

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.03.2015

DELIVERED ON : 18.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.NO.695 OF 2006

George Kavalam

.. Appellant/Plaintiff

-Vs-

P.Vijayalakshmi

... Respondent/Defendant

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Additional District Judge, Coimbatore dated 24.10.2005 made in A.S.No.157 of 2004 reversing the judgment and decree of the Subordinate Judge, Coimbatore dated 23.07.2004 made in O.S.No.131 of 1998.

For Appellants : Mr.T.R.Rajagopalan, Sr. Counsel
for M/s.T.R.Rajaraman

For Respondents : Mr.A.Radhakrishnan

JUDGMENT

The plaintiff in the original suit is the appellant in the second appeal. He filed the suit O.S.No.131/1998 on the file of Sub Court, Coimbatore for the relief of specific performance directing the respondent herein/defendant to execute a sale deed in respect of the suit property in his favour and for cost.

2. The above said prayer was made based on the plaint averment that the respondent/defendant entered into an agreement with the appellant/plaintiff on 05.03.1995 for the sale of the suit property (a house site) for a sale consideration of Rs.3,00,000/-, received a sum of Rs.2,00,000/- as advance and delivered the original title deeds to the appellant/plaintiff; that though the appellant/plaintiff was keeping ready the balance amount of sale consideration and requested the respondent/defendant on several occasions to receive the same and register a sale deed in favour of the plaintiff, the respondent/defendant was postponing the same under one pretext or other; that subsequently when the appellant/plaintiff came to know that the respondent/defendant was making attempts to sell the property to someone else for a higher price, he issued a notice dated 14.02.1998 calling upon the

respondent/defendant to come to Sub Registrar's office at Gandhipuram on 19.02.1998 at 10.00 a.m, collect the balance amount of sale consideration, execute a sale deed in favour of the appellant/plaintiff and register the same; that even thereafter, the respondent/defendant did not turn up and he was dodging and that hence the appellant/plaintiff was constrained to file the suit for the above said relief.

3. The plaint plea was resisted based on the contention that the respondent/defendant never agreed to sell the suit property and she did not receive a sum of Rs.2,00,000/- as advance as claimed by the appellant/plaintiff; that on 26.07.1994 in order to borrow a sum of Rs.1,00,000/- from one Vijayaraghavan for the business requirement of her husband, the respondent/defendant signed blank stamp papers, blank papers and blank inland letters and handed over the title deeds of her house property to her husband; that the said papers were handed over to the said Vijayaraghavan by the husband and second son of the respondent/defendant; that in addition, the said Vijayaraghavan had obtained a blank cheque for Rs.1,00,000/- from the husband of the respondent/defendant and that the said cheque was filled up in the name of one Srikumar for a sum of Rs.5,00,000/- and presented for encashment to be dishonoured for the reason "insufficient funds". She contended further that the criminal case instituted on complaint for the dishonour of the cheque was pending before the Judicial Magistrate No.3, Coimbatore and that the appellant/plaintiff colluded with the said Vijayaraghavan, misused the blank papers and blank stamp papers containing the signature of the respondent/defendant to create the suit sale agreement and thus the suit came to be filed for making wrongful gain. It was also contended by the respondent/defendant that the suit sale agreement was a forged one.

4. The trial court framed necessary issues and conducted a trial, in which two witnesses were examined as PWs.1 and 2 and 12 documents were marked as Exs.A1 and A12 on the side of the appellant/plaintiff. Three witnesses were examined as DWs.1 to 3 and five documents were marked as Exs.B1 to B5 on the side of the respondent/defendant.

5. The learned trial judge, upon considering the pleadings and evidence, accepted the plaintiff's case and decreed the suit as prayed for with cost by a judgment and decree dated 23.07.2004. The respondent herein/defendant preferred an appeal in A.S.No.157/2004 on the file of the First Additional District Judge, Coimbatore. The learned First Additional District Judge, Coimbatore, allowed the appeal, set aside the decree passed by the trial court and dismissed the suit with cost by a judgment and decree dated 24.10.2005. As against the said reversing judgment and decree of the lower appellate court, the present second appeal has been filed on various grounds set out in the memorandum of grounds of second appeal.

6. The second appeal was admitted on 28.06.2006 formulating the following questions to be the substantial questions of law involved in the second appeal:

" 1. When the defendant having not disputed the signature in the agreement and failed in establishing that the agreement was concocted with the help of Vijayaraghavan, still is the learned District Judge right in reversing the decision?

2. When the plaintiff proved the execution of the agreement and the contents of the same clearly prove the payment of advance and in the absence of any plea or evidence on the side of the defendant regarding the means of the plaintiff, is the learned District Judge right in holding that the plaintiff has not proved the agreement and consideration?

3. When the plaintiff has complied with all the requirements contemplated in the Specific Relief Act by proving his readiness and willingness from the date of agreement, still is the learned District Judge right in reversing the decree of the trial court and thereby dismissing the suit? "

7. The arguments advanced by Mr.T.R.Rajagopalan, learned Senior Counsel for M/s.T.R.Rajaraman, counsel on record for the appellant herein and by Mr.A.Radhakrishnan, learned counsel for the respondent were heard. The judgments of the courts below and the other materials available on record were also perused.

8. The appellant herein filed the original suit for the relief of specific performance on a specific plea that the respondent herein/defendant entered into a written agreement with him for the sale of the suit property for a sum of Rs.3,00,000/- and received a sum of Rs.2,00,000/- as advance. The same has been produced as Ex.A1. The defence plea of the respondent/defendant is that she never agreed to sell the suit property and she did not execute Ex.A1-sale agreement dated 05.03.2005 in favour of the appellant/plaintiff. In fact it is her case that she did not meet the appellant/plaintiff to receive any amount as advance and execute the sale agreement as claimed by the appellant/plaintiff. On the other hand, it is her contention that she had signed blank stamp papers, blank papers and blank inland letters in order to borrow a sum of Rs.1,00,000/- for the business requirement of her husband and handed over the same along with the title deeds of the suit property to one Mr.Vijayaraghavan through her husband and her second son Mano and that the said signatures found in the stamp papers and the blank papers have been used for the creation of the suit sale agreement in the name of the appellant/plaintiff, who

colluded with the above said Vijayaraghavan. Besides making such a plea, the respondent/defendant had also taken a plea that the suit agreement for sale was a forged one.

9. In view of the said stand taken by the respondent/defendant, the appellant/plaintiff, besides figuring as PW1, examined one Bharathi, a car driver of a friend of the appellant/plaintiff by name Srikumar, as PW2. PW1 deposed in tune with the plaint averments and it is his evidence that before entering into the agreement, he visited the suit property and at that point of time, the respondent/defendant offered to sell the suit property for a price of Rs.4,00,000/-, but he offered to purchase it only for Rs.3,00,000/-; that one Bharathi was present at the time of negotiation and that the contract was finalised on 05.03.1995 for the sale of the suit property by the respondent/defendant to the appellant/plaintiff for a sum of Rs.3,00,000/-. It is also his evidence that PW2 - Bharathi was present at the time of execution of the suit agreement for sale marked as Ex.A1. He had categorically denied the defence plea of the respondent/defendant that she had handed over signed stamp papers and blank papers to secure the loan advanced by Vijayaraghavan to her husband and that the same were used for the purpose of creating and concocting the suit agreement for sale. His evidence was corroborated by PW2-Bharathi. He also attested Ex.A1-agreement for sale. He testified regarding his attesting the suit agreement for sale. He also deposed in clear terms that in his presence a sum of Rs.2,00,000/- was paid as advance. PWs.1 and 2 have given clear evidence to the effect that besides executing Ex.A1-suit agreement for sale, the respondent/defendant handed over the title deeds relating to the suit property to the appellant/plaintiff. The said title deeds have been marked as Exs.A2 to A4.

10. On the other hand, the respondent/defendant, who figured as DW1 in her evidence has stated that she borrowed a sum of Rs.1,00,000/- from Vijayaraghavan on 26.07.1994 and that when she requested him to lend her the above said amount, Vijayaraghavan wanted her to sign two blank stamp papers, one blank inland letter and five blank white papers. It is her further contention that they had agreed to pay interest at the rate of 36% per annum and she repaid a sum of Rs.1,23,000/-. But she was not able to state the date on which the said amount was repaid and moreover her testimony that she paid such an amount without getting any receipt from Vijayaraghavan is quite unreliable and improbable. Exs.B1 to B4 are photographs taken at the time of the marriage of the son of the respondent/defendant. They have been produced along with the negatives. The purpose for which the said documents have been produced and the nexus of the same with the suit sale agreement or the other transaction have not been stated and proved. There is no evidence to connect those documents with any of the issues in the suit.

11. Gangadharan, the husband of the respondent/defendant was examined as DW2. It is the evidence of DW1 that she borrowed a sum of Rs.1,00,000/- on 26.07.1994, whereas DW2 would state that it was he who borrowed a sum of Rs.1,00,000/- from Vijayaraghavan. It is the admission made by DW2 that at the time of alleged borrowal he was owning properties and he was having all the documents relating to his properties with him. But still the lender did not ask for the title deeds of DW2 relating to his property and his signatures in the stamp papers. It is also his admission that he was not aware of the reason as to why the said Vijayaraghavan was content with getting a blank cheque containing his signature and refrained from seeking any such blank cheque from the respondent/defendant. DW2 has also admitted that there was no enmity between Vijayaraghavan and himself. It is also an admitted fact that he was prosecuted for an offence under Section 138 of the Negotiable Instruments Act, 1881 by one Srikumar and that though he had taken summons to the said Vijayaraghavan for being examined as witness on his side and the said Vijayaraghavan was also present in the court, he did not examine him as a witness on his side. It is highly unbelievable and improbable that the said Vijayaraghavan, who admittedly did not have any enmity with DWs.1 and 2 would have demanded a sum of Rs.8,00,000/- for returning the title deeds.

12. DW3 was an Assistant serving in the office of the Sub Registrar, Gandhipuram. He was examined only for the purpose of showing the guideline value of the suit property. As per the guideline value, the market value of the suit property would come around Rs.3,60,000/- only. There is no much difference between the sale consideration as per Ex.A1 and the guideline value. At some places guideline value may even be higher than the market value. The attempt made by the respondent/defendant to show that the sale consideration quoted in Ex.A1 is shockingly disproportionate ended in an utter failure.

13. Though the respondent/defendant had taken a plea that the suit promissory note had been forged, the said plea was given a go-by and on the other hand admitting the signatures of the respondent/defendant in the suit agreement for sale, she had contended creation and concoction of the suit sale agreement. In this regard, as against the clear and categorical assertions made by PWs1 and 2 in their testimonies, the testimonies of DWs.1 and 2 are not free from ambiguities and contradictions besides containing improbabilities. The suit agreement for sale has been produced as Ex.A1. The execution of Ex.A1 and payment of Rs.2,00,000/- as advance have been clearly spoken to by PWs1 and 2 in their evidence. The respondent/defendant admits her signature found in Ex.A1. Hence the proof that the document was created with the help of signatures obtained in the blank stamp papers and blank papers shall stand cast on the respondent/defendant. Excepting the intersted testimonies of DW1 (the respondent/defendant herself) and DW2, there is no other evidence to prove her

contention that she had handed over signed blank stamp papers and blank papers to Vijayaraghavan and the same were used for creating Ex.A1-suit sale agreement for sale. Moreover DW2 admitted that in a criminal case instituted by one Srikumar against him for an offence under Section 138 of the Negotiable Instruments Act, 1881, he wanted to examine Vijayaraghavan, who allegedly lent him a sum of Rs.1,00,000/- after getting signatures of the respondent/defendant in the blank stamp papers and blank papers and a signed blank cheque from DW2. Though the respondent/defendant, during her examination as DW1, would contend that a sum of Rs.1,23,000/- was repaid, not even a scrap of paper was produced to prove the same. It is highly improbable that they would have paid such an amount without getting any receipt or anything in writing. DW1 has also admitted that for Ex.A5-Pre-suit notice issued by the appellant/plaintiff, which was acknowledged by Ex.A6, no reply was sent by her. If at all what the respondent/defendant had stated in her written statement and her evidence could be true, she would not have failed to send a reply to the said notice.

14. One clinching aspect did not catch the attention of the learned lower appellate judge. According to the respondent/defendant, the borrowal of Rs.1,00,000/- from Vijayaraghavan was made on 26.07.1994. It is the evidence of DWs.1 and 2 that the discussion for the same with Vijayaraghavan was made on 25.07.1994 and on 26.07.1994 she signed the blank stamp papers and blank papers and sent them to Vijayaraghavan through her husband and son. But it is pertinent to note that two stamp papers of the value of Rs.5/- each have been used for the preparation of Ex.A1-sale agreement. Both the stamp papers were purchased in the name of the respondent/defendant on 31.08.1994. It is quite improbable that those stamp papers would have been used on 26.07.1994 itself for getting the signature of the respondent/defendant. There is no explanation regarding the above said discrepancy. On the other hand, the fact that only one person has signed as witness in Ex.A1 has been sought to be projected as a lacuna. It was argued on behalf of the respondent/defendant that the agreement was not properly attested in accordance with the provisions of law. It is pertinent to note that during the relevant period an agreement could be even oral and it was a document not required to be attested by law. Therefore, the contention of the respondent/defendant that it should have been created with the help of blank stamp papers and white papers based on the singular fact that the agreement was attested by PW2 alone and there was no second attestor, cannot be countenanced. There is no concrete plea or evidence that the appellant/plaintiff did not have the capacity to pay Rs.2,00,000/- on 05.03.1995 as advance. For an attempt made to raise such a contention by cross-examining PW1, he gave a clear answer that he was an NRI and he did have Rs.2,00,000/- as cash in hand at the time of execution of the suit sale agreement. It is also his evidence that he was doing agriculture in his own lands and was deriving an annual income of Rs.60,000/-. There is no contra evidence to nullify or discredit the said evidence of PW1. Moreover, when the execution of Ex.A1 - agreement and payment of

advance was proved by the testimonies of PWs.1 and 2, which remain unchallenged, the respondent/defendant failed to prove her contention that the said document was created with the help of blank stamp papers and blank white papers and no amount was paid on the date of agreement by adducing reliable evidence.

15. The learned trial judge, taking into account all the above said aspects arrived at a correct conclusion that Ex.A1-agreement for sale was genuine; that it was supported by consideration; that a payment of Rs.2,00,000/- as advance was also proved and that on the other hand, the defence plea that the said document was created using the signatures obtained in blank stamp papers was not proved. Such a conclusion which is a sound one, came to be upset by the learned lower appellate judge without any justification and without assigning valid reasons. The conclusion of the learned lower appellate judge seems to have been made on suspicions and surmises and not on preponderance of probabilities. Hence the first and second substantial questions of law are bound to be answered accordingly in favour of the appellant/plaintiff and against the respondent/defendant.

16. In a suit for specific performance it shall not be enough for the plaintiffs to prove the execution of the agreement and passing of consideration in the form of advance. As per section 16 (c) of the Specific Relief Act, 1963 he has to plead and prove that he has either performed his part of the obligations under the agreement for sale or has been ready and willing to perform his part of the obligations under the agreement for sale. In compliance with the mandate provided in the said section, the plaintiff has made necessary plea to the effect that right from the date of execution of the agreement for sale he had been ready and willing to pay the balance amount of sale consideration and get the sale deed executed and registered in his name at his cost and that it was the respondent/defendant, who postponed the same under one pretext or other. In fact under Ex.A5, the appellant/plaintiff chose to issue a notice on 14.02.1998 calling upon the respondent/defendant to be present at 10.00 a.m on 19.02.1998 in the Registrar's office to collect the balance sale consideration and execute the sale deed in terms of the agreement. The said notice was received by the appellant/plaintiff on 16.02.1998 as evidenced by Ex.A6. The respondent/defendant did not turn up and she had not even chosen to send a reply to the said notice. In addition, even in the written statement of the respondent/defendant, there is no specific denial of the readiness and willingness on the part of the appellant/plaintiff. In paragraph 5 of the written statement, it has been stated that she was not aware of several requests allegedly made by the plaintiff as averred in paragraph 3 of the plaint. Nowhere in the written statement the respondent/defendant had taken a specific plea that there was absence of readiness and willingness on the part of the appellant/plaintiff. There is also no such evidence adduce on the side of the respondent/defendant, whereas PW1 (plaintiff) in his

evidence made it clear that he was having sufficient money for making payment of the sale consideration. He has also produced Ex.A12, the banker's certificate to show that he was having Rs.3,05,000/- in his account as on 12.12.2002. By the cumulative effect of oral and documentary evidence, the appellant/plaintiff proved his readiness and willingness to perform his part of the obligations under the agreement. He has also proved his capacity to make payment and the same has not been disproved by the respondent/defendant by reliable evidence. Hence the finding of the learned trial judge regarding the readiness and willingness on the part of the plaintiff also ought not to have been interfered with by the lower appellate judge and there is no justification for such interference. For all the reasons stated above, the third substantial question of law deserves to be answered in favour of the appellant and against the respondent herein.

17. In view of the answers given to the first, second and third substantial questions of law, the appeal shall succeed. The decree of the lower appellate court reversing the decree of the trial court is liable to be set aside and the decree passed by the trial court deserves to be restored and confirmed.

In the result, the second appeal is allowed with cost. The decree of the lower appellate court dated 24.10.2005 made in A.S.No.157 of 2004 is set aside. The decree of the trial court dated 23.07.2004 made in O.S.No.131 of 1998 shall stand restored and confirmed. The appellant/plaintiff shall be entitled to cost throughout.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Additional District Judge, Coimbatore
2. The Sub Judge, Coimbatore
3. The section officer, VR Section
Hight Court, Madras - 104

+1cc to Mr. T.R.Rajaraman, Advocate SR 29758
+1cc to Mr. R.Priyakumar, Advocate SR 29941

S.A.No.695 of 2006

LRS (CO)
Rs 13.08.2015