7 is electricity bill dated 13.11.2007. All the above documents are not showing the source of money for the defendant to purchase the property, whereas the plaintiff had proved the source of money through Ex.C1. Interestingly the defendant had not marked any documents from the date of sale deed dated 25.08.1994. If the defendant had purchased in the year 1994, he would have produced documents like patta and property tax receipts standing in his name from 1994 onwards. But the defendant had produced the patta issued in the year 2007, property tax receipts for the year 2007 and 2010. Therefore, the plaintiff has better title than the defendant. Further the 1st plaintiff's husband had intended to



S.A.(MD).No.175 of 2017

WEB GORN

purchase for himself and for his own benefit. The 1st plaintiff and her husband never ever intended to purchase the property in the name of defendant and the mischief was committed by the father of the plaintiff and the defendant. Further the possession was with the plaintiff and her husband which is evident from the fact that the plaintiff and her husband had put up compound wall, constructed toilet, dig well etc. Motive of the benami transaction is clearly admitted by the father of the plaintiff which is elaborately stated supra. At the cost of repetition the father had admitted that at the time of execution of sale deed the 1st plaintiff's husband was in Saudi Arabia and the father of the plaintiff had apprehension whether the plaintiff's husband (son-in-law) would like the property, if the plaintiff's husband expresses any disliking, the father of the plaintiff had intention to retain for the property for his son, the defendant herein. Further if the transaction is not completed on that day, there will be increase in the sale consideration, hence the father of the plaintiff had decided to purchase the property in the name of the defendant. Infact the registration of sale deed in the name of the defendant is the mischief created by the father of the 1st plaintiff and the defendant. Even though the relationship between the 1st plaintiff and defendant brother is not protected under Section 3 of the Act, because of the close



relationship of the parties and the fact that the husband is staying in Saudi Arabia at that point of time, hence the sale would not attract the clutches of Benami Transactions (Prohibition) Act if motive is established as held in the Valliammal's case. As stated supra all most all the ingredients for the benami transaction stated supra are in favour for the plaintiff. Therefore, the second part of the 1st substantial question of law is also answered in favour of the plaintiffs.

10. The 2nd substantial question of law is whether Sections 91 and 92 of Indian Evidence Act would apply to the evidential circumstances of the case. The Sections 91 and 92 of Indian Evidence Act are extracted hereunder:

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. — When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in



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writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.— Wills 3 [admitted to probate in 4 [India]] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.— Where there are more originals than one, one original only need be proved.

Explanation 3. — The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B. Oral evidence is offered of the



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payment. The evidence is admissible.

92. *Exclusion of evidence of oral agreement. — When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:*

Proviso (1). — Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1 [want or failure] of consideration, or mistake in fact or law.

Proviso (2). —The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). —The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). —The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of



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Proviso (5). — Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). — Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods “in ships from Calcutta to London”. The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called “the Rampore tea estate” is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B’s as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that



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such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written —"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board. A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered."

11. On perusal of the said provisions especially under proviso (6) it is seen explanation may be given to prove in what manner the language of the document is related to existing facts. In the provisions several illustrations are narrated and



S.A.(MD).No.175 of 2017

WEB COPY

the illustrations permit to prove the circumstances of such transaction. In Real Estate business it is an accepted fact that any property would have guideline value and market value. Always the market value would be more than guideline value. And in the sale deeds always guideline value would be mentioned and the payment would be based on market value or as per terms agreed by the parties. Therefore, the sale consideration mentioned in the sale deed as Rs.19,000/- and the payment made by the plaintiff as Rs.90,000/- is saved by the illustrations stated in proviso 6 of the section 91 and 92 of the Evidence Act. Hence, the reasoning of the Appellate Court that the depositions of PW1 and PW2 is totally against Sections 91 and 92 of the Indian Evidence Act is erroneous and perverse. Therefore, the 2nd substantial question of law is held in favour of the plaintiffs.

12. The 3rd substantial question of law is “whether the Judgment of the Lower Appellate Court is perverse in ignoring the evidential value of Exhibit A3 to A5 and Exhibit C1”. As far as Ex.A3 to A5 are concerned, the 1st plaintiff has written letters to her husband which would clearly indicate that the 1st plaintiff and her husband were intending to purchase the property by paying Rs.90,000/- along with expenses for registration. In the said letters, she had also stated if the said



S.A.(MD).No.175 of 2017

WEB COPY

amount is sent, the property can be purchased. In Ex.A5, she has acknowledged the amount sent by her husband stating that she is in receipt of the cheque and also bank has issued the amount. Further, she has stated that even though the vendor has stated the extent of land as 6.5 cent, after surveying, it is measuring to the extent of only 6 cents. Therefore, this Court is of the considered opinion that the 1st plaintiff has proved through Ex.A3 to A5 that the property was intended to be purchased by her and her husband but the father has purchased the property in the name of the defendant with a clear understanding that the defendant would execute the sale deed in the name of the 1st plaintiff and her husband, when the 1st plaintiff's husband returns from Saudi Arabia. The Appellate Court has not appreciated the said letter in its true spirit. When the said two letters clearly establish the intention of the parties, the Appellate Court has erred in disbelieving the said letters. The Appellate Court has held that by relying on 2 letters, the plaintiffs cannot prove the case, since it shows a truncated transaction among the parties. The letters are dated 20.06.1994 and the same was produced in the suit filed in the year 2007 and a small portion was damaged. After a period of 13 years the court cannot expect to produce letters without any damage. Over a period of time the papers would undergo wear and tear. Therefore, this Court is of the



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considered opinion that the reason stated by the Appellate Court is perverse. The Appellate Court rather than going into the true intention and spirit of the letters, had cited absurd and perverse reasoning. Therefore, the 3rd substantial question of law is answered in favour of the plaintiffs and this Court is of the considered opinion that the judgment of the Lower Appellate Court is perverse since it had ignored the evidential value of Ex.A3 to A5 and Exhibit C1.

13. The Appellate Court further stated that the 1st plaintiff has not proved her plea that she had put up compound wall, dug a well and a toilet. And had held that the 1st plaintiff ought to have proved by submitting the approval granted by the local authority. At the time of hearing the second appeal, the learned Counsel appearing for plaintiffs / appellants herein submitted a letter dated 05.08.1995 written by the defendant and Aadhar cards of the plaintiff and her husband. The Learned Counsel appearing for the defendant / respondent herein objected to receive the said letter and Aadhar cards and sought permission to submit letters from the side of the defendant also. And both the parties had circulated typed set enclosing various letters. Even though in the second appeal stage, such letters cannot be entertained, since both the parties have submitted the letters, this Court



S.A.(MD).No.175 of 2017

is inclined to rely on.

14. One of the letters, dated 22.07.1995, written by the 1st plaintiff's husband to the defendant, wherein he had stated that one good news is that he had put up compound wall, constructed toilet and dug a well. He has also explained that water was available in 30 feet but it was advised to dig 40 feet, therefore, he had dug 40 feet. The relevant portion of the letter is extracted hereunder:

“நல்ல விஷயம் என்னவென்றால் கோம்பவுண்ட் அடித்தேன். கிணறு வெட்டினேன். 30 அடியில் தண்ணீர் கிடைத்தது. இப்போது தினம் அவசியத்திற்கு கிடைக்கும். ஆசாரி சொன்னார் (40) அடி தாக்க வேண்டும் என்று சொன்னார். ஆகையால் 40 அடியும் தாக்க வேண்டும். வேறு செய்தி ஒன்றும் இல்லை.”

From this, it is evident that after returning from Saudi Arabia, the 1st plaintiff's husband had admitted that he had put up a compound wall and also dug a well which would indicate that the 1st plaintiff was in possession of the property along with her husband. It is pertinent to state herein, the letter dated 22.07.1995 written



S.A.(MD).No.175 of 2017

by the 1st plaintiff husband to the defendant was not marked by the parties and this letter is produced by the defendant along with various letters before this Court. Therefore, this Court is of the considered opinion that the 1st plaintiff along with her husband was in possession of the property from the date of the sale deed dated 25.08.1994 onwards. And that is the reason the defendant has not produced or could not produce any documents from 25.08.1994 onwards, but had produced only from 2007. It is during this period the defendant along with his wife had demanded the plaintiffs to surrender the possession of the suit property, which is shown one of the cause of actions.

15. All the substantial questions of law are answered in favour of the plaintiffs. Hence for the reasons stated supra, the Second appeal is allowed. The defendant / respondent herein is directed to execute the sale deed within a period of one month from the date of issuance of the copy of the judgment and decree. The Judgment and Decree dated 18.02.2015, passed in A.S.No.55 of 2012 by the II Additional Sub Judge, Camp Court at Kuzhithurai is set aside and the Judgment and Decree, dated 19.06.2012, passed in O.S.No.142 of 2007 by the I Additional District Munsif Court, Kuzhithurai is confirmed. No costs. Consequently,



S.A.(MD).No.175 of 2017

connected Civil Miscellaneous Petitions are closed.

05.11.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. II Additional Sub Judge,
Camp Court at Kuzhithurai.
2. I Additional District Munsif Court,
Kuzhithurai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).No.175 of 2017

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.175 of 2017

Dated:
05.11.2024