IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 11.09.2017
DELIVERED ON : 13.10.2017
Coram:
THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.No.567 of 2012

1.A.Raja ..Appellant1/1st Defendant
2.R.Manjula ..Apellant 2/2nd Defendant
3.Vinoth Kumar Jain ..Apellant 3/4th Defendant
4.Shamila ..Apellant 4/5th Defendant

..vs..

1.Kamalasekaran ..Respondent1/Plaintiff
2.Lakshmii ..1st Respondent/3rd Defendant

Appeal Suit has been filed under Section 96 r/w Order XLI Rule 1 CPC, against the Decree and Judgment dated 29.02.2012 in O.S.No.263 of 2007 on the file of the Second Additional District Court cum Fast Track Court-IV at Ponneri.

For Appellants : Mr.N. Jothi

For Respondents : Mr.R.Munusamy for R1

JUDGMENT
(Judgment of the Court was delivered by P. VELMURUGAN,J.)

1. 2. The case of the plaintiff in brief:

1.(a) 1st defendant is the owner of the suit property. He has agreed to sell the said property to the plaintiff for Rs.15,20,0000/- and executed a sale agreement in writing on 21.7.2005 and received a sum of Rs.15,00,000/- on the same day and agreed to receive the balance sale consideration of Rs.20,000/- whenever the plaintiff wants to complete the transaction. He also handed over the original documents, E.B.Bill copy etc., It was agreed that time is not the essence of contract. The son of 1st defendant and others attested the sale agreement.

1.(b) The plaintiff was always ready and willing to perform his part of the contract as per the terms and conditions of the agreement of sale. The plaintiff was having ready cash to pay the balance sale consideration and to meet out all other expenses. When he demanded the 1st defendant for execution of the sale deed, there was no response from the 1st defendant. But instead of executing sale deed he has gone the extend of threatening with dire consequences. Therefore the plaintiff sent a legal notice on 11.4.2007 to the 1st defendant and demanded execution of the sale deed. 1st defendant received the notice on 24.04.2007 and sent a reply dated 03.05.2007, containing falsehood and declined to execute the sale deed. The allegations in the reply notice are false and set up to defraud the plaintiff. The plaintiff did not obtain the signatures of the 1st defendant in blank papers as alleged by him in his reply. In fact, in the year 2006, under the guise of effecting mediation, the villagers of Redhills, obtained ten signatures from the plaintiff in blank stamp papers, but they had not helped the plaintiff in obtaining the sale deed for the suit property.

1.(c) During the pendency of the suit, 1st defendant executed a settlement deed in respect of the suit property in favour of his wife and daughter which was already agreed to be sold to the plaintiff. When the plaintiff came to know that, the 2nd and 3rd defendants in collusion with 1st defendant encumbered the suit property in favour of 4th and 5th defendants on 24.09.2007. During the pendency of the suit 1st defendant encumbered the suit property in favour of other defendants. Hence, defendants 2 to 5 were impleaded in the suit. The plaintiff is always ready and willing to perform his part of contract. 1st defendant evaded to execute the sale deed further he has gone to the extent of threatening with dire consequences. Therefore, the plaintiff has filed the suit for the relief of specific performance of the contract, to direct the defendants to execute the sale deed in his favour.

2. In the written statement of the 1st Defendant it is averred as follows:

2.(a) The 1st defendant never agreed to sell the suit property to the plaintiff. He never received any sum from the plaintiff as advance towards sale consideration and he never executed any agreement of sale with the plaintiff agreed to sell the suit property. The alleged sale agreement dated 21.7.2005 is fabricated one and it is not valid in law. The plaintiff is a professional money lender, who lends money on very high ratio of interest rate. In the month of May 2003 1st defendant borrowed a sum of Rs.2,50,000/- from the plaintiff and the interest demanded by the plaintiff for the said sum was 60% per annum.

2.(b) At the time of borrowal the plaintiff took the original documents from the defendant, including the title deed with respect to the suit property, belonging to the 1st defendant. At the time of borrowal the plaintiff took blank cheques from the defendant and also 1st defendant's signatures on five blank papers and five blank stamp papers. The plaintiff also took the signatures of the 1st defendant's son in the left side bottom of the above blank and stamp papers. At that time due to the urgent need of money the 1st defendant did not question the plaintiff as to why he is obtaining signatures on blank papers and on blank stamp papers from him and from his son.

2.(c) In the middle of 2005, since the 1st defendant was in deep financial crisis, he was not able to pay interest for two months. Therefore, in July 2005, the plaintiff pressurized this defendant and took his signatures on five more blank papers and five more stamp papers. The plaintiff made use of the said signed blank papers and blank stamp papers has fabricated the alleged sale agreement dated 21.7.2005 with an evil motive to swindle 1st defendant's valuable property. The 1st defendant paid interest on the said sum at the exorbitant rate of 5% p.m.upto May 2006. Thereafter, since the interest rate of 5% p.m. is exorbitant he stopped paying the interest and asked the plaintiff to come forward for a decent settlement. But the plaintiff was not willing to receive the principal sum of Rs.2,50,000/- because his evil intention is to receive interest at such exorbitant rate, for ever. Further, the plaintiff without informing the 1st defendant deposited on such cheque for a sum of Rs.2,50,000/- for collection and got the same bounced and filed a Criminal Case in C.C.No.1 of 2007 on the file of the Judicial Magistrate No.1, Ponneri and the same is pending for disposal.

2.(d) There is no question of readiness and willingness when there is no valid contract. The plaintiff is a rowdy element surrounded by goondas, who threatened the 1st defendant that he would finish off 1st defendant's life, if he does not execute sale deed in respect of the suit property on receipt of the part of the sale consideration of Rs.20,000/-. The lawyer notice sent by the plaintiff has been duly replied by the 1st defendant through his lawyer dated 3.5.2007. The way in which the alleged sale agreement has been typed, the value of the stamp papers on which the alleged sale agreement has been typed and the fact that many unwanted words and sentences have been inserted in the alleged sale agreement, by themselves prove that the alleged sale agreement is fabricated one. If the 1st defendant really agreed to sell the suit property for Rs.15,20,000/- and if the plaintiff has really paid a sum of

Rs.15,00,000/- lakhs, as a part of sale consideration, nothing would be prevented the plaintiff from paying another sum of Rs.20,000/- and getting sale deed executed in July 2005 itself. This is another aspect which proves that the alleged sale agreement is fabricated one. The transaction between him and the plaintiff is purely a loan transaction and not a sale transaction. The suit is not maintainable in law and the same is liable to be dismissed.

3. In the written statement filed by the 4th defendant it is averred as follows:

The 4th defendant is the bonafide purchaser of the part of the suit property measuring to an extent of 1192 sq.ft., bearing door No.9 Part Rajaji Street, Naravarikuppam, Redhills, chennai-52 comprised in S.No.97, B/3-C by virtue of sale deed dated 24.09.2007 registered as document No.12696/2007 on the file of S.R.O. Redhills, for a valid sale consideration of Rs.4,85,000/- from the 2nd defendant to his favour. After going through the documents and encumbrance certificate which does not reflect any encumbrance, further believing the words of the 2nd defendant, 4th defendant purchased the part of the suit property from him. This 4th defendant is not friend or relative to the defendants 1 to 3 in the suit and moreover this defendant after the purchase of the part of the suit property he is in continues possession and enjoyment of the same. Hence, the suit may be dismissed as it is devoid of merits as against this defendant No.4.

4. The brief facts in the written statement filed by the 5th Defendants are as follows:

He is the bonafide purchaser of the part of the said property measuring to an extent of 736 sq.ft. bearing door No.9, part, Rajaji Street, Naravarikuppam, Redhills, Chennai-52, by virtue of sale deed dated 24.09.2007 registered as document on the file of S.R.O. Redhills for a valid sale consideration of Rs.3,00,000/- from the 2nd defendant to his favour. After gone through the documents and encumbrance certificate which does not reflect any encumbrance, further believing the words of the 2nd defendant, 5th defendant purchased the part of the suit property from the 2nd defendant. This defendant is not friend and relative to the defendants 1 to 3 and moreover, after the purchase of the part of the suit property she is in continuous possession and enjoyment of the same. Hence, the suit is liable to be dismissed.

5. After considering the pleadings, documents the trial court framed the following issues:

1. Whether the plaintiff is entitled for the relief of specific performance as prayed for in the plaint?
2. Whether the suit sale agreement dated 21.07.2005 is fabricated and legally unenforceable?

3. Whether the transaction took place between the plaintiff and the 1st defendant is money transaction only, not sale transaction as claimed by the 1st defendant?

4. Whether part of the suit property purchased by the 4th defendant for value without notice?

5. Whether part of the suit property purchased by the 5th defendant for value without notice?

6. Whether the plaintiff is entitled to any other reliefs?

6. Before the trial Court, in order to prove his case the plaintiff examined himself as P.W.1 and marked Exs.A1 to A5. On the defendants side 1st defendant was examined as D.W.1, 4th defendant was examined as D.W.2, 5th defendant was examined as D.W.3 and through them Exs.B1 to B11 were marked.

7. Considering the pleadings, oral and documentary evidence produced before the trial court, the trial court decreed the suit in favour of the plaintiff by granting the relief of Specific Performance. Aggrieved by the Judgment and Decree, the defendants have preferred the present appeal. For the sake of convenience and also for easy reference, the litigative status of the parties before the trial Court is taken in this appeal.

8. The learned counsel for appellants would submit that a bare perusal of the said agreement Ex.A.1 itself shows that the 1st defendant has not executed the sale agreement and from the signatures obtained in the stamp papers and blank papers, the sale agreement would have been fabricated by the plaintiff. The first page of the sale agreement was typed in two-line space and the other pages were typed in single-line space. The signatures appear in the agreement, the value of the stamp papers used for the alleged agreement and also the manner of the typewritten in the sale agreement itself show that the sale agreement has been created only from the signed blank stamp papers and blank green sheets. The 1st defendant never executed any sale agreement with the plaintiff and he never intended to sell the suit property to the plaintiff. Taking advantage of the money transaction between the plaintiff and the 1st defendant and the possession of the blank signed stamp papers and other signed blank green sheets with him, he had fabricated the sale agreement. Even assuming that the 1st defendant executed the sale agreement in favour of the plaintiff, the plaintiff has not proved the readiness and willingness to perform his part of the contract. In the alleged agreement dated 21.7.2005, no time limit is fixed to execute the

sale deed.

9. As per the sale agreement dated 21.7.2005, the plaintiff had paid a sum of Rs.15,00,000/-, out of total sale consideration of Rs.15,20,000/- on the same day. If the plaintiff has really paid Rs.15 lakhs, as a part of the sale consideration nothing would be prevented him from paying the balance of meager sum of Rs.20,000/- and getting sale deed executed in July 2005 itself. The learned counsel for the appellants would further submit that though he had entered into the sale agreement on 21.7.2005, he sent notice Ex.A.2 only on 11.4.2007 for which the 1st defendant suitably replied that he had not executed the sale agreement and the same was fabricated by the plaintiff. Further, the date of execution of alleged sale agreement Ex.A.1 is 21.7.2005 and the plaintiff issued notice only on 11.4.2007, when he paid major portion of the sale consideration i.e., out of Rs.15,20,000/-, paid Rs.15,00,000/- and the remaining amount is only Rs.20,000/- for which he has not given any valid reason as to why he was waiting for more than 20 months.

10. Even after obtaining all the title deeds and also paid major portion of the sale consideration no time limit was fixed in the sale agreement, the plaintiff has waited for 20 months to send notice to the 1st defendant to ask him to execute the sale deed by stating vague reasons that even though he frequently approached the 1st defendant, he did not respond in a proper manner and threatened the plaintiff with the help of anti social elements and local politician, for which there is no proof. Further the plaintiff in his cross examination had admitted the signature Ex.B.1 and denied the contents written in the undertaking letter. Though he deposed that the panchayatdars belong to Redhills Village obtained his signature Ex.B1 in blank papers agreeing to settle the the dispute between himself and 1st defendant with respect to sale agreement. But they had not helped him. However, he has not given any police complaint. The plaintiff has not examined any attesting witnesses to prove that the agreement Ex.A1 was genuine and also the suggestion put before him during the cross examination also clearly shows that the transaction between them is only a money transaction. The learned counsel for the appellants would further submit that the plaintiff is a money-lender and the 1st defendant borrowed a sum of Rs.2,50,000/-. This fact has not been denied by the plaintiff. Once it is specifically denied that the 1st defendant has not executed any sale agreement in favour of the plaintiff, it is the duty of the plaintiff to prove that transaction between the plaintiff and defendant is only a sale transaction. But on the other hand, on the side of the defendants it is proved that the documents were issued only for the money transaction, the plaintiff is not entitled to the relief of specific performance.

11. The learned counsel for the respondent would submit that the 1st defendant has executed a sale agreement in favour of the plaintiff for a sum of Rs.15,20,000/-. The plaintiff has paid a sum of Rs.15,00,000/- on the same day itself and the 1st defendant produced the documents of the rice mill and also copy of E.B.Bills etc., due to the relationship of parties, the time was not fixed. It is agreed by both the parties that as and when the plaintiff is ready to get the sale deed to be executed, the 1st defendant has to get the balance sale consideration and execute the sale deed. But when the plaintiff approached the 1st defendant, he evaded to execute the sale deed. Therefore, he issued a legal notice Ex.A.2 to the 1st defendant on 11.4.2007. The 1st defendant received the notice on 20.4.2007 and gave a evasive reply on 3.5.2007. Therefore the plaintiff constrained to file a suit for specific performance originally against the 1st defendant.

12. The plaintiff was always ready and willing to perform his part of the contract but the 1st defendant has failed to perform his part of the contract. Meanwhile, during the pendency of the suit he settled the property in favour of his wife and daughter and in turn his wife and daughter in collusion with the 1st defendant had encumbered the property in favour of 4th and 5th defendants. One of the reasons for non fixing the date in the agreement and also issued present notice belatedly is that the mill situated in the suit property was in a dilapidated condition and also the 1st defendant sought for some time to wind up his business. The plaintiff was always ready and willing to perform his part of the contract throughout. The trial court after considering all the oral and documentary evidence, has rightly decreed the suit and granted the relief of specific performance. Hence, there is no valid ground to interfere with the judgment and decree of the trial court. Therefore, the appeal suit is liable to be dismissed.

13. Heard both sides, Perused the plaint, written statements, issues framed by the trial court, oral and documentary evidence of both the parties before the trial court, Judgment and Decree passed by the trial Court, the grounds of appeal filed by the appellants in this appeal and also the written submissions of the learned counsel for both parties.

14. On perusal of the above materials, the first defendant has taken the defence in this suit is that no such sale

agreement had been entered into with the plaintiff. The plaintiff is a money lender and the 1st defendant was in need of money, he borrowed a sum of Rs.2,50,000/- from the plaintiff in the year 2003 for which he insisted the 1st defendant to sign in the blank stamp papers, blank green papers and blank cheques and also obtained the original title deeds. Since the interest is highly exorbitant, the 1st defendant could not pay the interest for 2 months in the year 2005, the plaintiff insisted the first defendant and got other set of signed, blank stamp papers, blank papers from the 1st defendant and his son. The plaintiff also filed a criminal complaint under Section 138 of Negotiable Insutruments Act by using the blank cheque obtained from the 1st defendant. Further, the plaintiff fabricated the alleged sale agreement by utilising 2 of the blank stamp papers and blank green papers. The 1st defendant never intended to sell the suit property to the plaintiff. The transaction between the plaintiff and the 1st defendant is purely a loan transaction. The plaintiff was not ready and willing to perform his part of contract. When the plaintiff falsely issued notice, the 1st defendant suitably replied to the legal notice. The 1st defendant has not executed sale agreement in favour of the plaintiff, the same is fabricated one, taking advantage of the possession of the signature of the 1st defendant in blank stamp papers and blank green papers it was fabricated. Therefore, the plaintiff is not entitled to the relief of specific performance.

15. The stand taken by the plaintiff is that 1st defendant executed the sale agreement on 21.7.2005 for a sum of Rs.15,20,000/-, out of which major portion of sale consideration of i.e., Rs.15,00,000/- was paid on the same day at the time of execution of the alleged sale agreement. Considering the relationship of the parties they have not fixed time to execute the sale deed. When the plaintiff was always ready and willing to perform his part of the contract, the 1st defendant has filed to perform his part of the contract. Therefore, he issued a legal notice to 1st defendant and filed the suit. In the meanwhile, the 1st defendant settled the property in favour of his wife and daughter, they sold the property to 4th and 5th defendants. Therefore, they have also been impleaded as parties during the trial of the suit.

16. From the above facts and circumstances of the case, the following points arise for consideration in this appeal are as to:

- 1. Whether the 1st defendant executed the agreement of sale in favour of the plaintiff with an intention to execute a sale deed?
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- 2. Whether the plaintiff had fabricated the agreement of sale by utilising the signed blank stamp papers and other papers obtained from the 1st defendant?
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- 3. Whether the transaction between the plaintiff and the 1st defendant was a loan transaction?
-
- 4. Whether the trial court is right in granting the relief of specific performance of contract in favour of the plaintiff?
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- 5. To what relief?

Point Nos.1 and 2.

17. According to the plaintiff, 1st defendant entered into a sale agreement with him on 21.7.2005 for a sum of Rs.15,20,000/- out of which on the very same day he paid a sum of Rs.15,00,000/- to the 1st defendant. The 1st defendant also received the same and handed over the title deeds of the suit property. No time limit was fixed to execute the sale deed, because the plaintiff and the 1st defendant are relatives. From the date of execution of the sale agreement, the plaintiff was always ready and willing to perform his part of the contract. But the 1st defendant evaded to execute the sale deed. Therefore, the plaintiff issued legal notice through his advocate on 11.4.2007 and the same was received by the 1st defendant on 20.04.2007. After the receipt of notice also, the 1st defendant has not come forward to execute the sale deed. But he sent a evasive reply on 3.5.2007. Therefore, the plaintiff has no other option except to file the suit as against the 1st defendant. The plaintiff was ready and willing to perform his part of the contract and the 1st defendant has failed to perform his part of the contract.

18. According to the 1st defendant, he never executed the

sale agreement with the plaintiff, he never intended to sell the suit property to the plaintiff. Actually he was bad in need of money for his business in the year 2003, for which he approached the plaintiff, because the plaintiff is the money lender. Taking advantage of his financial crisis, the plaintiff insisted him to sign in blank stamp papers, blank green papers, blank cheques and also insisted for original documents. After getting those documents, the 1st defendant was paid a sum of Rs.2,50,000/- as loan for which the interest claimed by the plaintiff was exorbitant.

19. Since the interest was exorbitant, the plaintiff could not repay the principal amount and in the year 2005 he could not pay the interest for 2 months, at that time, the plaintiff taking advantage of the financial crisis of the 1st defendant, obtained other set of signed blank stamp papers and some blank papers and in the year 2007 even prior to send the presuit legal notice, he filled and deposited the blank cheque issued to the plaintiff in the year 2003, knowing fully well that the 1st defendant was in a financial crisis, got the cheque bounced and filed a complaint before the Judicial Magistate No.1, Ponneri under section 138 of Negotiable Instruments Act. Thereafter, he created the sale agreement by using the signed blank stamp papers and other signed blank green papers and sent a notice to the plaintiff on 11.04.2007, for which the 1st defendant suitably replied. But the plaintiff filed the civil suit for specific performance knowing fully well that the signed blank stamp papers and other papers were obtained only as security for the repayment of loan amount. The plaintiff had also admitted during the cross examination, that he is a money lender and the first defendant borrows hand loan from him. Further he also admitted the signature Ex.B1 and there was a panchayat before the Redhills Villagers. But the trial court without considering all these aspects simply granted the relief of specific performance which warrants interference.

20. On a perusal of the sale agreement and other documents produced by the either side, a bare perusal of the agreement of sale, even in the naked eye, we are able to see that in the first page of the agreement it has been typed in double line space and the other pages have been typed in single line space. Further the manner of the signatures found in the stamp papers and also the other recitals found in the agreement would show that it might not have been prepared in the usual course and further, the agreement was prepared by an Advocate and the same was not registered. Therefore, the reading of the Ex.B1 to Ex.B4 and also the cross examination of the plaintiff and the

evidence of the defendants would show that there was a loan transaction between the plaintiff and the 1st defendant. The plaintiff also admitted that the 1st defendant borrowed a sum of Rs.2,50,000/-. Since the 1st defendant had not repaid the amount, he deposited cheque into the bank and consequently initiated criminal proceedings before the Judicial Magistrate No.1, Ponneri, u/s 138 of Negotiable Instruments Act.

21. On careful perusal of the dates of the sale agreement, date of pre-suit notice issued, date of cheque, date of deposit of cheque into the bank, notice issued for dishonour of cheque, complaint filed before the Judicial Magaistrate No.1, Ponneri and other evidence, we can easily arrive at a conclusion that certainly there was a loan transaction between the plaintiff and the 1st defendant. The 1st defendant also proved the same by oral and documentary evidence and the plaintiff also admitted in his cross examination that he is money lender and the first defendant borrowed money from him. This fact could not be denied by the plaintiff. It is pertinent to note that the date of the alleged sale agreement is 21.7.2005 and as stated by the plaintiff in his proof affidavit filed before the Judicial Magistrate in C.C.No.1 of 2007 that on 3.3.2006 the 1st defendant borrowed a sum of Rs.2,50,000/- for which he gave a cheque dated 28.6.2006. The plaintiff deposited the cheque for collection in his bank on 22.07.2006. Again he deposited the said cheque on 30.11.2006 and issued statutory notice on 7.12.2006 and filed complaint before the Judicial Magistrate No.1, Ponneri in the year 2007 in CC.No.1 of 2007. Though the date of filing of complaint is not clear, considering the C.C.No.1 of 2007 it would have been filed in the month of January 2007. After filing of C.C.No.1 of 2007 only he sent Ex.A.2 pre-suit notice to the 1st defendant for executing sale deed on 11.4.2007 and the same was received by the 1st defendant on 20.4.2007; he replied on 3.5.2007 and the plaintiff filed the suit on 24.8.2007. The plaintiff has admitted in his proof affidavit filed in C.C.No.1 of 2207 that he gave a hand loan of Rs.2,50,000/- on 3.3.2006 only for 2 months. Further, he admitted that he got the cheque only on 28.6.2006.

22. The specific case of the 1st defendant is that he borrowed a sum of Rs.2,50,000/- in the year 2003 for which the plaintiff obtained all the original title deeds of the rice mill and also obtained signed blank stamp papers, some signed blank papers and signed blank cheques. Further, in the year 2005 also he obtained some signed blank stamp papers and some signed blank papers. Taking advantage of the same in order to get more money from him in the year 2006 the plaintiff filled the cheque

knowingly fully well the first defendant was in financial crisis and no sufficient money in his account and deposited the cheque into the bank and gave a criminal complaint against the 1st defendant before the Judicial Magistrate No.1, Ponneri while criminal complaint is pending he created the alleged agreement of sale from the signed blank stamp papers which were already obtained from the 1st defendant and issued notice on 11.4.2007. Which would show that the plaintiff would have created the sale agreement only after filing of C.C.No.1 of 2007 before the Judicial Magistrate No.1, Ponneri and also before sending the pre-suit notice Ex.A.2 on 11.4.2007, as if the 1st defendant had executed an agreement of sale on 21.7.2005 itself. Further it is to be noted, as already stated, the sale agreement is unregistered one and prepared by an Advocate.

23. Further, even in the reply notice to the pre-suit legal notice, the 1st defendant had stated that there was a financial transaction between the plaintiff and him and the 1st defendant borrowed a sum of Rs.2,50,000/- for which the plaintiff obtained 5 signed blank stamp papers, 5 signed blank papers and signed blank cheques. The consistent case of the 1st defendant is, that there was a loan transaction between the plaintiff and the 1st defendant, he did not execute any sale agreement and also he never intended to execute sale deed in favour of the plaintiff. When the 1st defendant stoutly denied Ex.A.1 the agreement of sale, the plaintiff has not examined the witnesses of the said document. Though the plaintiff has stated that he knew the persons who have signed in Ex.A1 as witnesses. But he has not examined those witnesses and also not examined the scribe.

24. It is the duty of the plaintiff to prove that the 1st defendant has executed Ex.A.1 sale agreement with intend to sell the property. But he has not chosen to examine either the witnesses or the scribe and he has admitted during the cross examination that there was a loan transaction between them. Therefore, considering the oral and documentary evidence and the conduct of the parties, this court finds that the 1st defendant has not executed the sale agreement, it has been fabricated by the plaintiff taking advantage of the possession of the signed blank stamp papers and other singed green blank papers with him and filed the suit. Therefore, one of the contention raised by the counsel for the plaintiff that once the 1st defendant admitted the signatures found in the sale agreement he cannot deny the execution of the agreement is not sustainable. So we come to the conclusion that 1st defendant did not execute Ex.A.1 the agreement of sale with an intentition to sell the suit property to the plaintiff. The Point Nos.1 and 2 are answered

accordingly.

Point No.3

25. It is the specific case of the 1st defendant that he borrowed a sum of Rs.2,50,000/- in the year 2003, at that time, the plaintiff obtained signature in the blank stamp papers, blank papers and blank cheques and he filed the criminal case in the year 2007 by using one of the blank cheques given by the 1st defendant and the plaintiff has admitted in his cross examination that he is doing money lending business. According to the plaintiff the 1st defendant has borrowed a sum of Rs.2,50,000/- on 3.3.2006 as hand loan and on 28.6.2006 he gave a cheque, since no amount in his bank, the cheque was bounced, so the plaintiff after sending statutory notice filed the criminal complaint before the Judicial Magistrate No.1, Ponneri u/s 138 of Negotiable Instruments Act. Even during the examination both the parties have admitted in their evidence that there was a loan transaction between the plaintiff and the 1st defendant.

26. The 1st defendant in his reply to the pre-suit notice sent on 3.5.2007, has denied the sale agreement and stated that he borrowed a sum of Rs.2,50,000/- in the year 2003 and not on 3.3.2006 and further he would state that he gave signed blank stamp papers, signed blank green papers and signed blank cheques and the plaintiff misused the stamp papers and other green papers fabricated the sale agreement. The 1st defendant during the cross examination of the plaintiff marked Exs.B.1 to B.3. A perusal of the said documents reveal that there was a money transaction between the plaintiff and the 1st defendant. On a careful perusal of the reply notice sent by the 1st defendant Ex.A.4 dated 3.5.2007 and the written statements filed by the 1st, 4th and 5th defendants, the evidence of P.W.1, D.Ws.1 to 3 and Exs.B.1 to B.3, it comes to light that there was no sale transaction between the plaintiff and the 1st defendant, it was only a money transaction.

27. The sale agreement alleged to have been executed on 21.7.2005 for a sum of Rs.15,20,000/- on the very same day a sum of Rs.15,00,000/- was paid by the plaintiff to the 1st defendant. Though the time was not essence of contract and no time limit was fixed in the sale agreement, according to the plaintiff, from the date of execution of sale agreement he is continuously ready and willing to perform his part of contract,

only the 1st defendant evaded to execute the sale deed. If that be the position, how the plaintiff gave a hand loan of Rs.2,50,000/- to the 1st defendant on 3.3.2006 without obtaining any security? According to the plaintiff, the 1st defendant gave the cheque on 28.6.2006 for the repayment of hand loan borrowed from the plaintiff on 3.3.2006 which is not believable. If at all the 1st defendant ready with an intention to sell the suit property he had executed the agreement of sale Ex.A1. When the 1st defendant evaded to execute the sale deed then how the plaintiff has given hand loan of Rs.2,50,000/- even without obtaining any security and also without adjusting the balance sale consideration. Further, as per the alleged agreement of sale at the relevant point of time a balance sale consideration of Rs.20,000/- was due from the plaintiff to the 1st defendant. But there was no explanation for the same. This would clearly show that there may not be any sale transaction in between the plaintiff and the 1st defendant during the relevant period as stated by the plaintff. If really an agreement of sale was executed by the 1st defendant and evaded to execute the sale deed, the plaintiff would not have lent the money on 3.3.2006 and received the cheque from the 1st defendant on 28.6.2006 and he would have definitely insisted 1st defendant to execute the sale deed at the time of borrowal of Rs.2,50,000/- itself. At this juncture, it is pertinent to refer the decision referred to by the learned counsel for the appellant in the case of Tejram v. Patirambahu reported in (1997) 9 Supreme Court Cases 634 wherein the Honourable Apex Court has observed as follows:

> ''4. Having regard to respective contentions, the question that arises for consideration is; whether the respondent has paid Rs.48,000/- as cash consideration towards sale transaction? It is seen that document purporting to be an agreement of sale was not , in fact, in truth and in reality, not an agreement of sale, witness No.2, the scribe of the agreement admitted in the examination-in-chief that he had executed several similar documents. All those documents i.e., 10 out of 8, relate to specific performance; all of them are of those who took loan from the respondents. It is an admitted position that the respondent is a money- lender. Under these circumstances, the document purporting to be an agreement for sale is in fact not an agreement for sale; it is towards the unpaid interest on the loan taken by the respondent. It is seen that the High Court also accepted that the appellant had taken a loan in 1965 for a sum of Rs.1500/- and repaid Rs.3500/-. Shri Deshpande says that the sum of Rs. 15,000/-

is not factually correct; it is actually only Rs.1,500/-. If it is true sale transaction and the respondent being a businessman and having purported to have paid Rs.48,000/-, one would expect that he would seek possession or he would pay the balance consideration and request for execution of the sale deed. Instead, he kept quite for full 3 years. be that as it may, it would appear that there was money transaction between the appellant and the respondent and the respondent, being money-lender, was taking documents, purporting to be an agreement of sale, from the loanees. In the event of the loanees failure to pay the loan amount along with interest stipulated by him, the documents would, obviously, be executed, with a view to enforce the repayment of loan and interest accrued thereon. it is unlikely that being a money-lender and having parted with Rs.48,000/- as cash, he would have kept quite either for seeking possession of the property or payment of Rs.2,000/- immediately and then sought specific performances; it would be unlikely in the normal circumstances that he would have waited for 3 years for issuing notice and then filing suit on the last date. Under these circumstances, the Courts below rightly came to the conclusion that it is not an agreement for sale or purports to be a sale in truth and in reality, but in view of the admission made by the respondent by way of endorsement that he had received Rs.48,000/- and in the absence of any specific circumstances and in view of the doubtful conduct of both the parties, it is not possible for us to reach any satisfactory conclusion on the basis of evidence as to what a was the amount actually due to paid by the appellant to the respondent and what amount is still payable. Under these circumstances, we are of the considered view that the ends of justice would be met if the conclusion reached by the High Court that a sum of Rs.48,000/- was paid by the respondent to the appellant, is confirmed. However, respondent is not entitled to payment of any interest or cost, as ordered by the High Court. Under these circumstances, the order of the Division Bench of the High Court for payment of Rs.65,280/- is set aside. Instead, there will be a decree for a sum of Rs.48,000/- in lump-sum without any interest. ''

28. The principle involed in the above decision is squarely applicable to the facts of the present case. In this case also the plaintif has waited for 20 months without any valid reason, thereafter sent notice to the 1st defendant to execute the sale deed. Further, one of the peculiar situation said to have taken place in this case is that in between the period of 20 months, he had received a cheque from the 1st defendant on 28.06.2006 for the alleged hand loan given on 3.3.2006, deposited the said cheque, got dishonoured and filed a criminal complaint before the Judicial Magistrate No.1, Ponneri in C.C.No.1 of 2007. Under these circumstances, it can be inferred that the 1st defendant would not have executed the sale agreement with intend to sell the property.

29. One of the main contention of the plaintiff is that during the pendency of the suit, the 1st defendant has settled the property to his wife and daughter, the 2nd and 3rd defendants. In turn the wife and daughter of the 1st defendant have encumbered the property to the 4th and 5th defendants, who are third parties. The property was worth about 7 lakhs. Whereas in the agreement of sale the sale consideration was fixed at Rs.15,20,000/- Though the plaintiff admitted that at the time of execution of sale agreement there was a rice mill in a dilapidated condition, this fact has not been mentioned in the sale agreement. In the description of property, it is mentioned only as rice mill covered by tiles roof. Further, due to the relationship of the parties, the time was not fixed. This fact was also not mentioned in the sale agreement. In view of the above, it is proved that the transaction between the plaintiff and 1st defendant is only a money transaction and the plaintiff utilised 2 of the signed blank stamp papers and some of the signed blank green papers, fabricated the sale agreement. Hence, the Point No.3 is answered as indicated above.

Point No.4

30. As already stated that the plaintiff is a money lender, the 1st defendant borrowed money from the plaintiff for which the plaintiff obtained 5 signed blank stamp papers, 5 signed blank green sheets and blank cheques and also title deeds of the suit property. The plaintiff misused two of the signed blank stamp papers and some of the green sheets created the sale agreement Ex.A.1 for sum of Rs.15,20,000/- and sent a notice to the 1st defendant to execute sale deed. The plaintiff also misused the blank cheque and deposited the same into the bank and got

bounced and filed criminal case under Section 138 of N.I.Act, now appeal is pending. The learned trial Judge has not looked into the evidence of D.Ws.1 to 3 and also failed to consider Exs.B.1 to B.3. Even the plaintiff himself has admitted the signature Ex.B.1 is that of him and he has deposed in his evidence Ex.B.2 before the Judicial Magistgrate No.1, Ponneri, in C.C.1 of 2007 that under the guise of effecting mediation, the villagers of Redhills, threatened him and obtained his signatures forcibily in the blank papers. But he has not given any complaint before the police. The proceedings u/s 138 N.I. Act proves that there was a loan transaction. When the 1st defendant specifically denied the execution of sale agreement, the plaintiff has not examined either the witness or scribe of the sale agreement to prove the document. Further it is noted that the said alleged ageement of sale is unregistered one and the same was prepared by an advocate. Though the 1st defendant admitted his signatures, he has stated that he signed only in the blank stamp papers and other papers. When he is specifically denied the execution of the sale agreement, it is the duty of the plaintiff to prove the agreement of sale by examing atleast one of the witnesses or scribe of the sale agreement and prove that the 1st defendant had executed the agreement of sale with an intention to sell the property.

31. Further the plaintiff has not proved the readiness and willingness to perform his part of the contract. He has not given any valid reason for a period of 20 months between the date of execution of the alleged agreement of sale and pre-suit notice. The plaintiff would state that due to the relationship between the plainttiff and 1st defendant, time has not been fixed to execute the sale deed, but nowhere it is stated in the agreement. The plaintiff has not proved his readiness and willingness, to execute the sale deed, through out. The trial court without considering the oral and documentary evidence, the conduct of the parties and the nature of the case, wrongly decreed the suit in favour of the plaintiff. Therefore, the judgment and decree passed by trial court warrants interference and the relief granted to the plaintiff is liable to be set aside. The point No.4 is answered accordingly.

Point No.5

32. Though the plaintiff asked alternate relief of refund of advance money, on a bare reading of the plaint and the alternate relief of refund the advance money, as already discussed above in the other points that the 1st defendant has not executed any sale agreement and he has not received Rs.15

lakhs as part of the sale consideration and we have also held that the agreement was not genuine and the same was fabricated by the plaintiff by using blank signed stamp papers and other papers obtained from the 1st defendant for the loan money transaction between the plaintiff and the 1st defendant. The 1st defendant admitted the signatures found in the Ex.A.1 sale agreement. Further he admitted that in the year 2003 he borrowed a sum of Rs.2,50,000/- from the plaintiff, he could not pay the principal amounts since the interest is highly exorbitant. He paid only the interest for two years and since he could not pay the interest for two months, the plaintiff obtained signatures in the another set of blank stamp papers and blank sheets and misued the same and created the alleged agreement of sale Ex.A.1.

33. Further the plaintiff has deposed in his evidence before the trial court in this case that there was a panchayat, in a Redhills village, in that they obtained his signature in blank paper. The relevant portion of the deposition has been extracted hereunder:

> ``என்னிடம் காண்பிப்பது என்னுடைய கையொப்பம் தான். மேற்படி கையொப்பம் என்னிடம் எழுதாத வெற்றுபேப்பரில் வாங்கப்பட்டது. மேற்படி கையொப்பத்தில் நான் தேதி குறிப்பிட்டுள்ளென். அந்த கையொப்பம் பி.வா.சா.ஆ.1. செங்குன்றம் கிராமத்தை சேர்ந்த நபர்கள் எனக்கும். 1வது பிரதிவாதிக்கும் சொத்து சம்பந்தப்பட்ட கிரய ஒப்பந்தம் சம்பந்தப்பட்ட பிரச்சனையை பஞ்சாயத்து மூலம் தீர்த்து வைப்பதாக வெற்றுப் பேப்பரில் பிர.வா.ஆ.1ல் கையொப்பம் வாங்கினார்கள். பி.வா.சா.ஆ.1 ஆட்சேபனையின் பேரில் குறியிடப்பட்டது. 2006 ஆம் வருடம் பஞ்சாயத்து நடைபெற்றது. நான் என்னிடம் பஞ்சாயத்தார் கையொப்பம் வெற்று பேப்பரில் வாங்கியது சம்பந்தமாக காவல்துறையின் மூலம் புகார் கொடுத்து நடவடிக்கை எதுவும் எடுக்கவில்லை. முதல் பிரதிவாதிக்கோ மற்றவர்களுக்கோ அறிவிப்பு எதுவும் கொடுக்கவில்லை.”

whereas before Judicial Magistrate No.1, Ponneri, in C.C.No.1 of 2007 during the cross examination he has deposed as

> “என்னிடம் காண்பிக்கப்படும் உறுதிமொழிப் பத்திரத்தில் என் கையெழுத்துதான். இந்த உறுதிமொழி பத்திரத்தில் 4.7.2005ல் கையெழுத்துப் போட்டுள்ளேன். அதில் கூறப்பட்டுள்ள கூற்றுக்கள் என்னை மிரட்டி கையெழுத்து வாங்கிக் கொண்டார்கள். அதன் ஒரிஜினல் அவர்கள் கையில் உள்ளது. அது சம்பந்தமாக நான் காவல் நிலையத்தில் எந்த புகாரும் கொடுக்கவில்லை. அது பொறுத்து வழக்கறிஞர் அறிவிப்பும் நான் கொடுக்கவில்லை.”

34. According to the 1st defendant, a sum of Rs.13,50,000/- was due. When the plaintiff admitted his signautre Ex.B.1 and he would state that his signature was obtained against his wish. But, he did not give any complaint before police for the same. Therefore, the contention of the plaintiff is not believable. The document "Due Amount Letter" in which Ex.B.1 signature is found, it is mentioned that a sum of Rs.13,50,000/- is due from the 1st defendant and the plaintiff has promised to return the original documents with respect to the 1st respondent Rice Mill to Finobulls Company at the time of repayment of the said amount of Rs.13,50,000/- mentioned in the "Due Amount Letter". In view of the above, the plaintiff is not entitled to the relief of specific performance and since the 1st defendant has admitted that he is liable to pay Rs.13,50,000/-to the plaintiff, the 1st defendant shall repay the said amount of Rs.13,50,000/- to the plaintiff, within a period of 6 months from the date of this judgment after receiving the original document from the plaintiff.

35. We have already come to the conclusion that there was no agreement of sale between the plaintiff and the 1st defendant and transaction between them was only a money transaction. It is admitted fact that, during the pendency of the suit 1st defendant executed a settlement deed in favour of his wife the 2nd defendant and she has sold the property to the 4th and 5th defendants, third parties. Since this court found that the agreement was fabricated one the appeal against the defendants 3 to 5 is dismissed. The point is answered accordingly.

36. In the result, the Appeal Suit is partly allowed by setting aside the Judgment and Decree dated 29.02.2012 in O.S.No.263 of 2007 on the file of the Additional District Court cum Fast Track Court-IV at Ponneri, directing the 1st defendant to repay a sum of Rs.13,50,000/- after receiving the original documents within 6 months from the date of this Judgment. Considering the nature of the case and since both the parties have not approached the court with clean hands, they are not entitled for the cost. Therefore, the Appeal Suit is partly allowed without cost and the plaintiff is not entitled to any interest.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ggs

To
The Additional District Judge,
Fast Track Court No.IV
Ponneri

Copy to
The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+2cc to Mr.N.JOTHI, Advocate, S.R.No.73862
+1cc to Mr.R.MUNUSAMY, Advocate, S.R.No. 74024

Judgment in:
A.S.No.567 of 2012

VD(CO)
TR(02/04/2018)