

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15-09-2017

Pronounced on : 21-11-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Appeal Suit No. 871 of 2014

1. Joseph Antoine Marie Michel
2. Marie Xavier Anthone Helene .. Appellants/Defendants

Versus

Selin Mary .. Respondent Plaintiff

Appeal filed under Section 96 read with Order 41 Rule 1 of Civil Procedure Code against the Judgment and Decree dated 10.10.2014 passed in O.S. No. 48 of 2007 on the file of III Additional District Judge, Pondicherry.

For Appellant : Mr. S. Sundaresan
For Respondent : Mr. M. Venkatachalapathy,
Senior Counsel
for Mr. S. Wilson

JUDGMENT

R. SUBBIAH, J

This appeal is preferred against the Judgment and Decree dated 10.10.2014 passed in O.S. No. 48 of 2007 on the file of III Additional District Judge, Pondicherry, decreeing the suit filed by the respondent/plaintiff herein with costs and thereby directing the appellants/defendants herein to deliver the vacant possession of the suit property to the respondent/plaintiff within a period of three months from the date of judgment.

2. The appellants are the defendants in the suit in O.S. No. 48 of 2007 filed by the respondent/plaintiff. For easy reference, the parties shall be referred to as per their litigative status in the suit as 'plaintiff' and 'defendants' in this appeal.

3. The plaintiff has instituted the suit in O.S. No. 48 of 2007 before the Court below praying for the following reliefs:-

1. Declaring that the plaintiff is the absolute and rightful owner of the suit property well described in the schedule hereunder.
2. To direct the defendants No.1 and 2, their power agents, assignees or men to deliver possession of the suit property to the plaintiff herein
3. To direct the defendants No.1 and 2 to pay the plaintiff a mesne profit of Rs.75,000/- for the illegal and wrongful occupation of the suit property from December 2005, upto June 2007 and continue to pay mesne profits @ Rs.4,000/- per month till the defendants 1 and 2 deliver possession of the suit property to the plaintiff herein
4. Permanent injunction restraining the defendant No. 1 and 2, their agents, assignees or men from leasing, selling, alienating or encumbering the suit property in any manner to defeat the rights of the plaintiff
5. Cost of the suit

4. According to the plaintiff, the first defendant is a French National by birth, hence, the second defendant, after her marriage with the first defendant, was also conferred with French Citizenship and has become a French National. In other words, the defendants 1 and 2 are the husband and wife. The children of the defendants have settled at France. The house where the plaintiff was residing is situate just opposite to the defendants 1 and 2. According to the plaintiff, the defendants are the owners of the plaint described property where they are running a school under the name and style of St. Joseph High School at J.J. Nagar, Reddiarpalayam, Puducherry. Since the defendants 1 and 2 intended to settle at France along with their children, they disposed of the land and building where the School was run as also the management of the school to a third party in the year 2006 for a valuable sale consideration. Similarly, the defendants intended to sell the plaint described property and offered to sell it to the plaintiff, as the plaintiff is residing opposite to their house. It is represented by the defendants that the suit property was purchased by the first defendant on 16.09.1992 by means of a registered sale deed and from that date, the defendants are in possession and enjoyment of the same. After deliberations and mutual consent, an agreement of sale dated 28.04.2005 was entered into between the plaintiff and the defendants whereby the defendants agreed to sell the suit property to the plaintiff for Rs.18 lakhs and received a sum of Rs.2 lakhs as advance. As per the clauses contained in the agreement of sale dated 28.04.2005, the plaintiff has to pay the balance sale consideration of Rs.16 lakhs within one month from the date of agreement and to get the sale deed executed in her favour.

5. It is contended by the plaintiff that as per the prevailing French Law - Commune Legal System, the second

defendant, being the wife of the first defendant, is entitled to half a share in the suit property. It is also stated that both the defendants are governed by the French Law, therefore, by way of an abundant caution, the plaintiff requested the second defendant to be a party to the sale transaction, to which, the second defendant also agreed. When the plaintiff intended to purchase stamp papers, she was informed that the guideline value for the suit property is more than Rs.18 lakhs and therefore, the sale deed cannot be registered for a consideration not less than Rs.24,50,000/- and if the sale deed is presented for the amount agreed between the plaintiff and defendants at Rs.18 lakhs, the sale deed, will be retained on the ground of under-valuation. Therefore, the plaintiff purchased stamp papers for Rs.1,25,000/- which is proportionate to the sale price of Rs.24,50,000/-, drafted the sale deed by indicating the sale price as Rs.25 lakhs. When the defendants came to know that the guideline value of the suit property is about Rs.25 lakhs, they refused to honour the conditions contained in the agreement of sale and demanded the plaintiff to pay Rs.25 lakhs as sale consideration as against the sum of Rs.18 lakhs indicated in the agreement of sale dated 28.04.2005. The plaintiff also agreed for such a course to pay Rs.25 lakhs as sale consideration. Accordingly, the sale deed was presented for registration on 19.05.2005 and registered as document No. 2625 of 2005. The defendants have also affixed their photographs in the reverse of the sale deed as required and affixed their signature in the presence of attesting witness and scribe. Further, the thumb impression of the parties to the sale transaction was also obtained by the registering authority. On execution of the sale deed, the plaintiff paid a sum of Rs.12 lakhs by Cheque No. 902526 dated 19.05.2005 drawn on Indian Overseas Bank and a sum of Rs.11,00,000/- by way of cash in the presence of the attesting witness on the same day namely 19.05.2005. On 19.05.2005, being the date of execution of sale deed, the defendants have handed over possession of the suit property to plaintiff, besides handing over the title deeds pertaining to suit property.

6. After execution of the sale deed, the defendants requested the plaintiff to permit them to reside in the suit property till December 2005, during which time, they intended to leave India to France to settle with their children. Having regard to the proximity of relationship between the plaintiff and the defendants, the plaintiff permitted the defendants to reside in the suit property till November 2005. Thus, according to the plaintiff, the defendants were under permissive occupation from 19.05.2005, the date on which they have executed the sale deed in her favour. However, the second defendant went to France during April 2006 and thereafter, the first defendant left India to France during May 2006. However, before leaving India, the defendants failed to handover the vacant possession

of the suit property to the plaintiff. When the defendants returned to India during September 2006, the plaintiff demanded the defendants to handover vacant possession of the suit property to her, however, they refused to handover the suit property to the plaintiff. According to the plaintiff, in spite of several demands, the defendants refused to vacate and handover the suit property to her, therefore, she sent a notice dated 31.01.2007 calling upon the defendants to vacate and handover the vacant possession of the suit property inter alia claiming mesne profits at the rate of Rs.10,000/- per month for the use and occupation of the suit property after 19.05.2005. On receipt of the notice dated 31.01.2007, the defendants sent a reply dated 14.02.2007 denying the execution of the sale deed in favour of the plaintiff inter alia contending that the transaction emanated between the plaintiff and the defendants is a money transaction inasmuch as such deed was executed by the defendants under the impression that it was a mortgage deed. It was also stated in the reply that the deed purported to have been executed by the defendants is not a sale deed, but it was obtained by misrepresentation and by playing fraud. It was further stated that the plaintiff has taken advantage of the situation that the defendants are not acquainted with Tamil language. In view of such stand taken by the defendants in the reply notice dated 14.02.2007, the plaintiff has instituted the suit for the reliefs stated above.

7. Resisting the case of the plaintiff, defendants have filed a written statement stating that the defendants were running a School in the name and style of St. Joseph High School in the suit property, however, the defendants denied having sold the land, building and management of the school to third parties during the year 2006. The defendants have also denied having offered to sell the suit property to the plaintiff at any point of time. The defendants have also denied the execution of agreement of sale dated 28.04.2005, receipt of advance of Rs.2 lakhs on execution of the agreement of sale and the condition imposed in the agreement of sale to get the sale deed executed within a month. In the same breath, the defendants have also denied the execution of the sale deed dated 19.05.2005 in favour of the plaintiff for a valuable sale consideration. According to the defendants, the agreement of sale and the sale deed have emanated as a result of an act of fraud and misrepresentation perpetrated upon them by the plaintiff. The defendants also denied that they were in permissive occupation in the suit property with the permission of the plaintiff after 19.05.2005, but they are residing in the suit property on their own right and therefore the question of vacating the suit property will not arise.

8. According to the defendants, the plaintiff is residing just opposite to the suit property and by virtue of such

acquaintance with her, besides that the plaintiff is an affluent woman, the defendants have approached her and requested to pay a sum of Rs.12,00,000/- to enable them to develop the school. Considering such request made by the defendants, the plaintiff agreed to lend Rs.12,00,000/- on condition the defendants should mortgage the suit property, where the school is being run, in her favour. The defendants, in view of their financial constraints, agreed for such a condition imposed by the plaintiff for lending money and it was under such circumstances, the defendants handed over the title deeds, signed the documents, which were in Tamil under the impression that they are only signing a mortgage deed. On execution of such deed, purported to be a sale deed, the plaintiff handed over a sum of Rs.12,00,000/- by means of a cheque. In such circumstance, according to the defendants, there was no privity of contract or consensus adi-dem between the plaintiff and the defendants. The alleged sale deed was brought about by the plaintiff by misrepresentation and fraud. The defendants came to know that they have executed only a sale deed and not a mortgage deed only upon receipt of the notice sent by the plaintiff. Immediately, the defendants have also sent a reply notice clearly indicating that they never executed any sale deed with an intention to alienate the suit property in favour of the plaintiff and they have signed the deeds only under the impression that they were executing a mortgage deed. The defendants are actively running the school in which the defendants are holding the post of Directors. The defendants never intended to alienate the suit property in favour of the plaintiff and therefore, the defendants prayed for dismissal of the suit.

9. The trial Court has framed as many as 8 issues for deciding the dispute involved in the suit. In order to substantiate the averments in the plaint, the plaintiff examined herself as PW1 besides examining four other witnesses as Pws 2 to 5 and Exs. A1 to A21 were marked. On behalf of the defendants, the first defendant examined himself as DW1 and one Abida, in-charge of St. Joseph Play School was examined as DW2 besides Exs. B1 to B22 were marked. During the course of trial, at the instance of the defendants, the agreement of sale deed dated 28.04.2005, marked as Ex.A18 along with the sale deed dated 19.05.2005, marked as Ex.A20 were sent for comparison of the signatures of the defendants. Accordingly, a report was received from the Forensic Expert and it was marked as Ex.C1 besides Ms. C. Florence Devasudarmani, Scientific Officer and Document Expert was examined as CW1 before the trial Court. The trial Court, on analysing the oral and documentary evidence, concluded that the defendants, with full knowledge, have executed Ex.A20, Sale deed and the defence raised by them that they have signed certain documents thinking that it was a mortgage deed was disbelieved. After analysing the issues framed in the suit in extenso, the trial Court decreed the suit

filed by the plaintiff with costs and directed the defendants to handover the vacant possession of the suit property to the plaintiff. Aggrieved by such decree and judgment dated 10.10.2014, the present appeal is filed by the defendants.

10. The learned counsel appearing for the appellants/defendants would contend that at no point of time, did the defendants agree to sell the suit property to the plaintiff by executing the sale deed, Ex.A1 = Ex.A20. The alleged agreement of sale dated 28.04.2005, marked as Ex.A2 = Ex.A18 is not genuine and it was fabricated by the plaintiff. In this regard, the learned counsel for the defendants brought to the notice of this Court the certified copy of the sale deed dated 19.05.2005, marked as Ex.A20 and submits that if the alleged agreement of sale dated 28.04.2005, Ex.A18, is a genuine document, it would have been found place in the sale deed dated 19.05.2005, Ex.A1 = Ex.A20 and also in the pre-suit notice dated 31.01.2007, Ex.A5 sent by the plaintiff. The very fact that the agreement of sale dated 28.04.2005 was not indicated in the sale deed dated 19.05.2005 as well as in the notice dated 31.01.2007 would falsify the case of the plaintiff. According to the learned counsel for the defendants, the total sale consideration for which the sale deed dated 19.05.2005 was executed was Rs.25 lakhs, whereas, in the agreement of sale dated 28.04.2005, the sum of Rs.18 lakhs alone was mentioned as the sale consideration and therefore, there are reasons to believe that both the sale agreement dated 28.04.2005 and sale deed dated 19.05.2005 are forged and fabricated documents. The plaintiff during the course of her examination has deposed that on verification with the Sub-registration office, she came to know that the guideline value of the suit property was Rs.25 lakhs and if any lesser amount is quoted, the sale deed would be detained by the registering authority. However, the fact remains that the plaintiff has purchased stamps on different dates from 12.05.2005 to 19.05.2005 viz., till the date of registration and hence, the sale deed would not have been prepared before 19.05.2005 as contended by the plaintiff. Further, the plaintiff has not proved with any acceptable evidence that the defendants, on coming to know about the guideline value, demanded the plaintiff to pay Rs.25 lakhs as sale price for executing the sale deed. The learned counsel for the defendants would further contend that for the first time, before the office of the Registrar, the defendants have seen the document prepared by the plaintiff and they have signed such document with bonafide belief that it was a mortgage deed. There was no occasion for the defendants to verify the correctness of the contents of the document before it was signed by them.

11. The learned counsel for the appellants/defendants invited the attention of this Court to the evidence of PW2, husband of the plaintiff to contend that PW2 in his evidence has

stated that two days prior to the execution of the sale deed, the sale price for the suit property was fixed as Rs.25 lakhs. According to the learned counsel for the appellant, this statement of PW2 would falsify the case of the plaintiff, who has stated that after seeing the sale deed only, the defendants have demanded Rs.7 lakhs as additional sale consideration on par with the guideline value. Further, PW3, Scribe of the sale deed dated 19.05.2005, in his deposition, has stated that he had drafted the sale deed only on 19.05.2005 and after completing the draft sale deed, the defendants came to the office of the Sub-Registrar at 2.00 p.m., But contrary to the statement of PW3, PW1 in her deposition has stated that the draft sale deed was prepared on 19.05.2005 in the presence of the defendants. The learned counsel for the appellant also invited the attention of this Court to the deposition of PW4, one of the witnesses to the sale deed, Ex.A1 = Ex.A20 dated 19.05.2005, who has deposed that he has no idea as to what was the sale consideration and he merely signed the document on behalf of his owner, Mr. Ramalingam with whom PW3 is also working. Further, PW5, Bank Official has deposed that the plaintiff obtained loan from their bank only for the purpose of constructing a house in the suit property. PW5 further deposed that the plaintiff has deposited the original documents based on which the loan was granted. According to the counsel for the appellant, a reading of the deposition of PW5 would make it abundantly clear that the plaintiff has forged and fabricated the agreement of sale dated 28.04.2005 for the purpose of obtaining the loan from the bank. It is his contention that PW2, husband of the plaintiff, in his evidence has stated that they have intended to put up a construction in the suit property. On the other hand, the description of the property given in the sale deed dated 19.05.2005, Ex.A1, would indicate that the suit property is a RCC roofed house consisting of ground and two floors together with 3500 square feet. Therefore, the description indicated in the suit property would belie the deposition of PW2, husband of the plaintiff as well as the Bank Official, PW5, who has deposed that the loan is being granted for the purpose of putting up a construction, when already a building is in existence in the suit property.

12. Above all, it is the contention of the counsel for the appellants/ defendants that the suit property stands in the name of the first defendant in which the school is being run even till date. To fortify this submission, RW2, who is in charge of the school was examined before the Trial Court. Therefore, the contention of the plaintiff that the management of the school was entrusted to a third party even before the sale of the suit property in favour of the plaintiff is false. Thus, according to the counsel for the appellants/defendants, the agreement of sale as well as the sale deed were forged to make it appear that the suit property was alienated in favour of the

plaintiff. Even though the sale consideration is indicated as Rs.25 lakhs in the sale deed, Ex.A1 dated 19.05.2005, it was not proved by the plaintiff that a sum of Rs.25 lakhs was paid to the defendants. The plaintiff has only paid a sum of Rs.12 lakhs by way of a Bankers Cheque and it was alleged that the balance sale consideration of Rs.11 lakhs was paid by cash after adjusting the alleged sum of Rs.2 lakhs already paid at the time of execution of agreement of sale dated 28.04.2005, Ex.A2. Even though the plaintiff claims herself to be an assessee of Income Tax, she has not produced any document to show that the alleged sum of Rs.13 lakhs paid to the defendants is duly reflected in the Income Tax return filed by her for the year 2005. In essence, the learned counsel for the appellants/defendants would contend that the defendants have signed the sale deed under the impression that it is only a mortgage loan. The plaintiff has taken advantage of the situation that the defendants are not aware of the Tamil language and thereby played fraud and misrepresentation to deprive the valuable right over the property of the defendants. Thus, the counsel for the appellants/defendants would contend that the sale deed as well as the agreement of sale are vitiated by fraud and misrepresentation.

13. The learned counsel for the appellants/defendants would further contend that as far as the report of the handwriting expert given on the veracity of signature of the defendants found in the agreement of sale dated 29.04.2015, Ex.A2 is concerned, it does not contain any valid reasoning for her conclusion. CW1, the expert, during her cross-examination has deposed that she has not compared specific letters, which are at variance with the admitted signature of the defendants. In any event, the deposition of CW1 or the compliance to the provisions contained under Section 45 of the Indian Evidence Act are not conclusive proof. Furthermore, the trial Court failed to consider that the defendants have admitted their signatures in the sale deed dated 19.05.2005, Ex.A-1 while so there is no reason for the trial court to conclude that the defendants, wantonly denied their signature in Ex.A2, agreement of sale dated 28.04.2005.

14. The learned counsel for the appellants/defendants would also contend that the Judgment and decree passed by the trial court are against the doctrine of non-est factum. According to the learned counsel, every contract springs from a legally enforceable agreement between the parties, reflecting the identity of minds or meeting of minds generally referred to by the Latin phrase consensus ad idem. If either or both the parties to the contract erred in understanding any of the essential terms of the contract, there would not be any consensus ad idem. In this context, the learned counsel for the appellants/defendants relied on several decisions. One among

the decisions relied on by the counsel for the appellant is the decision of the Honourable Supreme Court in the case of (Dularia Devi vs. Janardan Singn and others) reported in AIR 1990 SC 1173 and also the Division Bench Judgment of this Court in (K. Varadhan vs. Pattammal (dead) and others) reported in 1993 (1) MLJ 259 to contend that the doctrine of non-est factum would apply to the present facts of the present case and the fraud and misrepresentation made by the plaintiff would vitiate the plaint filed by the plaintiff. According to the learned counsel for the appellants/defendants, the defendants, believing the misrepresentation made by the plaintiff as true, have signed the document under the impression that they were signing only a mortgage deed. Further, the defendants are not acquainted with Tamil language, however, they have signed the documents written in Tami only on the basis of the representation made by the plaintiff. According to the counsel for the appellant/defendants, the defendants were made to sign the documents by misrepresentation and fraud and therefore, the sale deed dated 19.05.2005, Ex..A-1 and the agreement of sale dated 28.04.2005, Ex.A2, are vitiated. The trial court, without considering the above aspects, has erroneously decreed the suit with costs. The learned counsel for the appellants/defendants therefore prayed for setting aside the decree and judgment passed by the trial court.

15. Countering the submissions of the learned counsel for the appellants/ defendants, the learned Senior counsel appearing for the respondent/plaintiff would contend that the defendants have expressed their inclination to sell the suit property for a valuable sale consideration and therefore, after deliberations, the plaintiff agreed to purchase the suit property. An agreement of sale dated 28.04.2005 was entered into between the plaintiff and the defendants, in which it was agreed that the plaintiff shall pay a total sum of Rs.18 lakhs as sale consideration. On the same day, plaintiff has paid a sum of Rs.2 lakhs to the defendants. According to the learned Senior counsel for the plaintiff, after execution of the sale agreement, when the plaintiff enquired about the guideline value of the suit property so as to purchase the stamp papers, she came to know that the guideline value is Rs.24,50,000/- and therefore, she had no option except to value the suit property for Rs.25 lakhs. Therefore, on 12.05.2005, plaintiff purchased stamp papers for Rs.80,000/-. According to the learned Senior Counsel for the plaintiff, as per the agreement of sale, the sale price was fixed at Rs.18 lakhs. As the plaintiff is a women, the Government of Puducherry has offered 50% exemption in payment of stamp duty and therefore, for the total sale price of Rs.18 lakhs, it is sufficient if the plaintiff pays the stamp duty only for half of the sale price namely Rs.9,00,000/- which works out to Rs.80,000/-. It is under those circumstances, the plaintiff, before enquiring about the guideline value of the

suit property, has purchased stamp papers for Rs.80,000/-. After realising that the guideline value of the suit property is Rs.25,00,000/- the plaintiff purchased stamp papers for Rs.1,25,000/- on 12.05.2005 and on 17.05.2005 respectively, which is pertaining to the sale price of Rs.24,50,000/-. As regards the payment of sale consideration, plaintiff paid a sum of Rs.12 lakhs by means of a bankers cheque in favour of the defendants and it was also encashed by them. The balance amount of Rs.11,00,000/- was paid in cash after adjusting the sum of Rs.2,00,000/- already paid to the defendants at the time of execution of the agreement of sale. Upon execution of the sale deed, the defendants have also handed over the original title deeds pertaining to the suit property. Thus, the consistent plea of the plaintiff is that there was an agreement of sale dated 28.04.2005 executed by the defendants agreeing to sell the suit property to the plaintiff consequent upon which the defendants have also executed the sale deed dated 19.05.2005 in favour of the plaintiff. Having executed the sale deed in favour of the plaintiffs, the defendants are estopped from contending as though they were not aware of the execution of the sale deed in favour of the plaintiff and they were under the impression that they have, in fact, executed only a mortgage deed in favour of the plaintiff.

16. As regards possession of the suit property, learned Senior counsel for the plaintiff would contend that at the request of the defendants, the plaintiff permitted the defendants to reside in the suit property, however, without handing over possession of the suit property, the defendants left India. When they returned to India during September 2006, the plaintiff demanded the defendants to handover the vacant possession of the suit property. As the defendants refused to handover vacant possession of the suit property, the plaintiff was constrained to issue a legal notice dated 31.01.2007 and thereafter, filed the suit on 28.07.2007 before the trial court.

17. The learned Senior counsel for the respondent/plaintiff would contend that in the written statement filed before the trial court, the defendants have denied the execution of the agreement of sale. As regards the execution of the sale deed, it was the defence of the defendants that they have in fact executed a Mortgage deed in favour of the plaintiff and the transaction between the plaintiff and the defendants was a loan transaction. According to the defendants, they have availed only a sum of Rs.12 lakhs from the plaintiff while executing the so-called mortgage deed and they denied having received the sum of Rs.11 lakhs in cash from the plaintiff. According to the learned Senior counsel for the plaintiff, if really the transaction in dispute was a loan transaction, the defendants ought to have paid some amount either towards principle or

interest to the plaintiff, but the defendants have not produced any document to substantiate the said defence.

18. The learned Senior counsel for the plaintiff would further contend that even though the defendants are French Nationals, the second defendant is acquainted with Tamil language and she is able to read Tamil. According to the learned Senior counsel for the plaintiff, the plaintiff has specifically pleaded in her deposition that the second plaintiff is acquainted with Tamil language. It is specifically deposed that the second defendant was born in Tirunelveli District in Tamil Nadu and is conversant with Tamil language. However, to disprove such deposition of the plaintiff, the second defendant did not step into the witness box and therefore an adverse inference has to be drawn against the second defendant. Further, the second defendant was one of the attesting witnesses to the sale agreement and also a party to the sale deed, while so, she ought to have stepped into the witness box to disprove the case of the plaintiff and failure to do so would only indicate that the plaintiff has proved that the sale agreement and sale deeds are true and genuine. The learned Senior counsel also submitted that DW1 in his evidence has admitted that he had his school education at Karaikal, graduation at St. Joseph College, Tiruchirapalli and Post Graduation (French) at Puducherry. Even DW1 has admitted that he can speak Tamil but he cannot read or write Tamil. Such a deposition tendered by DW1 would indicate that the second defendant is conversant in Tamil language. The defendants are not illiterate to sign the sale deed under the impression that it was a mortgage without properly verifying it.

19. The learned Senior counsel for the plaintiff would further submit that as the defendants have raised a defence that they did not sign the agreement of sale besides that they have signed the sale deed under the impression that it is a mortgage deed. In order to substantiate the same, the defendants themselves have taken out an application in I.A. No. 333 of 2010 for comparing their signature in the sale agreement and for examination of the State Forensic Science Laboratory. Such an application was dismissed by the trial court against which the defendants filed CRP No. 3375 of 2010 and it was allowed by this Court holding that if the Court come to the conclusion that the signature found in Ex.A18, agreement of sale are not the signatures of the revision petitioners/defendants, then the Court can presume in favour of the revision petitioner/defendants and if the Court come to the conclusion that the signatures in Ex.A18 are that of the revision petitioners/defendants, the Court can presume in favour of the respondent/ plaintiff. Pursuant to such order passed by this Court, the signatures in Ex.A18 were compared by the Forensic Sciences Department. CW1, Scientific Officer and Document Expert was examined before the trial Court and she has

categorically deposed that the signatures contained in the agreement of sale and the sale deed are that of the same person. CW1 was also cross-examined on behalf of the defendants but nothing could be elicited from CW1 to fortify the defence of the defendants. Thereafter, the defendants filed another application to compare the signatures in the agreement of sale and the sale deed by some other experts and it was dismissed by the trial court and affirmed by this Court.

20. The learned Senior counsel for the plaintiff would further contend that the plaintiff examined herself as PW1 and the document writer was examined as PW3. PW1 has narrated the manner in which the sale agreement came to be executed, the reason for the variation in the sale price indicated in the sale agreement and the sale deed and the consent given by the defendants to execute the sale deed in her favour. PW1 also asserted that the defendants, knowing fully well about the contents of the document, have executed the sale deed in her favour and therefore it is futile on the part of the defendants to contend that they have signed the sale deed under the impression that it is a mortgage deed. According to the learned Senior counsel for the plaintiff, the defendants, in order to gain unlawful enrichment, have set up the theory of mortgage and pleaded ignorance of Tamil Language. However, the defendants failed to prove such defence raised by them by any acceptable evidence. Further, the defendants have signed letters, marked as Ex.A10 to A13 whereby they have agreed for mutation of revenue records, transfer of electricity service connection in the name of the plaintiff and also the water service connection. If really the defendants have signed the sale deed under the impression that it was only a mortgage deed, they would not have signed such letters and there is no explanation forthcoming from the defendants as to what prompted them to sign the letters marked as Exs. A10 to A13.

21. In support of his contentions, the learned Senior counsel for the plaintiff/ respondent relied on the decision of the Honourable Supreme Court in the case of (Grasim Industries Limited vs. Agarwal Steel) reported in (2010) 1 Supreme Court Cases 83 to contend that when a person signs a document and admits his signature, the presumption is that he read the document properly and understood the content of it before signing the document before the witnesses, unless it is proved that such document came into existence by reason of fraud.

22. The learned Senior counsel for the plaintiff/respondent has also relied on the decision in the case of (Vimal Chand Ghevarchand Jain and others vs. Ramakant Eknath Jajoo) reported in 2009 (2) CTC 858 wherein the Honourable Supreme Court held that when a document titled as sale deed duly stamped and registered containing stipulations regarding passing of consideration, description of property conveyed, conveyance of

right, title, interest, use, inheritance etc., then it has to be concluded that the vendor satisfied all the ingredients contained under Section 54 of the Transfer of Property Act.

23. By placing reliance on the above decisions, it is contended by the learned Senior Counsel for the plaintiff that the plaintiff proved beyond any doubt that the sale deed was executed by the defendants for proper and valid sale consideration and she has fulfilled the ingredients contained under Section 54 of The Transfer of Property. The learned Senior counsel for the plaintiff also contended that the trial Court, on appreciation of the entire evidence on record, has rightly decreed the suit. Therefore, the learned Senior counsel for the plaintiff/ respondent prayed for dismissal of the appeal.

24. We have heard the learned counsel appearing for the defendants/ appellants as well as the learned Senior counsel for the plaintiff/respondent and perused the material records placed. Having regard to the above rival submissions made, the following points emerge for determination in this appeal namely

(a) Whether the defendants/appellants have substantiated their defence that the agreement of sale dated 28.04.2005 and sale deed dated 19.05.2005 are vitiated on account of fraud and misrepresentation made by the plaintiff

(b) Whether the doctrine of non-est factum will apply to the facts of the present case.

25. As we have dealt with the factual matrix of the case in detail, we refrain from repeating the same for the sake of brevity. It is an admitted fact that the defendants are the owners of the property in question. The defendants are husband and wife and they are French Nationals residing in the Union Territory of Puducherry.

26. According to the plaintiff, the defendants have expressed their intention to sell the property as they intended to settle with their children at France. The plaintiff is a resident of adjacent building to the property where the defendants are residing. Having regard to such proximity, the plaintiff expressed her inclination to purchase the suit property and it culminated in execution of the sale agreement dated 19.05.2005. At the time of execution of the agreement of sale, according to the plaintiff, she has paid a sum of Rs.2,00,000/- in cash in the presence of witnesses. The sale price mentioned in the agreement of sale was Rs.18 lakhs, however, on enquiry, the plaintiff came to know that the sale price to be indicated in the sale deed should not be lesser than Rs.25 lakhs inasmuch as the guideline value of the suit property itself is Rs.24,50,000/-. According to the plaintiff, on coming to know about the guideline value of the suit property, the defendants demanded the plaintiff to pay Rs.25 lakhs as sale

price even though Rs.18 lakhs was the agreed sale price as per the agreement of sale dated 28.04.2005. Accepting such demand made by the defendants, the plaintiff agreed to purchase the suit property for Rs.25,00,000/-. On 19.05.2005, the defendants signed and executed the sale deed in favour of the plaintiff, affixed their photographs and also signed other documents to more perfectly convey the property in question to the plaintiff. The title deeds pertaining to the suit property were also handed over to the plaintiff by the defendants. As regards possession, according to the plaintiff, since the defendants sought some time to handover the possession, she permitted the defendants to reside in the suit property. However, the defendants refused to budge from the suit property and therefore, after issuing a notice dated 31.01.2017, the plaintiff has filed the suit.

27. Repudiating the plaint averments, the defendants raised the defence that they have never signed the agreement of sale dated 28.04.2005 in favour of the plaintiff. Further, they have never intended to alienate the suit property for a valuable sale consideration in favour of the plaintiff. The defendants are not acquainted with the Tamil language and taking advantage of the same, the plaintiff has manoeuvred to obtain the signature of the defendants in the office of the Sub-Registrar in a deed purported to be a mortgage deed. According to the defendants, they were in great financial need and therefore, they have borrowed a sum of Rs.12,00,000/- from the plaintiff and on receipt of such sum, they have mortgaged the suit property in favour of the plaintiff. Therefore, according to the defendants, they have signed the documents before the office of the Sub-registrar under the impression that they are signing only a mortgage deed in favour of the plaintiff for having borrowed the sum of Rs.12,00,000/-. Thus, the defence of the defendants is a total denial of the suit transaction. It is the specific defence of the defendants that the plaintiff has obtained their signature in a document purported to be a mortgage deed and therefore, the sale deed dated 19.05.2005 said to have been executed by them is vitiated on account of fraud and misrepresentation, which is largely attributable on the part of the plaintiff. Therefore, according to the defendants, the entire sale transaction are vitiated by fraud and misrepresentation.

28. With this background, it has to be examined as to whether the sale deed dated 19.05.2005 executed by the defendants in favour of the plaintiff is vitiated or not. Admittedly, the sale deed dated 19.05.2005 executed in favour of the plaintiff by the defendants is a registered document and therefore it can reasonably be inferred and presumed that it was duly executed for a valuable sale consideration, unless the execution is denied on the ground of fraud and misrepresentation to the satisfaction of the Court. In the present case, the defendants admitted having signed some documents which were in

Tamil on 19.05.2005 in the presence of witnesses in the office of the Sub-Registrar, however, they claim that they were under the impression that they are only executing a mortgage deed. Thus, the defendants admitted having signed the sale deed dated 19.05.2005 but they only contend that they signed the document under the impression that it was a mortgage deed to mortgage the suit property in favour of the plaintiff. In this regard, useful reference can be made to the decision of the Honourable Supreme Court in (Grasim Industries Limited vs. Agarwal Steel) reported in (2010) 1 Supreme Court Cases 83 relied on by the learned Senior counsel for the plaintiff/respondent wherein it was held that when a person signs a document and admits his signature, the presumption is that he or she has read the document properly and understood the content of it before signing the signature in the presence of witnesses, unless there is strong proof to show that such document came into existence by reason of fraud and misrepresentation. The relevant portion of the Judgment delivered by the Honourable Supreme Court will be apposite to be looked into:-

"6. In our opinion, when a person signs a document there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise, no signature on a document can ever be accepted. In particular, businessmen, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence, the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence, it is difficult to accept the contention of the respondent while admitting that the document, Ext. D-8 bears his signatures that it was signed under some mistake. We cannot agree with the view of the High Court on this question...."

29. Therefore, it is evident that once a person signs a document and such document has also been registered before the competent registering authorities, thereafter, he cannot turn around and say that he signed the document either without reading the contents of the document or under the impression that the contents of the document are not the one agreed and understood by him. In any event, in the present case, the sale deed dated 19.05.2005, Ex.A-1 was registered before the registering authorities and therefore it partakes the character of a valid and genuine document, unless and until it is proved that the execution of such document is vitiated by errors of fraud, force, coercion or misrepresentation. The burden of proving the so-called fraud, force or misrepresentation is largely on the shoulders of the defendants, who aver false or misrepresentation on the part of the plaintiff, which led to

execution of the sale deed dated 28.04.2005.

30. In the present case, even though the defendants have raised a defence that the sale deed is vitiated by fraud and misrepresentation, they have failed to prove the same to the satisfaction of this Court. One of the grounds on which the defendants feigned ignorance over the execution of the sale deed is that the defendants are not acquainted with Tamil language, the sale deed dated 19.05.2005 was typed in Tamil and it was prepared and brought to the Sub-Registrar Office for the first time just prior to the execution of the same and therefore, there was no occasion for them to read the contents of the document. In other words, the defendants have admitted that they went to the Sub-Registrar Office on 19.05.2005 and signed some documents. If it is so, the burden of proof of the above aspects rests on the shoulders of the defendants. To prove such defence, the first defendant examined himself as DW1. To eschew his chief-examination, the first defendant has filed proof affidavit before the trial court. During the course of cross-examination, he admitted that the second defendant, who is his wife, is acquainted with Tamil language. The relevant portion of the deposition of DW1 in the cross-examination is as follows:-

“.....எனக்கு ஆங்கிலம் படிக்க தெரியும். நான் பி.எஸ்.சி (கணக்கு) திருச்சி செயின்ட் ஜோசப் கல்லூரியில் படித்துவிட்டு பிறகு எம்.ஏ (பிரஞ்சீ) பாண்டிச்சேரி தாகூர் கலைக் கல்லூரியில் படித்தேன். உயர் நிலைப்பள்ளி மெட்ரிக் குலேசன் படிப்பை நான் காரைக்காலில் படித்தேன். பியூ.சி திருச்சி செயின்ட் ஜோசப் கல்லூரியில் படித்தேன். என் மனைவி 2-ம் பிரதிவாதி சேலம் உயர்நிலைப் பள்ளியில் படித்தார். அவர் 10-ம் வகுப்பு, வரை படித்தார். எனக்கு ஆங்கிலம் நன்கு தெரியும். தமிழில் அவ்வளவு பேசுவேன் ஆனால் எழுத படிக்க தெரியாது. என் மனைவி 2-ம் பிரதிவாதி தமிழ் எழுத படிக்க தெரியும்.....”

31. From the above evidence of the first defendant, in his cross-examination, it could be seen that even the first defendant could fluently speak Tamil but he could not read and write Tamil. However, the first defendant categorically admitted that the second defendant, who is his wife, can read, write and speak Tamil. This admission falsifies the defence projected by the defendants as if the sale deed was in Tamil and that they are not acquainted with Tamil language and therefore, the sale deed was signed by them under the impression that it was a mortgage deed and consequently the sale deed is vitiated by fraud and misrepresentation. In fact, the second defendant is also a party to the sale deed dated 19.05.2005 executed in favour of the plaintiff. The second defendant, who is acquainted with the language of Tamil, could have very well gone through the contents of the documents before signing it and satisfy herself as to the purpose for which the document is to be executed by the defendants. It is not known as to what prevented the second defendant from going through the contents of the sale deed dated 19.05.2005 before signing it. Curiously, the second defendant did not step into the witness box and therefore, an adverse inference can be drawn against the

defendants that the second defendant is acquainted with Tamil language, Thus, we are of the view that the defendants could not sustain their defence that the sale deed is vitiated by errors of fraud and misrepresentation and it is too big a pill to be swallowed by them. On the other hand, the defendants who alleges fraud and misrepresentation on the part of the plaintiff themselves have made false representation by denying the very execution of the sale deed in favour of the plaintiff.

32. As mentioned above, the execution of the sale deed dated 19.05.2005, Ex.A1 is disputed by the defendants on the ground that they have signed the documents under the impression that they are only executing a mortgage deed in favour of the plaintiff. Even according to the defendants, on execution of such document purporting to be a mortgage deed, they have received a sum of Rs.12,00,000/- from the plaintiff by way of bankers cheque. Thus, the defendants wanted to portray that the amount of Rs.12,00,000/- alone was paid by the plaintiff after they have executed the mortgage deed for a loan. Even assuming that the defendants signed the documents before the Sub-Registrar office on 19.05.2005 under the impression that they are only executing a mortgage deed and received the sum of Rs.12,00,000/- as loan from the plaintiffs, then it is their bounden duty to repay the amount of Rs.12,00,000/- with principal and interest. In order to fortify such a defence, the defendants have not filed a single document to show that they have paid some amount to the plaintiff, either towards principal or interest after 19.05.2005. According to the defendants, they came to know about the execution of sale deed only when the plaintiff sent a legal notice on 31.01.2007 calling upon them to vacate and handover the vacant possession of the suit property inter alia claiming mesne profits at the rate of Rs.10,000/- per month. Thus, from 19.05.2005 till 31.01.2007 for about eight months, if really the transaction in question is a loan transaction, the defendants ought to have paid some amount either towards principal or interest for the alleged loan amount of Rs.12,00,000/- borrowed by them from the plaintiff. Thus, in the absence of any document to show that the defendants have paid some amount towards principle or interest, to sustain their defence that the instant transaction is a loan transaction, we are not inclined to hold that the transaction in this case is a loan transaction and the defendants have only borrowed a sum of Rs.12,00,000/- from the plaintiff, as has been alleged by them. Further, even according to the defendants, only on receipt of the legal notice dated 31.01.2007, they came to know that what was executed by them on 19.05.2005 was a sale deed in favour of the plaintiff. If it is so, the defendants ought to have filed a suit for declaration to declare the agreement of sale dated 28.04.2005 as well as the sale deed dated 19.05.2005 as null and void, but the defendants miserably failed to do so. Further, even though the defendants denied

that they have received only Rs.12,00,000/- by way of cheque and they did not receive any further amount, in the sale deed dated 19.05.2005, it was clearly stated as follows:-

".....Received a sum of Rs.12,00,000/- from you vide Indian Overseas Bank Cheque No.902526 drawn on Reddiyar Palayam Branch, Puducherry and balance sale consideration of Rs.13,00,000/- was received from you in the presence of witnesses by way of cash..."

33. When the recitals in the sale deed dated 19.05.2005 clearly indicates that the plaintiff has paid Rs.13,00,000/- by way of cash, it is very hard to believe that the defendants did not receive any amount other than the sum of Rs.12 lakhs by way of bankers cheque.

34. As regards the signature of the defendants in the agreement of sale dated 28.04.2005, the defendants have totally denied having signed any agreement with the plaintiff on 28.04.2005. The defendants, in order to fortify their defence that the signature in the agreement of sale dated 28.04.2005 is forged and fabricated, have taken out an application in I.A. No. 333 of 2010 for comparison of their signatures contained in the agreement of sale dated 28.04.2005 with the admitted signatures. A report submitted by the Forensic Expert, in this regard, was marked as Ex.C1 before the trial Court. CW1 was the Scientific Document Expert working in Forensic Science Department, Chennai - 600 004. The deposition of CW1 will be apposite for being quoted and it reads as under:-

"...On examination of the above signatures in the said document, the person who wrote the red enclosed signatures, stamp were marked as A1 to A10 also wrote the red enclosed signatures similarly stamped and marked Q1 and A2 was stated in our document report No.182/2011 along with reasoning sheets...."

35. During the cross-examination, when a question was put to CW1 that the remarks made by her in the report are generic and not specific, she has categorically denied the same by stating that "I deny the suggestion that my reasons are only a general and does not support my findings. I deny the suggestion that the signature found in the admitted documents and the disputed documents are entirely different and does not belong to one and the same person." Thus, it is clear that the the signatures found in the agreement of sale dated 28.04.2005 are that of the defendants herein. Therefore, it is crystal clear that there was an agreement of sale entered into between the plaintiff and defendants and as per the conditions contained in the agreement of sale, the sale deed was entered into between the plaintiff and defendants within a period of one months

namely 19.05.2005. Such sale deed dated 19.05.2005 is in accordance with Section 54 of The Transfer of Property and thereby the defendants have conveyed the suit property to the plaintiff. Therefore, we hold that the plaintiff has established that the defendants have executed the sale deed dated 19.05.2005 in her favour and thereby they have alienated the suit property for a valuable sale consideration. In such circumstances, we hold that defendants/appellants have failed to substantiate their defence that the agreement of sale dated 28.04.2005 and sale deed dated 19.05.2005 are vitiated on account of fraud and misrepresentation made by the plaintiff. Accordingly, we answer the first point framed in this appeal for determination against the defendants/appellants herein.

36. The next point for consideration is whether the doctrine of Non-est factum would apply to the facts of the present case. The term non-est factum refers to the defence available to a defendant in a judicial proceeding whereby he can raise a defence as to the non-existence of a contract or invalidate such contract by denying the signatures made by him in the agreements relating to the contract on the ground that such signatures were made by him unintentionally or without full understanding of the implications. In the present case, the defendants have admitted their signature in the sale deed dated 19.05.2005 but only pleaded that they signed the documents in the office of the Sub-Registrar without knowing the contents thereof and under the impression that they are only executing a mortgage deed. For such a laxity on the part of the defendants, who have taken no pain to even go through the documents before signing it, they deserve only to be penalised. Admittedly, the sale deed dated 19.05.2005 was a registered document and the defendants have also admitted that they went to the office of the Sub-Registrar, signed the documents and also affixed their photographs. In such circumstances, as we have already held, the registered sale deed dated 19.05.2005 is to be held as valid and enforceable in the eyes of law, in the absence of any strong proof forthcoming from the defendants to show that the defendants were made to execute it by misrepresentation, coercion or fraud. Therefore, such a defence raised by the defendants was rejected by us in the preceding paragraph. In such circumstances, we hold that the doctrine of non-est factum will not be made applicable to the facts and circumstances of the case.

37. As regards the submission of the learned counsel for the defendants that the sale agreement dated 28.04.2005 is not indicated in the sale deed dated 19.04.2005, we are of the view that mere non-mentioning of sale agreement entered into between the parties in the recitals in the sale deed, will not vitiate the transaction.

38. In the result, we confirm the Judgment and Decree dated 10.10.2014 passed in O.S. No. 48 of 2007 on the file of III Additional District Judge, Pondicherry. Consequently, the Appeal Suit is dismissed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The III Additional District Judge
Puducherry.

2. The Section Officer, VR Section, Madras High Court, Chennai.
(2 copies)

+ 1 CC to M/s S.Sundaresan, Advocate vide sr No.82534

+ 1 CC to M/s S.Wilson, Advocate vide sr No.82830

A.S. No. 871 of 2014

CNR(CO)

NR 20/12/2017



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