

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2016

Delivered on : 11.05.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

A.S.No.535 of 2003

K.Kandasamy ... Appellant/Plaintiff

-Vs-

A.Palanisamy ... Respondent/Defendant

Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree of the learned Additional District Judge and Fast Track Court No.5, Coimbatore at Tiruppur dated 06.11.2002 made in O.S.No.12 of 2002.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.K.Goviganesan

JUDGMENT

The plaintiff in the original suit O.S.No.12 of 2002 is the appellant in the appeal. He filed the said suit against the respondent herein for the relief of specific performance of an Agreement for sale dated 26.06.1995. After trial, the trial Judge dismissed the suit without cost by a judgment and decree dated 06.11.2002. The said decree of the trial court is challenged in the appeal suit. For the sake of convenience the parties are referred to in accordance with their ranks in the suit and at appropriate places, if necessity arises, their ranks in the appeal will also be indicated.

2. The appellant herein/plaintiff filed the suit praying for the relief of specific performance based on the plaint averments, which are in brief, as follows:

The respondent/defendant is the owner of the suit property. He entered into an agreement with the appellant/plaintiff on 26.06.1995 for the sale of the suit property to the plaintiff

for a sum of Rs.4,00,000/- and received on the same day a sum of Rs.3,80,000/- as advance and part of sale consideration leaving a balance sale consideration of only a sum of Rs.20,000/-. It was agreed that the plaintiff could pay the balance amount of sale consideration within 15 months from the date of agreement and get the sale deed executed and registered in his name. Right from the date of agreement, the plaintiff was ready and willing to perform his part of the obligations under the suit sale agreement. On the other hand, the defendant was evading execution of the sale deed and was even trying to sell the property to third parties. Hence the plaintiff issued a lawyer's notice on 15.06.1996 calling upon the defendant to execute a sale deed in accordance with the agreement for sale after receiving the balance amount of sale consideration. Since the demand was not complied with the plaintiff was constrained to file the suit for specific performance.

3. The respondent/defendant resisted the suit denying the plaint averments and raising other contentions in the written statement which are, in brief, as follows:

The defendant did not agree to sell the suit property to the plaintiff for a sum of Rs.4,00,000/-. He did not receive Rs.3,80,000/- as advance and part sale consideration on 26.06.1995, the date of alleged execution of the suit agreement for sale. The suit agreement for sale dated 26.06.1995 was not executed by the defendant. The plaint averments regarding the plaintiff's readiness and willingness are false as there shall be no question of the plaintiff being ready and willing to complete the sale transaction, since there was no agreement at all. The suit agreement seems to have been fabricated by forging the signature and thumb impression of the defendant. The signatures and thumb impression found therein are not that of the defendant. The defendant has got two sons. Due to misunderstanding, the elder son Selvaraj has been estranged and he is living separately. While leaving the house of the defendant, his elder son Selvaraj took away the original title deeds of the defendant relating to the suit property and other parent documents. The plaintiff is a partner in Poomagal Finance with which Selvaraj, the elder son of the defendant was having dealings. The suit agreement should have been fabricated forging the signature and thumb impression of the defendant either with the intention of recovering the debt due from Selvaraj or in collusion with the said Selvaraj. Had the agreement been true and genuine, the plaintiff would have taken steps for performance of the same within the period stipulated in the agreement. He failed to do so and filed the suit after the expiry of the said period and the same will show that the agreement is not genuine. There is no cause of action for the plaintiff to file the suit and the one stated in the plaint is false. Hence, the suit should be dismissed with exemplary cost.

4. In addition to the above said averments made in the written statement, the respondent/defendant also filed an additional written statement containing, in brief, the following additional averments.

There is a civil cart track with a width of 12' starting from Chettipalayam Road, which runs towards the south on the western extremity of the suit property to reach the land in S.No.45/2 of Panikkampatti village which belongs to the defendant's vendor. The cart track occupies an extent of 45 cents and it is a common cart track for the defendant and his vendors. After the purchase of the suit property, the defendant dug a well to a depth of 75 feet by spending a sum of Rs.50,000/- in 1982 itself and obtained service connection in 1984 in S.C.No.304. He also constructed a residential house in 1989 with tiled roof having a plinth area of 750 sq.ft. bearing door No.1/339 spending a sum of Rs.1,50,000/-. He also constructed a poultry shed with tiled roof in an area of 1600 sq.ft. spending a sum of Rs.80,000/- and obtained an electric service connection for the same in SC No.164. He also improved the lands by removing the stones, levelling the ground, storing the sand and manure in the land and converting it into a garden land, for which he spent about Rs.1,50,000/-. The value of the suit property would be more than Rs.25,00,000/-. The consideration quoted in the suit agreement for sale is very low, whereas the superstructures alone are worth Rs.2,80,000/-. The said facts will show the agreement to be forged and the impossibility of performance.

5. In the reply statement, the plaintiff admitted the existence of a 12' wide cart track to reach S.No.45/2 from the main road. However, in addition he made the following averments:-

The existence of a well and service connection is admitted, but they are useless as the well dug to a depth of 40 feet alone is dry without water. The family members of the defendant are bringing water to the suit property from a public borewell pipe near the suit property. The existence of a poultry shed and a tiled house used as residence of the defendant is also admitted. But the total value of the residential house and the poultry shed would be only Rs.50,000/-. The sale consideration noted in the suit sale agreement included the value of the house and the poultry shed. The averment made by the defendant to the effect that the suit property would be worth more than Rs.25,00,000/- is denied. The suit sale agreement dated 26.06.1995 is genuine, true and legally possible of performance. The plaintiff is entitled to the grant of the relief of specific performance directing the defendant to execute a sale deed and register the same conveying the suit property in favour of the plaintiff, after receiving Rs.20,000/- being the balance amount of sale

consideration.

6. Based on the above said pleadings, the learned trial judge framed two issues and five additional issues. They are as follows:

Issues:

1. Whether the plaintiff is entitled to get a sale deed based on the suit sale agreement dated 26.05.1998?

2. To what relief?

Additional Issues:

1. Whether the correct description of the property is provided in the agreement for sale?

2. Whether the correct value has been shown in the sale agreement?

3. Whether the sale agreement dated 26.06.1995 is genuine? Whether the signature and thumb impression found in the sale agreement are that of the defendant?

4. Whether there is any cause of action to file the suit?

5. Whether the plaintiff is entitled to the relief of specific performance of the sale agreement dated 26.06.1995?

7. A trial was conducted in which Pws 1 and 2 were examined and Ex.A1 to A11 were marked on the side of the plaintiff, whereas Dws 1 to 3 were examined and Exs.B1 to B6 were marked on the side of the defendant. At the conclusion of trial, the learned trial Judge considered the evidence in the light of the arguments advanced on both sides and, upon such consideration, held that the suit sale agreement marked as Ex.A1 was not proved, accepted the contention of the defendants that the signature of the defendant and thumb impression found therein were forged. Consequent to the said finding, the learned trial Judge also found that the plaint averment regarding readiness and willingness was also false, held that the plaintiff was not entitled to the reliefs sought for in the suit and dismissed the suit by a judgment and decree dated 06.11.2002 without cost. As against the said decree of the trial court dismissing the suit, the present appeal has been filed by the unsuccessful plaintiff on various grounds set out in the grounds of appeal.

8. The points that arise for consideration in the appeal are as follows:

1. Whether sale agreement dated 26.06.1995 has been proved to be genuine?

2. Whether the plea of alibi made by the defendant has been substantiated?

3. Whether the description of property is not proper?

4. Whether the appellant/plaintiff is entitled to the relief of specific performance?

9. The arguments advanced by Mr.N.Manokaran, learned counsel for the appellant and by Mr.K.Goviganesan, learned

counsel for the respondent were heard. The judgment and decree of the court below, evidence adduced on both sides and other materials available on record sent for from the court below were also perused.

Point Nos.1 to 4:-

10. It is not in dispute that the suit property, namely an extent of 4.00 Acres comprised in S.Nos.44/1 (part), 44/2(part), 45/1(part), 416 (part) in Panikkampatti Village, Palladam Taluk, Tiruppur District, absolutely belongs to the respondent herein/defendant. The appellant herein/plaintiff filed the suit based on his contention that the defendant agreed to sell the suit property to the plaintiff for a sale consideration of Rs.4,00,000/-, received a sum of Rs.3,80,000/- as advance and part payment of the sale consideration and executed a written sale agreement on 26.06.1995 agreeing to execute and register a sale deed in favour of the plaintiff on receipt of the balance sale consideration of Rs.20,000/- within 15 months from the date of agreement. The suit sale agreement has been produced by the plaintiff and marked as Ex.A1. The further contention of the plaintiff is that though the plaintiff was ready and willing to complete the transaction as per the terms of the agreement, it was the defendant who was postponing the same by one pretext or other; that at last, when the plaintiff came to know that the defendant was making hectic efforts to sell the property to third parties, he issued a lawyer's notice calling upon the defendant to receive the balance sale consideration, execute a sale deed in his favour and register it at his cost and that since the said demand was not complied with and on the other hand, a reply denying the execution of the suit sale agreement came to be issued, he was constrained to file the suit for specific performance of the agreement for sale. Copy of the notice sent by the lawyer of the plaintiff has been marked as Ex.A6. The postal acknowledgement evidencing service of notice has been marked as Ex.A5. Reply notice sent by the defendant through his counsel has been marked as Ex.A7. In the said reply notice, the respondent herein/defendant denied the execution of the agreement and receipt of any amount as advance and part payment of the sale consideration.

11. In support of the plaintiff's case that the suit sale agreement was executed by the respondent herein/plaintiff, the plaintiff also contended that the title deeds relating to the suit property had been handed over to him at the time of entering into agreement. Exs.A2 and A3 series are the documents that were, according to the plaintiff, handed over by the defendant to the plaintiff at the time of execution of the agreement. In order to explain how the documents could have gone into the hands of the plaintiff, the defendant took a stand that his first son Selvaraj had parted with him and he, at the time

of leaving the house of the defendant, took away the title deeds relating to the suit property and that the same could have been handed over to the plaintiff while availing loan facilities in the financial institution run by the plaintiff in partnership with others. It is also his contention that the suit itself could have been filed in collusion with Selvaraj, the elder son of the defendant.

12. Since the defendant has flatly denied the execution of the suit sale agreement and vehemently contended that the signatures and the thumb impression found therein were not that of the defendant, the burden of proving the execution of the document, namely Ex.A1-Agreement for sale heavily lies on the plaintiff. In order to prove the execution of Ex.A1-Agreement for sale, the plaintiff himself deposed as PW1 and also examined one Rangasamy, one of the alleged attestors of the suit sale agreement, as PW2. Though both of them spoke in one voice about the place, date and time of execution of Ex.A1-Agreement for sale, there is contradiction between their testimonies as to when the negotiations were made and the parties arrived at a consensus regarding fixation of the sale consideration. According to the evidence of PW1, he inspected the property before holding negotiation for the purchase of the same from the defendant and that on 08.06.1991 itself, the agreement was orally concluded; that on the same day he went to Sulur and purchased the stamp papers and that thereafter the agreement came to be executed in writing on 26.06.1995 after 10.00 a.m. Though he would have deposed that the consensus regarding the sale consideration was arrived at on 08.06.1991 itself pursuant to which he purchased the stamp papers, for the subsequent question, he pleaded loss of memory as to the date on which they arrived at the consensus regarding the sale consideration. Two persons by names P.S.Rangasamy and A.Thanganan were projected as attestors of the suit sale agreement. Out of them, the said Rangasamy alone has been examined as PW2. According to him, two years prior to the date of Ex.A1-Agreement, the plaintiff informed him that he was going to purchase the suit property from the defendant. He also deposed to the effect that, when they went for the registration of Ex.A1-Agreement on 26.06.1995, the stamp papers had already been purchased and got ready for writing the agreement on them. In this regard, there is a contradiction between the evidence of PW1 and PW2 as to whether PW2 was present at the time of negotiation leading to the consensus regarding sale consideration.

13. In the above background we have to approach the evidence adduced on the side of the defendant also. The defendant Palanisamy figured as DW1. According to his testimony he never agreed to sell the suit property for a sum of Rs.4,00,000/- and he did not receive a sum of Rs.3,80,000/- as

advance as claimed by the plaintiff. It is also his testimony that he did not execute the suit agreement for sale and that since the agreement itself was false, there was no truth in the claim of the plaintiff regarding his readiness and willingness to complete the transaction. His further evidence is to the effect that out of two sons he had got, the elder son Selvaraj got separated from the family and he was living separately; that he was a drunkard and he had taken away some of the documents relating to the suit property while leaving the house of the defendant and that the defendant came to know subsequently that the suit agreement could have been created in collusion with the said Selvaraj. It is also his evidence that he dug a well to a depth of 75 feet spending a sum of Rs.50,000/- and got free service connection to the said well in S.C.No.304 and that a residential house had been put up with the plinth area of 750 sq.ft incurring a cost of Rs.1,50,000/- and another shed for his poultry form was put up at the cost of Rs.80,000/- in an area of 1,600 sq.ft. It is also his evidence that he reclaimed the land spending a sum of Rs.1,50,000/-. Thus, DW1 furnished an account for a total sum of Rs.4,30,000/- as the amount spent by him for such improvements. In addition, in support of his contention that he could not have agreed for selling the land for a lesser amount than the amount spent by him for the above said improvements and that the suit property, even as on the date of the alleged agreement, was worth more than 15 lakhs, he has also pleaded an alibi that he was on duty from 07.00 am in the morning till 03.00 pm in the evening in Lakshmi Mills, Palladam to show that he could not have been there at the time of the alleged execution of the suit sale agreement. The other documents produced by the defendants to show that the plaintiff was a partner in Annai Finance, Somanur and Poomagal Finance are Exs.B1 to B4. Another Palanisamy, S/o.Kumarasamy Gounder deposed as DW2. He was examined to show that the value of the suit property could have been much more than what has been stated in Ex.A1 agreement for sale. It is his evidence that on 30.01.1995, his sister Rukmani purchased a property, which is at a little more distance from the main road than the suit property and that 30 cents of such land was purchased by his sister Rukmani on 30.01.1995 for a sum of Rs.1,17,800/-. Though he would have claimed that it was he who arranged for the said sale in favour of his sister, he was not in a position to give the four boundaries of the 30 cents of land purchased by his sister. However, he would give the time of execution of the said sale deed and the date on which the same was registered. A certified copy of the said sale deed under which 30 cents of land was purchased by Rukmani, the sister of DW2, has been marked as Ex.B5.

14. The suit sale agreement marked as Ex.A1 is dated 08.06.1995. The certified copy of the sale deed relied on by the defendant, to show that the market value of the property could have been several times more than what was stated in the agreement, namely the sale deed registered as Document No.271/1995 has been marked as Ex.B5. Ex.B1 is the certified copy of the Register of Partnership firms showing the partners in Annai Finance, Somanur. The plaintiff's name is found as the 7th partner in the said Finance. Ex.B2 is the certified copy of Form No.1 under Rule 3 of the Indian Partnership Act, 1932 of Annai Nidhi Niruvanam. It contains the names of the partners and also their declaration. The plaintiff, namely Kandasamy S/o. Karuppana Gounder is shown as the 7th partner and his declaration is also found therein. The certified copy of the extract of Register of Firms regarding "Poomagal Finance" under Form A has been produced as Ex.B3. The plaintiff's name is found as the second partner in Poomagal Finance, Somanur. Certified copy of Form 1 relating to Poomagal Finance is Ex.B4. The plaintiff's name is found as the second partner and his declaration to that effect is also found therein. From Ex.B1 to B4 it is quite obvious that the plaintiff was running two financial institutions in the names of "Annai Nidhi Niruvanam", Somanur and "Poomagal Finance", Somanur in partnership with others.

15. However, the plaintiff while deposing as PW1 has denied the suggestion that he was doing business in partnership as Poomagal Finance at Somanur. It is also his evidence that he was not a partner of Annai Nidhi Niruvanam, Somanur. Only after his denial of his running a finance business in partnership with others in the name of Annai Nidhi Niruvanam and Poomagal Finance, the defendant has chosen to produce the above said documents Exs.B1 to B4 to substantiate his contention that the plaintiff was doing business in partnership in the name of Annai Nidhi Niruvanam and Poomagal Finance. Rangasamy, who was examined as PW2, has not spoken anything about the above said business of the plaintiff. When the defendant has not only led oral evidence through himself as DW1, but also produced the documents relating to the registration of partnership firms and the declaration made by the partners in proof of his contention that the plaintiff was a partner in Annai Nidhi Niruvanam and Poomagal Finance, Somanur, the plaintiff could have led rebuttal evidence to show that Kandasamy S/o.Karuppasamy shown in those documents was some other person. On the contrary, the plaintiff, as PW1, himself admits the addresses found in the above said documents produced by the defendant to be his.

16. The plaintiff, having filed the suit for specific performance based on an agreement for sale, need not have hesitated to admit the fact that he was doing finance business in partnership with others in the names of Annai Nidhi

Niruvanam and Poomagal Finance, which are substantiated by the production of documents marked as Exs.B1 to B4. The very fact that he has chosen to suppress the said fact and deny the same will make the defence plea of the respondent/defendant that the suit sale agreement could have been created to be probable. In fact, Ex.A1 suit sale agreement is stated to have been typed and executed at Tiruppur. However, the stamp paper for writing the said agreement came to be purchased from a stamp vendor at Sular on 08.06.1995 itself, whereas the suit sale agreement is said to have been executed on 26.06.1995. Though PW1 would state that he had purchased the stamp paper and the concur papers to be used for preparation of the suit sale agreement and such purchase was made at Sular, he is not able to state on which date or how many days before the execution of Ex.A1 sale agreement, the said papers were purchased. He has also admitted the fact that the suit property situates at a distance of 1 ½ kms from Palladam and that the jurisdictional Sub-Registrar office is at Palladam. When the jurisdictional Sub-Registrar office is at Palladam and the property is also very close to Palladam, what made them to go to Tiruppur, after purchasing the stamp paper at Sular, to write the agreement is a pertinent question to be considered.

17. It is the evidence of the plaintiff, as PW1, that since the defendant wanted the document to be prepared and executed at Tiruppur, they went to Tiruppur. PW2-Rangasamy examined as an attester of Ex.A1 agreement says that negotiation for the sale was made at Perumalgoundan Palayam on 26.06.1995 at 10.00am and that thereafter they went to Kumar typewriting institute at Tiruppur, where Ex.A1 was prepared and executed. The said evidence of PW2 is quite contrary to the evidence of PW1. PW1 has stated that prior to 26.06.1995, the negotiations were over and a consensus was arrived at and that only for the purpose of execution of the agreement for sale, they went to Tiruppur on 26.06.1995. Both PW1 and PW2 were not in a position to state the date on which the stamp paper for Ex.A1 was purchased or at least how many days prior to the date of execution of Ex.A1, the stamp paper came to be purchased. It is quite obvious that in the stamp papers used in Ex.A1 the thumb impressions purported to be the thumb impression of the plaintiff and the defendant are found only in the first page. In the other two sheets, there is no such thumb impression. The defendant has clearly denied having executed the suit sale agreement and he has also pleaded alibi to the effect that on 26.06.1995 between 07.00 am and 03.30 pm he was on duty in Lakshmi Mill at Palladam. In order to prove the said plea of alibi, he has also caused production of Ex.B6 Attendance Register and also examined one Bose as DW3. DW3 has made it clear in his evidence that an entry in the attendance register was made on 26.06.1995 to the effect that the defendant was on duty in Lakshmi Mills, Palladam from 07.00 a.m to 03.30pm. It will be pertinent to note that

DW3 was sent to the Court to produce the document Ex.B6. While he was examined as DW3 he deposed based on the entries found in Ex.B6. Simply because he had not produced a document to show that he was working in the said Mill on 26.06.1995, his evidence regarding the attendance of the defendant in Lakshmi Mill on 26.06.1995 between 07.00 am and 03.30 pm could not be disbelieved.

18. The Attendance Register relating to S.F.Unit of Lakshmi Mills, Palladam for the month of June 1995 has been produced and marked as Ex.B6. 26.06.1995 fell on a Monday and the defendant Palanisamy is shown to be on duty in the shift between 07.00 am and 03.30 pm. PW3 has given clear evidence as to different colour inks used for different shifts. According to his testimony, the blue ink denote the shift between 07.00 am and 03.30 pm, the use of red ink denote the next shift between 03.30pm and 12.00 Midnight, whereas blue ink denotes the first shift between 12.00 midnight and 07.00 am. The ticket number of the defendant is 3015. He was shown to be in the preparatory section with the designation Simplex Tent. His attendance in the week from 25.06.1995 to 30.06.1995 has been shown in blue ink. The entries in Ex.B6 and the evidence of DW3 corroborates the evidence of the defendant (DW1) that on the date of alleged execution of Ex.A1 agreement for sale, he was on duty in Palladam Lakshmi Mills between 07.00 am and 03.30pm. When such stronger evidence came to be adduced on the side of the respondent/defendant, there is dearth of reliable evidence adduced on the side of the appellant/plaintiff to show that the respondent/defendant was not on duty at the time of alleged execution of the agreement for sale or that he had availed permission and came out of the Mill in advance. Though PW1 would have stated that the stamp paper was purchased at Sular on 08.06.1995 in his chief examination, during cross-examination his evidence has been recorded to the effect that he purchased the stamp paper at Sular on 08.06.1991. Of course, the same may be taken as a slip of tongue or erroneous recording of the date by the trial Court. If at all such a mistake occurred in the recording of the evidence, the appellant/plaintiff could have very well brought it to the notice of the trial Court and pleaded for correction of the same, by filing a memo. Or else he could have taken steps to correct the mistake committed by slip of tongue by re-examining him, but the same was not done.

19. Further, PW1 himself has admitted the existence of a residential house, a well and a poultry shed in the suit property. However, he contended in his evidence that the residential shed and the poultry shed together would be worth only a sum of Rs.50,000/-. But he has not chosen to include the residential house and the poultry shed in the description of property regarding which he has claimed the relief of specific performance. Though the said structures were not included in

the description of property, in the plaint schedule, PW1 in his evidence would contend that he claims conveyance of the suit property including the well, electricity service connection to the well, the house and the poultry shed, by way of specific performance, even though they have not been specifically mentioned in Ex.A1-Agreement for sale.

20. A perusal of the description of property provided in the plaint schedule will make it clear that the description was simply copied from the parent deed. For better appreciation, the description provided in vernacular in the plaint schedule is re-produced hereunder:-

"திருப்பூர் ரிடி, பல்லடம் சப்டி, பல்லடம் தாலுக்கா, பல்லடம் பஞ்சாயத்து யூனியனைச் சேர்ந்த பணிக்கம்பட்டி கிராமம், பஞ்சாயத்து போர்டு எல்லைக்குட்பட்ட பணிக்கம்பட்டி கிராமம், க.ச.44/1 நெ. க.ப. ஏக்கர் 2.03க்குத் தரம் ரூ.1.62 இதில் தென்வடல் பொழியாக கிழபுரம் சரிபாதி ஏக்கர் 1.1 1/2 க்குத் தரம் ரூ.0.81 க.ச.44/2 நெ.கா.ப. ஏக்கர் 3.46க்குத் தரம் ரூ.2.81 இதில் தென்வடல் பொழியாக கிழபுரம் சரிபாதி ஏக்கர் 1.73க்குத் தரம் ரூ.1.40 க.ச.45/1 நெ.கா.ப. ஏக்கர் 1.09க்குத் தரம் ரூ.0.88 இதில் தென்வடல் பொழியாக கிழபுரம் சரிபாதி ஏக்கர் 0.54 1/2க்குத் தரம் ரூ.0.44. பின்னும் மேற்படி ரிடி, மேற்படி சப்டி, மேற்படி தாலுக்கா, மேற்படி யூனியனைச் சேர்ந்த பல்லடம் கிராமம், பஞ்சாயத்து போர்டு எல்லைக்குட்பட்ட பல்லடம் கிராமம், க.ச.416 நெ. கா.ப.ஏ.1.42க்குத் தரம் ரூ.1.19 இதில் தென்வடல் பொழியாக கிழபுரம் ஏக்கர் 0.71க்குத் தரம் 0.60 ஆக ஒட்டு ஏக்கர் 4.00க்குத் தரம் ரூ.3.31 மேலேகண்ட 4 கால்களிலும் இந்தக் கிரையப்பத்திரத்தில் கண்ட பங்கில் மேல்கோட்டில் எங்களுக்குப் பாத்தியப்பட்ட க.ச.45/2 நெ. காலை தோட்ட பூமிக்கு நாங்கள் வண்டி கால்நடை வகையரா ஒட்டி நடந்துகொள்ள வடகோட்டிலிருந்து கிழக்கு முகமாகவும், மேல்கோட்டில் வடக்கு முகமாகவும் 12அடி அகலமுள்ள தடம் தெற்குக் கோட்டிலிருந்து வடகோட்டு ரோட்டு வரைக்கும் வண்டி கால்நடை லாரி வகையரா ஒட்டி நடந்து கொள்ள நீங்கள் எங்களுக்குத் தடம்விட்டு விடவேண்டியது. நீங்களும் அதே தடத்தில் வண்டி கால்நடை, லாரி வகையரா ஒட்டி நடந்துகொள்ள வேண்டியது."

The highlighted portion will make it clear, how mechanically the schedule of property came to be provided in the plaint. A comparison of the same with Ex.A2 will make it clear that the same recital provided in the said sale deed has been reproduced in Ex.A1 and in the plaint, without any application of mind. The relevant portion in Ex.A1 in vernacular is re-produced as under:

"இந்தக் கிரையப் பத்திரத்தில் கண்ட பங்கில் மேல்கோட்டில் எங்களுக்குப் பாத்தியப்பட்ட க.ச.45/2 நெ. காலை தோட்ட பூமிக்கு நாங்கள் வண்டி கால்நடை வகையரா ஒட்டி நடந்துகொள்ள வடகோட்டிலிருந்து கிழக்கு முகமாகவும், மேல்கோட்டில் வடக்கு முகமாகவும் 12அடி அகலமுள்ள தடம் தெற்குக் கோட்டிலிருந்து வடகோட்டு ரோட்டு வரைக்கும் வண்டி, கால்நடை லாரி வகையரா ஒட்டி நடந்து கொள்ள நீங்கள் எங்களுக்குத் தடம் விட்டு விட வேண்டியது. நீங்களும் அதே தடத்தில் வண்டி கால்நடை, லாரி வகையரா ஒட்டி நடந்துகொள்ள வேண்டியது."

The same has been borrowed and re-produced from Ex.A2. PW1 has admitted that the defendant did not retain any portion in the suit survey number with him. If it was so, the above said recital would be quite unnecessary and misleading. The very fact that the description found in Ex.A2 has been simply re-produced in Ex.A1 agreement without any application of mind and it has been again re-produced in the plaint schedule, will show that the plaintiff was not aware of the correct particulars of the surrounding properties. The failure to include the well, electricity service connection fitted to the well, residential house and poultry shed will make it clear that the plaintiff himself was not aware of the full particulars of the property which was sought to be purchased.

21. In addition, PW2 Rangasamy in his evidence has not stated anything about the existence of well, residential house and poultry shed. Coupled with the same, the defendant, as DW1, has clearly denied having executed Ex.A1 Agreement for Sale. He has denied not only his signature, but also the thumb impression found in the first page of the Ex.A1 agreement for sale. Apart from the said denial, he has also adduced evidence through himself and through DW3 and by causing production of Ex.B6 to show that he could not have been present in Tiruppur at Kumar Typewriting institute at 10.00 am on 26.06.1995 as he was on duty in Lakshmi Mills, Palladam between 07.00 am and 03.30pm on the said date as contended by PW1. Though PW2 Rangasamy would state that they went to Tiruppur at 08.00 am on 26.06.1995 for the execution of Ex.A1 agreement, the evidence of PW1 is quite contradictory insofar as he has stated that they went to Tiruppur at 10.00 am on 26.06.1995. It is also quite unnatural that thumb impression of the parties to the agreement were obtained in the first page alone and not other pages or in the last page of the agreement. It is the evidence of PW1 that he informed his counsel of the existence of residential shed, well and poultry shed while giving instructions for filing the case. However, he was clever enough when confronted with the question, "what are the properties regarding which he filed the suit?", to simply state that he filed the suit in respect of the property concerned in Ex.A1 agreement.

22. Above all, the defendant has adduced clear and reliable evidence to the effect that he spent about Rs.50,000/- for digging a Well, Rs.1,50,000/- for constructing a residential house with the plinth area of 750 sq.ft in the suit property and a sum of Rs.80,000/- for putting up a poultry shed in an area of 1000 Sq.ft. If all those amounts are taken into account, then it will take us to the figure Rs.2,80,000/-. This Rs.2,80,000/- is not inclusive of the amount allegedly spent by the defendant for reclaiming the land. The well, residential house and poultry shed in the suit property themselves account for Rs.2,80,000/-. Through DW1 and by the production of Ex.B5, the

defendant has adduced clear and reliable evidence to the effect that, the value of the land would be not less than Rs.3,90,000/- per acre as on the date of agreement itself. The total extent of the suit property is admittedly 4 acres. If the value is calculated on the basis of Ex.A5, it will come to not less than Rs.15,60,000/-.

23. The sale price quoted in Ex.A1 is only Rs.4,00,000/-. Out of the said amount, Rs.3,80,000/- was said to be paid on the date of agreement itself. If such a major part came to be paid on the date of agreement itself, the plaintiff could have very well paid the balance amount within a short time and got the sale deed. On the other hand, notice calling upon the defendant to execute the sale deed on receipt of the sale consideration came to be issued only at the fag end of three years from the date of agreement. Ex.A4 is the copy of the notice dated 15.06.1998. Ex.A5 is the acknowledgment card showing service of the said notice. It does not contain the clear impression of the postal stamp to show the date on which it was served. However, a reply on behalf of the defendant sent through his lawyer came to be issued on 26.06.1998. In the said reply notice, execution of the suit sale agreement and the receipt of a sum of Rs.3,80,000/- as advance have been denied. The defendant also wanted to have a xerox copy of the agreement for his perusal and sent a sum of Rs.25/- for the expenses of taking a xerox copy of the agreement and sending the same to the defendant. Such xerox copy was furnished to the counsel for the defendant as per the endorsement found in Ex.A6. Thereafter, the respondent/defendant issued a detailed reply notice denying the averments made in Ex.A4 notice and also contending that the suit sale agreement could have been fabricated. The entire plea of defence taken by him in the written statement had been stated in the said reply notice also. It was claimed that the suit agreement could have been forged one and that the documents pertaining to the suit properties which were taken by his elder son Selvaraj when he left the house of respondent / defendant could have been used for such fabrication of the suit sale agreement.

24. If all these aspects are taken into account and considered in proper perspective, one can arrive at a conclusion that the preponderance of probabilities show that the agreement could not be true and it could have been fabricated as contended by the respondent/defendant. The failure on the part of the appellant/plaintiff to have the signature and thumb impression found in the disputed document, namely Ex.A1 agreement for sale, compared with a handwriting expert, will show that the appellant/plaintiff has miserably failed in proving the execution and genuineness of Ex.A1 agreement for sale. The learned trial Judge seems to have properly appreciated the evidence adduced on both sides and also omission made by the

appellant/plaintiff to prove at least the thumb impression found in the agreement for sale to be that of the defendant and arriving at a correct conclusion that the execution of the suit agreement for sale was not proved by the plaintiff by reliable evidence and that hence the appellant/plaintiff was not entitled to the relief of specific performance as prayed for.

25. Even if it is assumed for argument sake, without admitting, that the suit sale agreement could be true, the appellant/plaintiff was not entitled to the relief of specific performance because of the misdescription omitting to include the residential house, well, electricity service connection and poultry shed in the suit property. Since the respondent/defendant has also proved that the land itself was worth more than Rs.15 lakhs as on the date of agreement for sale and the improvements made by him themselves would account for more than four lakhs and that the total value of the property shall be not less than Rs.19 lakhs, the sale consideration quoted in Ex.A1 is shockingly low and that alone will be a ground for rejection of the equitable relief of specific performance. The above said observation has been made in addition to the finding that the disparity in the value itself will show the improbability of the plaintiff's case regarding the execution of the suit sale agreement for sale under Ex.A1. When the respondent/defendant has also led clear evidence of alibi, the plaintiff ought to have taken steps to prove at least the thumb impression found in the agreement to be that of the defendant. The appellant/plaintiff, for the reasons best known to him, has not chosen to do so. The cumulative effect of the evidence adduced on both sides and the omission made by the plaintiff will lead to the only conclusion that by preponderance of probabilities, the plaintiff's case has not been proved and on the other hand, the defence case of the defendant stand substantiated.

26. The learned trial Judge has not committed any mistake or error in holding that the plaintiff failed to prove his case regarding the execution of Ex.A1 Agreement for sale and his entitlement to get the relief of specific performance based on the same. The learned trial Judge has also arrived at a correct conclusion that the suit filed by the appellant/plaintiff was liable to be dismissed without costs. On re-appreciation of evidence, this Court also comes to the conclusion that the plaintiff is not entitled to the relief of specific performance. Hence, this Court finds no rhyme or reason to interfere with the same. On the other hand this Court holds that the appeal is liable to be dismissed.

In the result, the Appeal Suit fails and the same is dismissed. The decree of the trial Court shall stand confirmed. No costs.

-s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

gpa

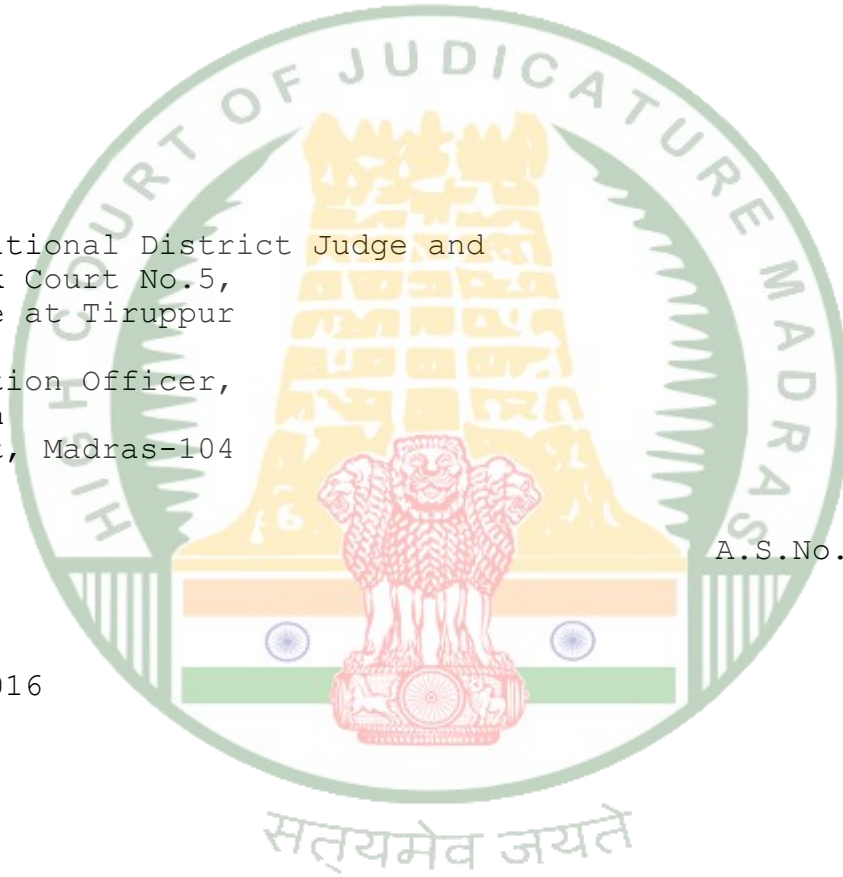
To

1.The Additional District Judge and
Fast Track Court No.5,
Coimbatore at Tiruppur

2.The Section Officer,
VR Section
High Court, Madras-104

A.S.No.535 of 2003

aa14/06/2016



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