

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.10.2017

Delivered on : 09.10.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.670 of 2009

R.Anandapadmanabhan (deceased)

1.Prabhavathi

2.Balaveena

3.Balasaravanan

.....Appellants/Defendants

(Cause title accepted vide order of
this Court dated 02.04.2009 in
MP.No.1 of 2009)

vs.

1.R.Vadivel Gounder (deceased)

2.R.Arumugham

3.Mala Devi

4.V.Bhuvaneswari

..... Respondents/Plaintiffs

(RR3 and 4 impleaded as LR's
of deceased R1 vide order
of Court dt.6.1.2012 made
in M.P.No.2 of 2009 in
A.S.No.670 of 2009)

Appeal suit filed under Section 96 of C.P.C. against the
judgment and decree dated 14.08.2008, passed by the Additional
District & Sessions Judge (Fast Track Court No.IV, Coimbatore at
Tiruppur) in O.S.No.374 of 2005.

For Appellants : Mr.R.Muthukumarasamy, Sr.counsel
for Mr.A.Jenasenan

For Respondent : Mr.V.Raghavachari for
Mr.V.Subramanian for R2 to R4

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JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.)

This Appeal Suit has been directed against the judgment and
decree dated 14.08.2008, passed in O.S.No.374 of 2005, by the
Additional District & Sessions Judge/Fast Track Court No.IV,
Coimbatore.

2.The second respondent herein and one deceased Vadivel Gounder, as plaintiffs, have instituted O.S.No.374 of 2005, on the file of the trial Court, for the reliefs of specific performance and perpetual injunction, wherein, the deceased appellant has been arrayed as sole defendant.

3.The material averments made in the plaint can be summarized as follows:

The suit property is the absolute property of the defendant. The plaintiffs have approached the defendant to purchase the suit property. The defendant has agreed the demand made by the plaintiffs. On 17.09.2003, the suit sale agreement has come into existence and total consideration is fixed at Rs.40 lakhs. On the date of its execution, the defendant has received a sum of Rs.30 lakhs. The defendant has agreed to execute a sale deed within a period of two years, after receipt of balance sale consideration. The plaintiffs, on several occasions, have approached the defendant to execute a sale deed after receipt of balance of sale consideration, but the defendant has given an evasive reply. Further, the defendant has not produced encumbrance certificate. The defendant has mortgaged a portion of the suit property in favour of a Housing Society and obtained a loan of Rs.4,95,000/-. The defendant has constructed six shops and subsequently leased out the same for monthly rent. The defendant has failed to handover possession of the suit property as per terms of the sale agreement. The plaintiffs are always ready and willing to perform their part of the contract. Now the defendant has endeavored to create encumbrance in respect of the suit property. The plaintiffs have issued a legal notice dated 06.09.2005 to the defendant, but he has refused to receive the same and subsequently, another legal notice has been issued to him. After receipt of the same, the defendant has given a reply notice dated 29.09.2005. Under the said circumstances, the present suit has been instituted for getting the reliefs sought therein.

4.In the written statement filed on the side of the defendant it is averred to the effect that it is false to say that the defendant has executed the sale agreement dated 17.09.2003. Further it is false to aver that on the date of its execution, the defendant has received a sum of Rs.30 lakhs. The defendant has invested money in a chit company and for the purpose of recovering the same, a proceeding has been instituted, wherein, the first plaintiff has been appointed as Power of Attorney agent of the defendant. During the relevant period, the first plaintiff has obtained signatures of the defendant on various blank papers. The defendant, without raising any question, has used to put his signatures by way of believing the words of the first plaintiff. The defendant has started construction in the year 2003. At the time of

construction, the first plaintiff has acted as an agent of the defendant. The defendant has not executed any sale agreement in respect of the suit property. During 2004, the defendant has fallen in illness. The second plaintiff is nothing but a henchman of the first plaintiff and both of them have concocted suit sale agreement by utilizing the signatures put by the defendant on blank papers. There is no merit in the suit and the same deserves to be dismissed.

5. On the side of the plaintiffs, a replication statement has been filed, wherein, they refuted most of the averments made in the written statement.

6. In the additional written statement filed on the side of the defendant it is averred that the sale agreement dated 17.09.2003 is nothing but a fraudulent document. It is false to aver that due to escalation of price of the suit property, the defendant has refused to execute the sale deed in favour of the plaintiffs. The defendant has given a suitable reply notice to the plaintiffs and there is no merit in the suit and the same deserves to be dismissed.

7. On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues and after evaluation of both oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present appeal suit has been preferred by the defendant. During pendency of the same, the sole appellant has passed away and his legal heirs have been impleaded as appellants. Likewise, the first respondent/first plaintiff has passed away and his legal heirs have been impleaded as respondents.

8. The crux of the case of the plaintiffs is that the suit property is the absolute property of the defendant. The defendant has agreed to sell the same in favour of the plaintiffs for a sum of Rs.40 lakhs and to that effect the suit sale agreement has come into existence on 17.09.2003 and on the date of its execution, the defendant has received a sum of Rs.30 lakhs. The plaintiffs have agreed to get a sale deed registered within a period of two years after paying balance of sale consideration. The defendant has also conceded the same. Despite of repeated demands made by the plaintiffs, the defendant has evaded in executing a registered sale deed in favour of the plaintiffs. Under the said circumstances, a legal notice has been issued on 06.09.2005, but the defendant has refused to receive the same and subsequently, another legal notice has been issued. After receipt of the same, he has given a false reply notice and further, the defendant has constructed six shops and let out the same on monthly rental basis and now, the defendant has endeavored to create encumbrance over the suit

property. Under the said circumstances, the present suit has been instituted for getting the reliefs sought therein.

9.The defence taken on the side of the defendant is that he has not executed the suit sale agreement on 17.09.2003 and he has not received the alleged sum of Rs.30 lakhs. The defendant has invested his money in a chit company and for the purpose of recovering the same, a proceeding has been instituted, wherein, the first plaintiff has acted as his agent and during the relevant period, the first plaintiff has used to obtain the signatures of the defendant on various blank papers and by utilizing the same, both the plaintiffs have concocted the suit sale agreement dated 17.09.2003 and further, the defendant has given a befitting reply notice to the plaintiffs and therefore, the plaintiffs are not entitled to get the reliefs sought in the plaint.

10.The trial Court, after analyzing both the oral and documentary evidence, has decreed the suit as prayed for.

11.The main points that arise for consideration in the present appeal suit are:

(1)Whether the plaintiffs and defendant have created the suit sale agreement dated 17.09.2003?

(2)Whether the suit sale agreement dated 17.09.2003 is a forged document?

(3)Whether the plaintiffs are entitled to get the reliefs sought in the plaint?

12.The learned Senior counsel appearing for the appellants/defendants has repeatedly contended to the effect that the suit sale agreement has been marked as Ex.A1 and another sale agreement, alleged to have been executed by the defendant in favour of the first plaintiff, has been marked as Ex.A8 and both the documents are nothing but concoction. The signatures found therein are not the signatures of the defendant and the trial Court, even without comparing the disputed alleged signatures of the defendant with his admitted signatures, has erroneously decreed the suit and further, the plaintiffs are not having sufficient means to purchase the suit property and the trial Court, without considering the vital infirmities found on the side of the plaintiffs has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

13.As a repartee to the contentions raised on the side of the appellants/defendants, the learned counsel appearing for the respondents/plaintiffs has contended to the effect that the specific defence taken on the side of the defendants is that

prior to execution of Ex.A1, the first plaintiff has acted as an agent of the defendant and during that period, he used to obtain his signatures on various blank papers and by utilizing the same, both Ex.A1 and Ex.A8 have been falsely created. The defendant has been examined as D.W.1 and his specific evidence is that the signature found in the last page of Ex.A1 is his signature and in fact, all the signatures found in Ex.A1 and Ex.A8 are identical and also similar and further, the specific admission made by D.W.1 is that the first plaintiff has been doing real estate business and further, the plaintiffs are always ready and willing to perform their part of contract, whereas, the defendant has adopted evasive method so as to avoid execution of a registered sale deed and the trial Court, after considering the over all evidence available on the side of the plaintiffs, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court do not warrant interference.

14.The learned counsel appearing for the respondents/plaintiffs has relied upon the decision reported in (2008)11 Supreme Court Cases 45 (Silvey and Others vs. Arun Varghese and Another), wherein the Hon'ble Supreme Court has held that on facts, the plaintiffs intended buyers were always ready and willing to perform their part of the agreement but defendants intended sellers were not ready to perform their obligations in terms of the agreement. Conduct of defendants in taking a false plea has to be taken into account while decreeing or denying a decree for specific performance.

15.Basing upon the divergent submissions made on either side, the Court has to meticulously analyse as to whether Ex.A1 has come into existence betwixt the plaintiffs and defendant.

16.The consistent case of the plaintiffs is that Ex.A1 has come into existence on 17.09.2003, whereby, the defendant has agreed to sell the suit property for a sum of Rs.40 lakhs in favour of the plaintiffs and on the date of its execution, he has received a sum of Rs.30 lakhs and further the plaintiffs have agreed to get the sale deed registered within a period of two years after paying the balance of sale consideration and the defendant has also conceded the same.

17.The main defence emanated from the written statement filed on the side of the defendant is that Ex.A1 is a concocted document and the same has been created by utilizing the signatures of the defendant put on various blank papers.

18.The learned Senior counsel appearing for the appellants/defendants has mainly advanced his argument on the ground that Ex.A1 and another sale agreement, viz., Ex.A8 are nothing but concocted documents and the signatures found therein

are not the signatures of the defendant.

19. At this juncture, the Court has to look into the evidence given by the defendant, who has been examined as D.W.1. During the course of cross-examination, he has fairly conceded to the effect that the signature found in the last page of Ex.A1 is his signature. Therefore, it is needless to say that the defendant has accepted his signature, which is available in the last page of Ex.A1.

20. It is a settled principle of law that as per Section 73 of the Indian Evidence Act, 1872, the Court can very well compare the disputed signatures with admitted signature. In fact, this Court has compared the admitted signature of the defendant with all disputed signatures found in Ex.A1 and Ex.A8 and ultimately found that all the disputed signatures are nothing but signatures of the defendant. Further, it is highly impossible to forge the signature of the defendant, since the defendant has used to put his signature in labyrinthical manner.

21. As set out earlier, the specific defence taken on the side of the defendant is that prior to alleged execution of Exs.A1 and A8, a proceeding has been instituted against a chit company by the defendant, wherein, the first plaintiff has acted as his agent and during the relevant period, the first plaintiff has used to obtain his signatures on various blank papers and by utilizing the same, Exs.A1 and A8 have been falsely created. Therefore, the specific defence taken on the side of the defendant is that only by utilizing signed blank papers and stamps, the plaintiffs have falsely created Ex.A1 and Ex.A8. But the argument put forth on the side of the appellants/defendants is totally inverse. Since the argument put forth on the side of the appellants/defendants is totally contra to the pleadings raised in the written statement, this Court is not in a position to accept the first contention put forth on his side and further, this Court has meticulously compared the admitted signature of the defendant with the disputed signatures and in that collation, it is found that all disputed signatures are the signatures of the defendant. Therefore, it is quite clear that Ex.A1 is a genuine document and the same has come into existence betwixt the plaintiffs and defendant and on the date of its execution, the defendant has received a sum of Rs.30 lakhs by way of an advance.

22. Now, the Court has to look into the second contention raised on the side of the appellants/defendants.

23. The second contention put forth on the side of the appellants/defendants is that the plaintiffs are not having sufficient source so as to purchase the suit property.

24. For analysing the said aspect, once again the Court has to look into the evidence given by the defendant (D.W.1). The defendant has fairly conceded to the effect that the first plaintiff has been doing real estate business and further, on the basis of remaining documents filed on the side of the plaintiffs, the Court can easily come to a conclusion that the first plaintiff is having sufficient means to purchase the suit property. Further, it is a settled principle of law that after entering into a sale agreement, the purchaser need not always show money to the seller. Therefore, the second contention urged on the side of the appellants/defendants also goes out without merit.

25. It is seen from the records that initially a legal notice has been issued to the defendant, but the same has not been served to him. Subsequently, another legal notice has been issued and after receipt of the same, the defendant has given a reply notice.

26. Considering the fact that Ex.A1 is a genuine document, this Court is of the view that after receipt of second legal notice, the defendant has given a false reply notice. Therefore, it is quite clear that the defendant has taken a false plea so as to deny the legal remedy of the plaintiffs. Under the said circumstances, as per the dictum given by the Hon'ble Supreme Court, the appellants/defendants are bound to execute a sale deed in favour of the respondents/plaintiffs.

27. The trial Court, after considering the overall evidence available on record, has rightly decreed the suit. In view of the foregoing elucidation of both factual and legal aspects, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/defendants and therefore, the present appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with cost. The judgment and decree passed in O.S.No.374 of 2005, by the trial Court, are confirmed.

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Assistant Registrar(CCC)
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Sub Assistant Registrar

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To

1.The Additional District & Sessions Judge
(Fast Track Court No.IV),
Coimbatore at Tiruppur.

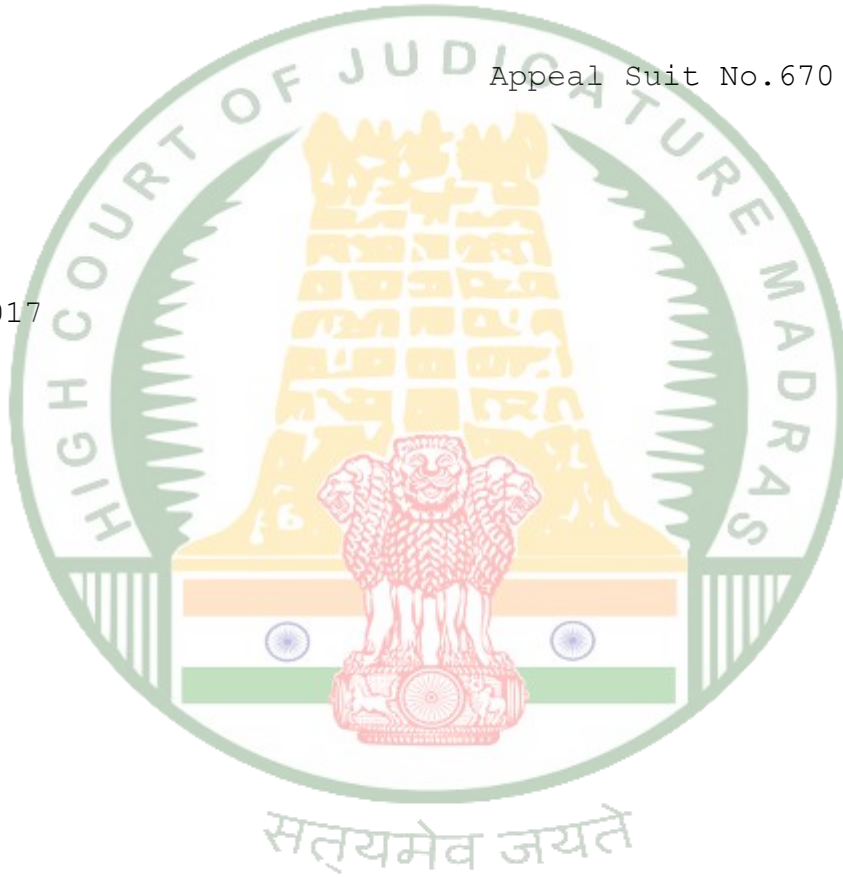
2.The Section Officer
VR Section High Court
Madras

+1 cc to M/s.A.Jeenasenani Advocate sr 71971

+2 ccs to M/s.M.Mohideen Pichai Advocate sr 72045

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