

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2016

DELIVERED ON : 29.08.2017

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.604 of 1997

A.Velusamy

... Plaintiff

Vs.

1.Hemavathy Ramanathan

2.Vellambal (deceased)

3.Jayashree

4.SriLakshmi

5.Sripriya

(Defendants 3 to 5 have been declared major as per order dated 10.12.2014 in A.No.7265 of 2014 and the first defendant has been discharged as natural guardian as per order dated 10.12.2014 in A.No.7266/2014)

6.Seethalakshmi

7.Sundara Kanchana

(Defendants 6 and 7 brought on record as LR's.

Of deceased 2nd defendant as per order dt.9.3.2010 in A.No.5934 of 2009)

... Defendants

This Civil Suit is preferred, under Order IV Rule 1 of the Original Side Rules seeking a decree inter-alia to direct the defendants to execute a deed of sale, deliver vacant possession of the suit property, to cause execution and registration of a sale deed in favour of the plaintiff or in alternative, to refund Rs.50 lakhs with interest at the rate of 24% per annum from 20.12.1996 till date of repayment.

For Plaintiff : Mr.R.Thiagarajan

For Defendants : Mrs.C.R.Rukmani for D1,3 and 5
Mr.G.Nagarajan for D6 and D7

JUDGMENT

This is a suit for specific performance of an agreement to sell a property in the form of an independent residential house in the city of Chennai.

2 I deem it necessary to set out the facts under two heads, viz., 'Facts in a nutshell' and 'Facts in detail', both for better appreciation of this judgment.

Facts in a nutshell :

3(a) One A.V.Ramanathan was a Government servant working with the Government of Tamil Nadu in the Secretariat as Personal Secretary to an Election Officer in the Secretariat, Chennai. A.V.Ramanathan lived with his family consisting of his mother, wife and three daughters in Chennai in an independent house which is the suit property.

3(b) A.V.Ramanathan was in robust health with no known illness or ailment. On 30.9.1997, after a days regular work in the Secretariat, then 43 years old A.V.Ramanathan left his office and was heading home, when tragedy struck, he was hit by a train in the railway track and he died

instantaneously. A.V.Ramanathan left behind his then 32 years old wife, three young minor daughters and a widowed mother. This sad and sudden demise of A.V.Ramanathan, a sordid reminder of ephemerality of life, is the beginning of this litigation.

3(c) Little over a fortnight after the sudden demise of A.V.Ramanathan, this suit was filed against the legal heirs of A.V.Ramanathan, who were arrayed as Defendant 1 to 5. To be precise, this suit was filed on 20.10.1997.

3(d) It is the case of the plaintiff that late A.V.Ramanathan had entered into an agreement to sell dated 20.12.1996 with the plaintiff, agreeing to sell his residential house (independent house) at Door No.1, Corporation Colony, Second Street, Rangarajapuram, Kodambakkam, Chennai-600 024 for a total sale consideration of Rs.52,00,000/- and had received Rs.50,00,000/- in all towards advance and part payment, which is almost the entire sale consideration.

3(e) It is the further case of the plaintiff that the sale was about to be completed when the cruel snatching away of A.V.Ramanathan by fate happened on 30.09.1997. This independent house is situate in land admeasuring an extent of 3272 square feet (one ground and 872 square feet) with three superstructures thereon. This shall hereinafter be referred to as 'suit property' for the sake of brevity, convenience and clarity.

3(f) As stated supra, it is the case of the plaintiff that A.V.Ramanathan had agreed to sell the suit property for a total sale consideration of Rs.52,00,000/- and had received almost the entire sale

consideration by way of advance and part consideration. It is the plaintiff's further say that the advance and part payment of Rs.50,00,000/- was made in three parts (Rs.15,00,000/- on 15.12.1995; Rs.20,00,000/- on 11.3.1996; and another Rs.15,00,000/- on 20.12.1996). All payments are said to have been made by cash. The agreement to sell the suit property is dated 20.12.1996 and the same is marked as Ex.P.2.

3(g) A.V.Ramanathan's widow Hemavathy Ramanathan, who was arrayed as first defendant entered appearance through a counsel and filed a written statement dated 19.1.1998, which was adopted by defendants 2 to 5, who are her mother-in-law (A.V.Ramanathan's mother) and her three daughters. Putting on pause here for a moment the chronicled narration of facts, it is necessary to record that, pending suit, A.V.Ramanathan's mother, who was arrayed as second defendant, died and A.V.Ramanathan's two sisters were brought on record as defendants 6 and 7 (in their capacity as legal heirs of deceased second defendant). Though defendants 6 and 7 entered appearance through an Advocate, no written statement has been filed on their behalf and they had not shown any interest in contesting the instant suit until this final hearing.

3(h) Be that as it may, it is to be noted that in the above said written statement dated 19.1.1998, the defendants would contend that they are not aware of the transactions of A.V.Ramanathan. However, they completely deny Ex.P.2 agreement to sell and say that it is fabricated and concocted. The defendants do not stop by saying that it was fabricated and concocted, but they are disputing the signature of A.V.Ramanathan in Ex.P.2. Now that

A.V.Ramanathan is no more, this Court has to necessarily embark upon the exercise of appreciating oral and documentary evidence in the light of the pleadings and decide as to whether Ex.P.2 agreement to sell dated 20.12.1996 was executed and whether there was any transaction between the plaintiff and A.V.Ramanathan at all. For embarking upon such enquiry, some more details regarding the circumstances surrounding the execution of Ex.P.2, as can be culled out from the pleadings, depositions and exhibits, will have to be set out and I do so under the caption 'Facts in detail' infra.

Facts in Detail :

4(a) As can be inferred from facts that emerge from the pleadings, depositions and exhibits, it is relevant to see how A.V.Ramanathan met the plaintiff and under what circumstances, Ex.P.2 came to be executed as per the plaintiff's version.

4(b) Plaintiff Veluchamy is doing business of selling paddy, gunny bags and Urud dhal in Kumbakonam. Plaintiff is also having a house site at Kumbakonam and has built a commercial complex therein. P.W.3, K.S.Ramanathan, is a friend of the plaintiff. P.W.3 was working in Punjab National Bank at Kumbakonam at the relevant point of time. P.W.3 was thereafter transferred to the Mylapore Branch at Chennai. At Chennai, late A.V.Ramanathan was introduced to P.W.3 by another bank customer Natarajan of D.P.Shoes Company.

4(c) Late A.V.Ramanathan enquired with P.W.3 as to whether he could avail loan against his immovable house property. At that time, as no

such scheme was available, P.W.3 expressed his inability in this regard. After some time thereafter, late A.V.Ramanathan again met P.W.3 and informed him that he is willing to sell his house property and requested him to find a buyer. In the meanwhile, plaintiff expressed to P.W.3 his desire of purchasing a house at Chennai. Therefore, P.W.3 asked the plaintiff to come to Chennai stating that one A.V.Ramanathan has offered to sell his house property at Chennai. Accordingly, the plaintiff came to Chennai. Plaintiff, late A.V.Ramanathan and P.W.3 discussed the proposal.

4(d) After discussion, the sale transaction was finalized in 1995 and the sale consideration of Rs.52,00,000/- was fixed. An initial payment of Rs.15,00,000/- was paid in cash at the residence of the Bank Officer Ramanathan in the year 1995 (15.12.1995 to be precise). The said amount was earned by the plaintiff in his business. Thereafter, as late A.V.Ramanathan requested for further sale consideration, the plaintiff borrowed Rs.12,00,000/- from P.W.2 Senthil Kumar and another sum of Rs.8,00,000/- from the mother of P.W.2 and paid Rs.20,00,000/- to late A.V.Ramanathan on 11.3.1996. Plaintiff made the last payment of Rs.15,00,000/- on execution of the sale agreement (Ex.P.2) on 20.12.1996. P.W.3 Ramanathan signed in Ex.P.2 as first witness and P.W.2 Senthil Kumar signed as second witness. Thereafter, the plaintiff also made a payment of Rs.15,00,000/- to late A.V.Ramanathan and asked him to execute the sale deed. Late A.V.Ramanathan told him that as he was having a loan over his property, he would discharge the same and get the sale deed executed.

4(e) Out of two witnesses who signed Ex.P.2, one was examined as P.W.2 (R.Senthil Kumar), who had deposed that the plaintiff was known to him for over 25 years. P.W.2 is a private contractor in Public Works Department. P.W.2 was also looking after his father's steel business. P.W.2 gave Rs.12 lakhs to the plaintiff from the sale proceeds of his mother's house. As the plaintiff requested him to come to Chennai, P.W.2 came to Chennai and stayed in a hotel at Egmore. On the day of execution of agreement Ex.P.2, plaintiff, P.W.2, P.W.3 and late A.V.Ramanathan assembled near the house of late A.V.Ramanathan. After signing in Ex.P.2 as a witness, P.W.2 left the house of late A.V.Ramanathan.

4(f) As this entire transaction was by cash, it has become necessary to examine how the plaintiff mobilized these funds. The plaintiff had paid the first instalment of Rs.15 lakhs on 15.12.1995 and the second instalment of Rs.20,00,000/- in the year 1996. The plaintiff would say that the first instalment of Rs.15,00,000/- was earned by him in the course of his business. As set out supra, the plaintiff owns a commercial complex at Kumbakonam and he is also doing business of selling paddy, gunny bags and Urud dhal, he used to keep the amount in his residence as well as in bank. The plaintiff also got loan of Rs.12,00,000/- from P.W.2 and another Rs.8,00,000/- from the mother of P.W.2. Another sum of Rs.15,00,000/- was arranged by the plaintiff from and out of his business and the same was paid to late A.V.Ramanathan.

4(g) This also takes us to the issue as to why plaintiff who was based in Kumbakonam, wanted to buy a property in Chennai. Plaintiff had

stated in his cross examination that his wife wanted to purchase a property at Chennai to educate their children in Chennai. In the meanwhile, as plaintiff's son got admission in Coimbatore, he was studying in Coimbatore itself. The plaintiff's daughter studied in Kumbakonam itself. In the above backdrop, we shall now proceed to discuss the case.

Discussion :

5(a) As a first step for commencing the discussion, it is necessary to set out the issues framed by this Court on the basis of the rival pleadings. Six issues were framed by this court on 7.4.2006 and the same are as follows :

(i) Whether the husband of the first defendant by name A.V.Ramanathan had executed the sale agreement dated 20.12.1996 in favour of the plaintiff agreeing to sell the suit property ?

(ii) Whether the plaintiff has paid the advance amount as alleged in the plaint?

(iii) Whether the plaintiff was always ready and willing to perform his part of the contract?

(iv) Whether the plaintiff is entitled to a decree for specific performance as prayed for?

(v) Whether the plaintiff is entitled to a decree for Rs.50 lacs as an alternative relief?

(vi) To what relief the parties are entitled to ?

5(b) From the rival pleadings that have been set out supra under the captions 'Facts in a nutshell' and 'Facts in details', it would be evident that

issue No.(i) is pivotal for the suit. In other words, I am of the view that issue No.(i) is the fulcrum of the case. I say so, as the answer to issue No.(i) will have a direct impact on issue Nos.(ii) and (iii).

5(c) Issue No.(iv) will fall for consideration based on the answer to issue No.(iii).

5(d) Thereafter, if the answers to issue Nos.(i) and (ii) are in the affirmative, this Court sitting in equitable discretionary jurisdiction (to be noted, this is a suit for specific performance of an agreement to sell), will go into whether the plaintiff would be entitled to an affirmative answer qua issue No.(iv) or qua issue No.(v).

5(e) Issue No.(vi) is residuary in nature. Therefore, any other aspect of the matter will be discussed under issue No.(vi).

5(f) With the above sequence and logic in mind, this Court proceeds with discussion and takes up issue No.(i) for discussion.

5(g) Before searching for an answer for issue No.(i), it is to be noted that four witnesses, namely, P.W.1 to P.W.4 were examined on the part of the plaintiff and four exhibits, namely, Exs.P.1 to P.4 were marked on the side of the plaintiff. On the side of defendants, only one witness, namely, D.W.1 was examined and 12 exhibits, namely Exs.D.1 to D.12 were marked. To be noted, Exs.D.10 and D.11 were marked through subpoena witness P.W.4.

5(h) It is to be further noted that the plaintiff has examined himself as P.W.1 and the first defendant has examined herself as D.W.1.

5(i) On the side of the plaintiff, R.Senthil Kumar, who signed as one of the witnesses in the agreement to sell dated 20.12.1996 (Ex.P.2) has been

examined as P.W.2. K.S.Ramanathan, Bank Manager, who is said to have introduced the plaintiff and late A.V.Ramanathan, was examined as P.W.3. One R.Prabhakaran, a Government servant, then serving as Under Secretary to Government, was examined on subpoena as P.W.4.

5(j) As already mentioned supra, the first defendant examined himself as D.W.1 and she was the lone / sole witness on the side of the defendant.

5(k) As the very execution of Ex.P.2 is being disputed, one has to necessarily bear in mind one aspect of the matter. With regard to document Ex.P.2, it is not the case of the defendants that it is a manufactured document, wherein papers signed by A.V.Ramanathan for some other purpose was misused. It is the specific case of the defendants that the signature as contained in Ex.P.2 is not late A.V.Ramanathan's signature at all. Interestingly and intriguingly, both the parties, namely, plaintiff and defendants have not taken out an application for sending Ex.P.2 to a handwriting expert though a contemporaneous admitted signature was available in EX.D.6. Conscious of the fact that burden of proof rests heavily on the plaintiff, I consciously say that both parties have not chosen to take out such an application, on the time honoured principle that while the burden of proof does not shift, onus of proof keeps swinging like a pendulum from one end to the other qua parties to the lis, i.e., between plaintiff and defendants. The plaintiff, no doubt, should have taken out an application to send Ex.P.2 to a handwriting expert. The plaintiff had not done so. As defendants are disputing the very signature of late A.V.Ramanathan and as he is no more,

they have not given any tenable or acceptable reason for not taking out an application for sending Ex.P.2 to a handwriting expert.

5(l) It is to be noted that a contemporaneous signature of late A.V.Ramanathan, being his signature in the mortgage deed along with discharge receipt, namely, Ex.D.6, dated 1.9.1983 (to be noted, his signature therein is dated 25.9.1997), is available for comparison. Therefore, with an intention to give an opportunity to parties and as an exercise in pursuit of truth, when the suit was taken up for final hearing, I put it to the plaintiff and defendants as to whether they are willing to take out such an application now for comparison of the admitted signature of late A.V.Ramanathan in Ex.D.6 dated 25.9.1997 with the disputed signature of late A.V.Ramanathan in Ex.P.2 dated 20.12.1996.

5(m) Both learned counsel took time for getting instruction from their respective parties. After getting instructions, the plaintiff readily agreed to take out such an application and / or for sending the document for opinion of an Expert. However, learned counsel for the defendants, on instruction, vehemently opposed such a move and did not agree for sending the document for examination by experts.

5(n) Both parties were expressing a huge sense of urgency as the suit is of the year 1997. Under such circumstances, if an application for sending Ex.P.2 for the opinion of handwriting experts is taken out now and some order is passed on contest, it will only lead to further delay if the matter is taken on appeal. Therefore, left with no option, I proceed on the basis of

comparison of admitted signature of late A.V.Ramanathan in Ex.D.6 and the disputed signature of late A.V.Ramanathan in Ex.P.2 as evident to the naked eye.

5(o) Before going to the signature aspect, certain other aspects that were highlighted and raised by the defendants, to say that Ex.P.2 is fabricated and gotten up document, are as follows :

(i) Non judicial stamp paper in which Ex.P.2 has been executed is dated 10.10.1993 while Ex.P.2 itself is dated 20.12.1996;

(ii) The flavor of language in which Ex.P.2 has been written (by flavor reference is to dialect) is that of Kumbakonam;

(iii) The entire Rs.50 lakhs is said to have been paid by cash, which is difficult to believe, more so in the light of the fact that the plaintiff has not filed his Income tax returns;

(iv) The factor buttressing the above three points is that late A.V.Ramanathan had no need or necessity to sell his dwelling house.

5(p) I now embark upon the exercise of searching for answers for the above said points raised.

5(q) To be noted, this Court has the task of searching and finding answers from the suit filed before this Court. In other words, answers to the above have to be necessarily searched and found on the basis of pleadings, exhibits and depositions in the suit.

5(r) One more aspect of the matter which has made this search

terrain very difficult is the sudden demise of late A.V.Ramanathan. In the suit, he was not alive to tell the tale. The difficult terrain has been made more difficult by the stand of the defendants that they were completely unaware of the transactions of late A.V.Ramanathan and that they were kept in the dark. It is the categoric deposition of D.W.1 that it is correct to state that her husband did not discuss about various transactions including the transaction pertaining to the suit property with her or any of its family members.

5(s) Deposition of D.W.1 on above aspect is unambiguous in this regard and the same reads as follows :

“several people demanded monies from us and since we were not aware of his transactions we were kept in the dark. It is correct to state that my husband did not discuss about the various transactions including the transactions pertaining to the suit property with me or any of his family members.....”

5(t) The defendants have made a faint plea qua execution of Ex.P.2 in the written statement, which reads as follows :

“..... Old Stamp papers of the value of Rs.200/- said to have been purchased in Kumbakonam had been used to antidate and fabricate a false document to file this frivolous suit....”

5(u) With regard to cross examination of P.W.1 on stamp paper being of the year 1993, it runs as follows :

“..... The blank stamp paper for the denomination of

Rs.200/- was bought at Kumbakonam in my name. This was the only stamp paper I was having on that day. I do not remember the date on which the stamp paper was purchased by me. The stamp paper was purchased from Kalyana Sundaram. It is correct to state that the stamp paper was purchased in 1993. The Election Officer Ramanathan telephoned me in the evening and asked me to get the stamp paper from Kumbakonam. I was having the old stamp paper of the year 1993 and brought the same with me and gave it to Election Officer Ramanathan. In that stamp paper, Election Officer Ramanathan typed the agreement.”

5(v) There is also a suggestion put to P.W.1 which has been denied and the same reads as follows :

“I deny the suggestion that by using the old stamp paper bearing the year 1993 I have prepared Ex.P2 agreement in the year 1996 with my Kumbakonam witnesses.....”

5(w) In arguments, learned counsel for the plaintiff would contend that the plaintiff was eager to get an agreement to sell penned / executed at the earliest as he had parted with a huge sum of Rs.35 lakhs and this is the reason why the plaintiff hurriedly came down to Chennai with a further sum of Rs.15 lakhs, paid the same and got Ex.P.2 executed in Chennai. It is also not disputed that late A.V.Ramanathan was running a typewriting institute in the suit property.

5(x) One other crucial aspect of this matter is the pleading of defendants, wherein there is a reference to a suit being O.S.No.7639 of 1997

on the file of VII Assistant Court, City Civil Court, Chennai filed by one S.P.Balasubramanian with a prayer for permanent injunction restraining the defendant from alienating the suit property without executing the sale deed in favour of S.P.Balasubramanian. Defendants have also set out in their pleadings that an interim order was granted in the said suit in I.A.No.19820 of 1997.

5(y) Most importantly, the defendants have pleaded that lot of persons were claiming various amounts allegedly under various alleged pronotes and also under agreements of sale allegedly executed by late A.V.Ramanathan. The defendants would go on to say that they are questioning the execution, genuineness and validity of all those alleged transactions. This aspect of pleading has been articulated by the first defendant (written statement of the first defendant adopted by defendant 2 to 5) in paragraph 12 of the written statement and I deem it appropriate to extract paragraph 12 of the written statement, which runs as follows :

“12.The first defendant submits that similarly one Mr.S.P.Balasubramanian filed a suit O.S.No.7639 of '97 on the file of VII Assistant City Civil Court, Madras, for a permanent injunction restraining the defendants herein from alienating the suit property herein, except by the defendants by executing sale deed or otherwise the said S.P.Balasubramanian has also obtained interim injunction in I.A.No.19820 of '97 from alienation. That apart lot of persons were claiming various amounts allegedly under various alleged pronotes and also under agreement of sale allegedly executed by her husband. The first defendant is also questioning the execution, genuineness and validity of those

alleged transactions.”

5(z) The above said pleadings of the defendants articulated in paragraph 12 have to necessarily be read in the light of the deposition of the first defendant, who examined herself as D.W.1. The deposition of D.W.1 in this regard runs as follows :

“.....It is correct to state that I filed C.S.No.475 of 1998 on my behalf, on behalf of my minor children, my mother-in-law and my sister-in-law, Madurambal. Since several people informed me after my husband's demise that he had borrowed monies from them, after discussing with a lawyer I filed C.S.No.475 of 1998 stating that I had only the suit property since I did not know that what to do to repay the debts, I asked the Court to decide. It is correct to state that after my husband's demise, several people demanded monies from us and since we were not aware of his transactions we were kept in the dark. It is correct to state that in C.S.No.475 of 1998 the present plaintiff has been impleaded as 47th defendant. It is correct to state that C.S.No.475 of 1998 is still pending.....”

The above pleadings and deposition provide the answer for the five points raised above. The answer can be inferred from the aforesaid extracted pleadings and depositions. The inferential process is like this. Late A.V.Ramanathan had admittedly borrowed heavily during his lifetime from various persons. Obviously, none of the creditors anticipated the sudden, untimely and unfortunate demise of A.V.Ramanathan. Therefore, immediately after the sudden and unfortunate demise of A.V.Ramanathan in an accident, there was a scramble by the creditors to get back their money and to some

how secure the moneys lent. As alluded to supra, as late A.V.Ramanathan did not live to tell the tale, we have to necessarily make an inference from the deposition and pleadings of his wife, who takes an unambiguous stand that late A.V.Ramanathan kept her and the other members of the family, completely in the dark and completely out of such transactions. To be noted, the plaintiff herein is D.47 in a suit in C.S.No.475 of 1998 filed by the first defendant. A copy of the plaint has not been marked as exhibit, but as set out supra, the first defendant (D.W.1) has clearly admitted in her deposition about filing of the above suit.

5(aa) Therefore, from the above inferential process, one thing that emerges indisputably is that the plea of the defendant to the effect that late A.V.Ramanathan had no need or necessity to sell his dwelling house does not hold water. Late A.V.Ramanathan had definitely borrowed heavily from various creditors during his lifetime and admittedly, there was a scramble by creditors (for recovery and for securitizing) immediately after his untimely demise. Applying the principle of preponderance of probabilities, I have no hesitation in coming to the conclusion that there has definitely been some transaction between the plaintiff and late A.V.Ramanathan. That transaction is definitely in the nature of money being advanced by the plaintiff to A.V.Ramanathan. This takes us to the question as to whether moneys were advanced by the plaintiff for the purchase of the suit property towards advance and part consideration or for some other purpose. In the light of the defendant not agreeing for Ex.P.2 document being sent for expert's opinion and in the light of the above said inferential process and conclusion arrived at

by applying the principle of preponderance of probabilities, I have no option other than holding that Ex.P.2 agreement to sell is not a completely sham and manufactured document, gotten up by an utter stranger. However, this takes us to the next limb of the discussion in search of a more definitive answer to issue Nos.1 and 2.

5(ab) There are certain aspects of the matter touching upon Ex.P.2 agreement to sell dated 20.12.1996. Though I have discussed some of the aspects in detail supra, I deem it appropriate to condense those aspects touching upon Ex.P.2 and give the same at one place and I do so here, infra.

(i) Though there are two witnesses to Ex.P.2, only one, namely, R.Senthil Kumar, has been examined as P.W.2;

(ii) Ex.P.2 has been executed in a stamp paper dated 10.10.1993, though Ex.P.2 itself is dated 20.12.1996 and was purchased in Kumbakonam;

(iii) One of the witnesses, who was examined as P.W.2 says that he does not know where Ex.P.2 was prepared. To be precise, P.W.2 has deposed that he does not know whether Ex.P.2 was prepared in Chennai or in Kumbakonam;

(iv) P.W.2's deposition further brings to light that Ex.P.2 was executed some time between 10.30 A.M and 12.30 P.M.

(v) 20.12.1996 was a Friday and Rahukalam, which is considered to be inauspicious by persons professing Hindu faith, is between 10.30 a.m. and 12.00 noon.

5(ac) Now, with regard to stamp paper having been purchased in Kumbakonam and that the same being of the year 1993, it is to be noted that this submission of the plaintiff that he was in a hurry to get the agreement to sell executed as he had advanced a huge sum of Rs.50 lakhs only on receipts, more so, when the entire agreed sale consideration is only Rs.52 lakhs. It is the plaintiff's case that he being a man in hurry, had taken the stamp paper purchased earlier for execution of Ex.P.2. On the contrary, the counsel for the defendants 1 and 3 to 5 would contend that entire Ex.P.2 is fabricated and gotten up document. Most importantly, learned counsel for contesting defendants does not merely say that Ex.P.2 is fabricated. Learned counsel for contesting defendants would go on to say that the very signature of late A.V.Ramanathan in Ex.P.2 is forged.

5(ad) For the purpose of clarity, this court put it to the learned counsel in the course of the hearing and asked a pointed question as to whether the execution of document alone is disputed or whether the signature of late A.V.Ramanathan is also disputed. In other words, this court wanted to know from the learned counsel for contesting defendants as to whether the said counsel is advancing a theory that late A.V.Ramanathan had signed some blank stamp papers for some transactions with the plaintiff and that the same has been misused by the plaintiff (taking advantage of the untimely demise)

and created an agreement to sell with such blank stamp paper. To this, learned counsel emphatically and categorically took a stand that the signature of late A.V.Ramanathan itself is disputed. However, when an option was given for sending Ex.P.2 for expert opinion qua signature of late A.V.Ramanathan by comparing with the admitted, available, contemporaneous signature in Ex.D.6, while learned counsel for the plaintiff readily agreed, learned counsel for the contesting defendants stoutly resisted the same.

5(ae) To be noted further is that according to the defendants, the plaintiff A.Velusamy and the deceased late A.V.Ramanathan are utter strangers and that there was no transaction between them. Learned counsel for contesting defendants would submit that the first defendant was not aware of the transactions of late A.V.Ramanathan, but would assert that the plaintiff and late A.V.Ramanathan are utter strangers. Therefore, while the stamp paper being three years prior to Ex.P.2, the stamp paper having been purchased in Kumbakonam and P.W.2's deposition that he does not know where Ex.P.2 had been prepared (whether in Chennai or in Kumbakonam), certainly raises some reasonable doubts about the circumstances under which Ex.P.2 came to be executed This Court is unable to believe the stand of the contesting defendants that the plaintiff Velusamy and late A.V.Ramanathan are utter strangers, there was no transaction whatsoever between the two, but A.V.Velusamy created an agreement to sell by Ex.P.2 and forged late A.V.Ramanatha's signature on the same is too far-fetched to

believe. More so, in the light of the fact that one K.S.Ramanathan, who is the Bank Manager, who is said to have introduced the plaintiff and late A.V.Ramanathan, has deposed as P.W.3 and his deposition with regard to the introduction, interaction between the two and his advice that a sale agreement is a good replacement for the receipt remains unimpeached.

5(af) Now, with regard to Rahukalam aspect of the matter, it is quite possible that parties assembled at 10.30 a.m. made all preliminary arrangements, but actually got Ex.P.2 executed between 12.00 noon and half past 12.00 immediately after the end of Rahukalam.

5(ag) Owing to these reasons, weighing the rival contentions and applying the preponderance of probability, I am of the view that while Ex.P.2 cannot be completely disbelieved, but doubts raised about the circumstances under which Ex.P.2 came to be executed, can at best be put against the plaintiff for denying him the decree for specific performance. In other words, the doubts raised qua surrounding circumstances under which Ex.P.2 came to be executed, at best only disentitles the plaintiff to get the relief of decree for specific performance, but it does not go, conclusively and completely, disbelieve Ex.P.2.

5(ah) Without going into the realm of surmises and conjectures and dwelling only in the arena of the principles of preponderance of probability, it is highly probable (obviously from the available pleadings, exhibits, depositions and submissions) that there were some transactions between the plaintiff and late A.V.Ramanathan and the transaction is of the nature wherein the plaintiff has advanced certain sums of money to late A.V.Ramanathan.

Therefore, this Court is of the view that it would be fair and not inequitable if the plaintiff's alternate prayer for return of money paid is acceded to without granting a decree for specific performance.

5(ai) The next limb of the discussion is that there is high probability that late A.V.Ramanathan had borrowed from the plaintiff and signed some blank papers on which Ex.P.2 has been written. This aspect of the matter has to be examined from the point of view that the plaintiff, who pleads that late A.V.Ramanathan gave receipts and acknowledgement for payment of Rs.15 lakhs, Rs.20 lakhs on 15.12.1995 and 11.3.1996 respectively, has not chosen to produce the same as exhibits in the Court. Therefore, with regard to issue No.2, I have no option other than returning a finding that plaintiff has paid a sum of Rs.50 lakhs to late A.V.Ramanathan, but it may or may not have been towards advance and part sale consideration. With regard to issue No.1, the answer to issue No.2 tilts the answer to issue No.1 also in favour of the plaintiff and I have to necessarily come to the conclusion that there was a contract between the plaintiff and A.V.Ramanathan, that is Ex.P.2, but intention of parties could have been either sale or securitization.

5(aj) This takes us to issue No.3. I propose to answer (infra) issue No.4 in the light of the findings I have returned qua issue Nos.1 and 2. In the light of the answer I propose to give to issue No.4, issue No.3 becomes otiose.

5(ak) With regard to issue No.4 as to whether the plaintiff is entitled to specific performance, I exercise my discretion and hold that the plaintiff will

not be entitled to a decree for specific performance and the reasons are as follows :

(i) Though on the basis of available records, i.e., pleadings, depositions and exhibits, I have concluded partly in favour of the plaintiff with regard to issue No.1 and held Ex.P.2 to be not wholly sham and fabricated, it is to be noted that such an answer (i.e. answer that it may have been for sale or securitization) is by applying the principle of preponderance of probabilities;

(ii) being a civil suit for specific performance, I had applied the principle of preponderance of probabilities (as opposed to principle of proof beyond doubt strictly applied in criminal jurisprudence) and come to the conclusion;

(iii) the surrounding circumstance (surrounding Ex.P.2) are such that it does not warrant exercise of discretion of this court in favour of the plaintiff qua a decree for specific performance; this being a suit for specific performance, this court sits in equitable discretionary jurisdiction; the process of inference, application of principle of preponderance of probabilities have all tilted the discretion against the grant of a decree for specific performance;

(iv) In equity also, it is the dwelling house of late A.V.Ramanathan, in which his widowed wife, D.W.1, is now

residing. She has given in marriage her three daughters as a single parent;

(v)I have also noticed the pleadings of the first defendant in the written statement that the suit property is not one, of which late A.V.Ramanathan is the sole and absolute owner. The first defendant claims that she has half share in the suit property, as she has also contributed, equally, to the purchase of the suit property way back in 1982. To be noted, the suit property was purchased by A.V.Ramanathan in and by a sale deed dated 3.2.1982, which has been marked as Ex.P.1. This cannot be completely disbelieved.

(vi)The only reason for which the plaintiff wanted to purchase the suit property is to educate his children in Chennai. At this distant point of time, it is admitted that his children have completed their education and have settled their life in their respective careers. Therefore, the purpose of purchase ceases to exist.

(vii)On the contrary, the grant of decree of specific performance would mean completely unsettling the first defendant.

5(a) Therefore, having answered the issue Nos.1 to 4, as set out above, I am inclined to answer issue No.5 partly in favour of the plaintiff. In

other words, I am inclined to grant alternative relief of refund of Rs.50,00,000.00 to the plaintiff, but not with 24% interest. I am inclined to grant this relief with simple interest at the rate of 6% per annum. It will be simple interest at the rate of 6% per annum on Rs.15,00,000.00 from 15.12.1995 to 20.12.1996. It will be 6% simple interest per annum on Rs.20,00,000.00 from 11.3.1996 to 20.12.1996 and thereafter, it will be 6% simple interest per annum on Rs.50,00,000.00 lakhs from 20.12.1996 till the date of making payment by the defendants.

CASE LAWS :

6(a) For the purpose of clarity and convenience, in the discussion supra, I have not set out the case laws which were cited before me at the Bar, though I have applied the ratio and principle/s (wherever it is relevant and applicable) in what I have set out in the discussion supra.

6(b) Now, I shall set out the case laws that were cited before me at the Bar and also reduce to writing as to how I have applied the ratio or dealt with the case laws for various inferences made in the discussion supra.

6(c) On the side of the plaintiff, the following case laws were placed before me. The case laws and the principle / ratio for which it was placed and pressed into service before me are as follows :

6(d) A decision of the Supreme Court in *Prakash Chandra Vs. Angadlal and others* [AIR 1979 SC 1241] has been pressed into service, wherein with regard to discretionary relief, it has been observed that "The ordinary rule is that specific performance should be granted. It ought to be

denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief”.

6(e) *Chand Rani Vs. Kamal Rani* [(1993) 1 SCC 519] was cited for the principle that in answer to whether time was essence of the contract, it has been held that in the case of sale of immovable property, there is no presumption as to time being the essence of the contract and that it can be ascertained from the express terms of the contract, from the nature of the property and surrounding circumstances.

6(f) *S.V.R.Mudaliar Vs. Rajabu F.Buhari* [(1995) 4 SCC 15] was pressed into service to say that the question of exercise of discretion not to grant a decree of specific performance can be exercised only where it is inequitable.

6(g) *Swarnam Ramachandran Vs. Aravacode Chakungal Jayapalan* [(2004) 8 SCC 689] was pressed into service for the principle that time is presumed not to be of the essence of a contract relating to immovable property qua Section 55 of the Indian Contract Act, 1872. It was cited also to say that the onus to plead and prove that time was of the essence of the contract is on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of the essence.

6(h) *Aniglase Yohannan Vs. Ramlatha and others* [(2005) 7 SCC 534] was pressed into service to say that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief and the Court is to grant relief on the basis of the conduct of the person seeking relief.

6(i) *Panchanan Dhara and others Vs. Monmatha Nath Maity* [(2006) 5 SCC 340] was cited to say that the question as to whether a suit for specific performance of contract will be barred by limitation or not would not only depend upon the nature of the agreement, but also on the conduct of parties and also as to how they understood the terms and conditions of the agreement.

6(j) *Balasaheb Dayandeo Naik Vs Appasaheb Dattatraya Pawar* [(2008) 4 SCC 464] was placed before me and that is a case where the Hon'ble Supreme Court dealt with the question as to whether time is essence of the contract in respect of sale of immovable property and held that the purchaser was entitled to enforce the specific performance and that the plea of the seller that the time was of the essence of the contract was rejected and as the purchaser was found ready and willing to perform his part of the deal, the purchaser was directed to deposit the balance amount and seller was directed to execute the sale deed.

6(k) *Laxman Tatyaba Kankate and another Vs. Taramati Harishchandra Dhatrik* [(2010) 7 SCC 717] was also pressed into service, where the Hon'ble Supreme Court has dealt with Section 20 of the Specific Relief Act, 1963 and held that the conduct of parties plays an important role and the Court is to take care that process of the court is not used as an instrument of oppression and giving an unfair advantage to plaintiff as opposed to defendant.

6(l) *J.P.Builders and another Vs. A.Ramadas Rao and another* [(2011) 1 SCC 429] was cited wherein the Hon'ble Supreme Court has held

that in a suit for specific performance, readiness and willingness cannot be treated as straitjacket formula and has to be determined from the entirety of facts and circumstances relevant to intention and conduct of the parties and the readiness and willingness is a condition precedent for obtaining relief.

6(m) *Narinderjit Singh Vs. North Star Estate Promoters Limited* [(2012) 5 SCC 712] was pressed into service wherein the Hon'ble Supreme Court has dealt with the readiness and willingness of plaintiff to perform his part of the agreement of sale of land and held that it has to be decided with reference to conduct of parties, attendant circumstances and evidence on record.

6(n) *Satya Jain Vs. Anis Ahmed Rushdie* [(2013) 8 SCC 131] was placed before me to say that the Hon'ble Supreme Court held that principles of business efficacy can be invoked to ascertain intended meaning of parties only when terms of agreement / contract are ambiguous or not clear.

6(o) A decision of the learned Single Judge of this Court in *George Kavalam Vs. P.Vijayalakshmi* [2015 (2) MWN (Civil) 481] has also been relied on by the plaintiff to say that when the plaintiff has proved his readiness and willingness to perform his part of the obligations under the agreement and when the same has not been disproved by the defendant by reliable evidence, the plaintiff is entitled to the relief of specific performance.

6(p) The following are the case laws cited on the side of the defendants. The purpose for which it was cited are stated infra.

6(q) *Thiruvengada Pillai Vs. Navaneethammal and another* [AIR 2008 SC 1541] was pressed into service to say that when the plaintiff alleges

that the defendant has executed an agreement of sale in his favour and when it is denied by the defendant, the burden would be on the plaintiff to prove that the defendant has executed the agreement and not on the defendant to prove the negative. It was pressed into service also with regard to comparison of disputed signature to say that while there is no doubt that Court can compare the disputed signature with the admitted signature, such comparison by Court without the assistance of any expert, has always been considered to be hazardous and risky.

6(r) *Satish Kumar Vs. Karan Singh and another* [(2016) 4 SCC 352] was placed before me to say that the Supreme Court has observed that the jurisdiction to order specific performance of contract is based on the existence of a valid and enforceable contract. Where a valid and enforceable contract has not been made, the court will not make a contract for them and specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the Court will not be there even though the contract is otherwise valid and enforceable.

6(s) *Vyapuri Gounder Vs. (Minor) Vijayan* [1978 TLNJ 62] was placed before me wherein a division bench of this Court held that the plaintiff who comes to the Court with a false case in material ingredients necessary for the grant of relief of specific performance will not be entitled to the equitable relief at all. The remedy of specific performance is an equitable remedy and is in the discretion of the Court, which discretion has to be exercised according to recognised principles of law and not arbitrarily.

6(t) *Basappa Vs. Basamma* [AIR 2004 Mad 390] was also cited wherein a learned Single Judge of this Court has observed that in the ordinary course of business, whenever such agreements are entered into, the advance amount would be a meagre sum and the major sum of sale consideration would be paid only at the time of registration of the sale deed. There is absolutely no rule or dictum or condition that there cannot be a sale agreement of this nature, but in extreme cases, there could be agreements of sale, wherein major part of sale consideration is being parted with as advance leaving a minor portion to be paid at the time of registration of document, but in such event, they would be a part performance of the original owner of the property being a party to the agreement parting with the possession of the property so as to have a hold both on fact and in law by operation of Section 53-A of the Transfer of Property Act.

6(u) *N.Chinnasamy Vs. P.S.Swaminathan* [2006 (4) CTC 850] was placed before this Court, wherein this Court has held that when the signature in the sale agreement is disputed as forged by the defendant, it is for the plaintiff who vouches for the genuineness of the document to take steps to send the document for getting the opinion of handwriting expert to prove his case. Further, the opinion of handwriting expert alone is not the deciding factor in finding out the genuineness of the sale agreement and the same could be tested by examining the attesting witness and it is the duty of the plaintiff to establish his case by letting in sufficient oral and documentary evidence.

6(v) *Bhaskaran Nadar Vs. Kesavan Nadar* [(2010) 2 MLJ 675] was cited wherein the Madurai Bench of this Court has held that the relief under specific performance is a discretionary relief and even if a small doubt arises about the agreement of sale between the parties, the relief can be refused. In respect of comparison of signature, it has been held that unless the courts are satisfied that the characteristics of the language in which it is signed are familiar with the Court, the Court shall refrain from comparing the signatures. However, that case dealt with the signature which is in Malayalam.

6(w) *R.Kumar Vs. R.Sushilkumar* [(2012) 2 MLJ 204] was placed before this Court, wherein a Division Bench of this Court has held that unless the plaintiff pleads and proves readiness and willingness, Section 16(c) explanation (II) of the Specific Relief Act, 1963 bars a specific relief.

On Case Laws and it's application in 'Discussion' (Para 5 and all sub paragraphs therein) supra :

7(a) With regard to the judgments set out in paragraph 6 sub paragraphs (d) to (j) supra, they all deal with the aspects of discretion qua granting of decree for specific performance, time being the essence of such contracts and limitation. While coming to the conclusion that the plaintiff would be entitled to only alternate prayer of return of money and not decree for specific performance, I have taken into account all these legal aspects and come to the conclusion that it would be not inequitable to grant the alternate relief. I have also exercised my discretion, obviously in the light of the

materials placed before me to not to grant decree for specific performance owing to surrounding circumstances qua Ex.P.2, which is the fulcrum of this case.

7(b) The other judgments as set out in sub paragraphs (k) to (o) were pressed into service by the plaintiff with regard to readiness and willingness on the part of the plaintiff to perform his part of the contract qua Section 16 of the Specific Relief Act and for the proposition that the intention of the parties should be inferred from the covenants in the light of the discussions supra and in the light of my conclusion that these judgments pale into insignificance and are not of no avail for the plaintiff.

7(c) Turning to the judgments that were pressed into service by the defendants, *Thiruvengada Pillai's* case was pressed into service by the contesting defendants with regard to burden of proof on the plaintiff and with regard to comparison of disputed signature. This Court has come to the conclusion that there can be no dispute that burden of proof does not shift, but the onus swings like pendulum from one end to the other. One more reason as to why *Thiruvengada Pillai's* case does not help the defendants is, as alluded to supra, option to send the disputed signature for comparison with admitted contemporaneous signature was given to both parties. While the plaintiff readily agreed to such a course, it is the defendants who stoutly and vehemently opposed such a course being taken. For this reason, the principle in this case is not helpful to the defendants. In my view, owing to this reason, the defendants cannot even press into service this judgment as they have

opposed to suggestion that the signature can be sent to an expert for comparison.

7(d) With regard to *Satish Kumar's* case, I have applied the principles and come to the conclusion that there is no ground to completely disbelieve Ex.P.2 and that doubts raised about the surrounding circumstances under which it came to be executed have only disintitiled the plaintiff to get the decree of specific performance, more so as this Court has exercised its equitable discretionary jurisdiction in trying and deciding a suit for specific performance.

7(e) With regard to *Vyapuyri Gounder* case, there can no no doubt about the proposition that remedy of specific performance is a discretionary relief and it is on that basis that I have denied the said relief to the plaintiff.

7(f) With regard to *Basappa's* case, it is to be noted that a photocopy of the title deed for the suit property being a sale deed dated 3.2.1982 was with the plaintiff and the plaintiff has marked the same as Ex.P.1. The theory of the same being snatched from the first defendant is too far-fetched to believe. As I am granting only the alternate relief, the principle in this judgment is also not of much help to the contesting defendants.

7(g) *N.Chinnasamy's* case pertains to signature verification and the same has already been discussed extensively supra. It is also to be noted that this is a case where the most important personae dramatis, namely, late A.V.Ramanathan unfortunately did not live to tell the tale.

7(h) *Bhaskaran Nadar and R.Kumar's* cases (paragraphs 6(v) and 6(w)) supra, dealt with principles, viz., specific performance is a discretionary

relief, readiness and willingness and allied aspects / principles. These aspects have already been discussed supra. One other aspect of *Bhaskaran Nadar's* case is with regard to the language in which the disputed document has been executed. In this case, it is only the question of dialect and in the light of the discussions supra qua Ex.P.2, this is not of much avail to the defendants, particularly in the light of the fact that in *Bhaskaran Nadar's* case, the signature made in Malayalam was compared and therefore, is clearly distinguishable on facts and on that aspect of the matter too.

7(i) It is to be noted that none of the case laws pressed into service by both sides, namely, plaintiff and contesting defendants, dealt with a case on facts where personae dramatis (most important person in the entire action / exercise) died suddenly (unexpectedly and untimely) and did not live to tell the tale. Therefore, owing to facts of this case being so unique, I have applied my mind independently to the facts that have unfolded in this case. Legal search of counsel on either side unravels that this case is not blessed with precedents qua its unique facts and circumstances. However, I have taken into account the time honoured principles regarding specific performance suit particularly the principle that this Court exercising discretionary equitable jurisdiction.

CONCLUSION :

8 Owing to all that have been stated supra, I am inclined to grant alternate relief of refund of Rs.50,00,000.00 to the plaintiff, but not with 24% interest. I am inclined to grant this relief with simple interest at the rate of 6%

per annum. It will be simple interest at the rate of 6% per annum on Rs.15,00,000.00 from 15.12.1995 to 20.12.1996. It will be 6% simple interest per annum on Rs.20,00,000.00 from 11.3.1996 to 20.12.1996 and thereafter, it will be 6% simple interest per annum on Rs.50,00,000.00 lakhs from 20.12.1996 till the date of making payment by the defendants 1 and 3 to 5.

DECISION :

9(a) C.S.No.604 of 1997 is partly decreed, granting alternate relief alone for the refund of Rs.50,00,000.00 (Rupees fifty lakhs only) with simple interest at the rate of 6% per annum, i.e., for Rs.15,00,000.00, simple interest at the rate of 6% per annum from 15.12.1995 to 20.12.1996, for Rs.20,00,000.00, 6% simple interest per annum from 11.3.1996 to 20.12.1996 and from 20.12.1996 onwards, for the entire sum of Rs.50,00,000.00, simple interest will be calculated at the rate of 6% per annum, till the date of making payment by defendants 1 and 3 to 5. The other reliefs prayed for in the suit qua execution of sale deed, delivery of vacant possession and registration of sale deed are rejected.

(b) Considering the nature of the matter, parties are left to bear their respective costs.

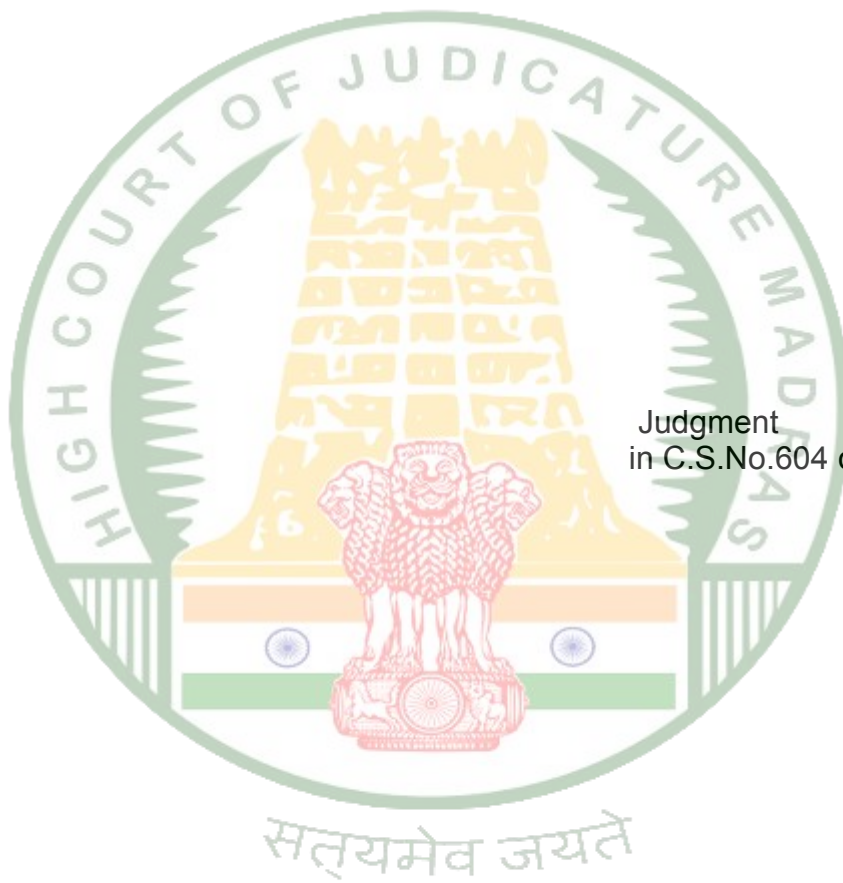
29.08.2017

Index : Yes/No

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M.SUNDAR, J.

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Judgment
in C.S.No.604 of 1997

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