

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 18.04.2018****PRONOUNCED ON : 04.06.2018****CORAM****THE HONOURABLE MR.JUSTICE T.RAVINDRAN****S.A.No.1054 of 2004**

G.Shanthi

...

Appellant

Vs.

Halima John

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 09.12.2002 passed in A.S.No.34 of 2002 on the file of the Principal District Court, Cuddalore, confirming the Judgment and Decree dated 07.08.2000 passed in O.S.No.690 of 1994 on the file of the Principal Subcourt, Cuddalore.

For Appellant : Mr.R.Sunilkumar

For Respondent : Mr.R.Gururaj

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 09.12.2002 passed in A.S.No.34 of 2002 on the file of the Principal District Court, Cuddalore, confirming the Judgment and Decree dated 07.08.2000 passed in O.S.No.690 of 1994 on the file of the Principal Subcourt, Cuddalore.

2. Parties are referred to as per their rankings in the trial Court

3. Suit for specific performance.

4. The case of the plaintiff, in brief, is that the suit property absolutely belongs to the defendant, she having purchased the same by way of a registered sale deed dated 16.04.1994 for Rs.74,000/- and the defendant and the plaintiff entered into an unregistered agreement of sale on 20.06.1994, whereunder, the defendant agreed to sell the suit property to the plaintiff for a sale consideration of Rs.85,000/- and as per the terms of the agreement, the plaintiff paid an advance of Rs.45,000/- and also undertook to discharge a promissory note executed by the defendant in favour of Prabakaran for Rs.12,000/- on 25.01.1994 and another promissory note executed by the defendant in favour of Samyuktha for Rs.20,000/- on 14.04.1994 and the principle and interest due under both the promissory notes come to Rs.33,000/- and the balance of Rs.7,000/- should be paid to the defendant at the time of completion of the sale deed and time is the essence of the contract and as per the terms of the agreement, the plaintiff has always been ready and willing to perform her part of the contract and the plaintiff with the balance sale consideration and necessary expenses for the execution and registration of the sale deed, approached the defendant and requested

her to receive the amount and execute the sale deed and however, the defendant was evading and hence, the plaintiff issued a notice on 08.11.1994 to the defendant setting out the terms of the agreement and calling upon her to perform her part of the contract as per the agreement and in the abovesaid notice, by inadvertance, it is stated that Rs.7,000/- is to be paid before the Sub-registrar and the defendant received the said notice, but showed no signs of honouring the same and in addition to that, the plaintiff also issued a paper publication as regards the sale agreement on 09.11.1994 and accordingly, the plaintiff has been necessitated to lay the suit for specific performance.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is incorrect to state that the defendant and the plaintiff entered into an agreement of sale on 20.06.1994 as claimed in the plaint agreeing to convey the suit property for a sale consideration of Rs.85,000/- and as per the terms of the agreement, the plaintiff undertook to discharge a promissory note executed by the defendant in favour of one Prabakaran for Rs.12,000/- on 25.01.1994 and another promissory note in favour of Mrs. Samyuktha for Rs.20,000/- on 14.04.1994 and that, the principle and interest due under the abovesaid promissory notes come to Rs.33,000/- and the balance of Rs.7,000/- should be paid to the defendant at the time of the execution of the sale deed and that, time is the essence of the contract

and as per the terms of the agreement, the plaintiff has always been ready and willing to perform her part of the contract and it is false to state that the plaintiff was approaching the defendant to receive the balance sale consideration and complete the sale transaction and however, the defendant has been evading the same. The defendant and one Samyuktha, wife of Balakrishnan are known to each other in connection with their contact in stitching centre of Social Service Department and the defendant borrowed a total sum of Rs.11,000/- from Samyuktha on two occasions i.e. 09.02.1994 and 15.04.1994 for her needs and to purchase the suit property and for the said borrowings, Samyuktha obtained the signatures of the defendant on 09.02.1994 in two blank stamp papers and on 15.04.1994 in some other blank papers as well as stamp papers for the security purpose and when the defendant approached Samyuktha for discharging the debts, she claimed usurious rate of interest viz., 120% per annum and as the defendant was unable to discharge the debts with such exorbitant rate of interest, Samyuktha and her husband schemingly represented that they would obtain loan from the Cuddalore Permanent Fund Office by depositing the original title deed and made the defendant to part with the original title deed from her hands and when later the defendant insisted for getting the loan from the permanent fund, she was shocked to receive a notice dated 07.11.1994 from the plaintiff as if the defendant had executed an agreement of sale as putforth in the said notice and immediately, on the receipt of the

same, the defendant ascertained and enquired that the plaintiff was a tenant to the said Samyuktha and the said notice has come to be issued by a lawyer from Villupuram, who is none other than the sister's husband of Samyuktha and the defendant approached the said lawyer at Villupuram, who also promised to settle the dispute and get back the document and blank papers and hence, the defendant did not give any reply to the lawyer's notice and Samyuktha has designed the evil idea of concocting the sale agreement with the aid of her tenant, the plaintiff and the plaintiff is a housewife and her husband is working in the Health Department on a low salary and she does not have any means to make the alleged advance amount, which is a huge amount and the defendant has never agreed to sell the suit property and execute the sale deed as put forth in the plaint on the basis of the sale agreement projected and the suit has been filed on the basis of a fabricated sale agreement with intent to snatch the defendant's property and there is no need for the defendant to sell the suit property to the plaintiff and hence, the suit is liable to be dismissed.

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6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A9 were marked. On the side of the defendant, DW1 was examined and no document has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and challenging the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i). Whether the Courts below did not err in failing to apply the burden of proof on the plaintiff for establishing the genuineness of the agreement and found it to be not true especially when there was no proof for consideration nor any witness to support the plaintiff's version?

(ii). Whether the decree of the Courts below not erroneous without rendering a specific finding on the plaintiff's readiness and willingness to act as per the alleged agreement under Section 16(c) of the Specific Relief Act and test the same with reference to her financial inadequacy to meet the requirements of purchase?

(iii) Whether the relief of the specific performance was not inequitable when the defendant was being deprived of her residential house for her indebtedness of the defendant?"

9. The suit has come to be laid by the plaintiff for specific performance on the footing that the defendant being the owner of the suit property agreed to convey the same in favour of the plaintiff for a sum of Rs.85,000/- and as the plaintiff agreed to the abovesaid proposal, the parties had entered into an unregistered sale agreement on 20.06.1994 as regards the abovesaid transaction and according to the plaintiff, she had paid a sum of Rs.45,000/- as advance on the date of the sale agreement and undertook to discharge the two promissory notes executed by the defendant in favour of Prabakaran for Rs.12,000/- on 25.01.1994 and in favour of Samyuktha for Rs.20,000/- on 14.04.1994 and the principle and interest as regards the abovesaid promissory notes being worked at Rs.33,000/-, according to the plaintiff, the balance sum of Rs.7,000/- of the sale consideration should be paid by her to the defendant, at the time of completion of the sale deed and though the plaintiff has always been ready and willing to pay the balance sale consideration and complete the sale transaction, however, the defendant had been evading the same on some other pretext and left with no other alternative, according to the plaintiff, she had issued a notice to the defendant on 08.11.1994 calling upon her to receive the balance sale

consideration and execute the sale deed as agreed to and as there had been no response to the same from the defendant, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

10. Per contra, the defendant has disputed the sale agreement projected by the plaintiff by contending that it is a fabricated document created at the instance of Samyuktha in the name of the plaintiff, who, according to the defendant, is a tenant under Samyuktha and according to the defendant, she had not agreed to sell the suit property to the defendant for a sum of Rs.85,000/- as put forth in the plaint and also the plaintiff had not agreed to discharge the promissory notes as claimed in the plaint and further, according to the defendant, the plaintiff is not a wealthy person to pay the advance amount as claimed in the plaint by way of the sale agreement projected and it is stated by the defendant that she had borrowed a sum of Rs.11,000/- from Samyuktha wife of Balakrishnan on two occasions and at the time of the said borrowal, Samyuktha had obtained her signatures in blank stamp papers as well as in blank papers for security purpose and though the defendant was willing to discharge the said debts, as Samyuktha demanded exorbitant interest for the borrowed sum, the defendant was unable to discharge the debts and on the representation of Samyuktha that she would secure loan from the permanent fund and accordingly, the defendant, believing the said representation, parted with the title deed of the suit property and later,

on the receipt of the notice sent by the plaintiff, the defendant had come to know about the evil idea of Samyuktha in creating the sale agreement in the name of the plaintiff for achieving the ulterior object of grabbing the suit property from her and hence, according to the defendant, the sale agreement is a fabricated document and hence, she is not liable to execute any sale deed in respect of the suit property as claimed in the plaint and the suit is liable to be dismissed.

11. The defendant has challenged the genuineness of the sale agreement put forth by the plaintiff for seeking the relief of specific performance and the sale agreement has come to be marked as Ex.A2, which is dated 20.06.1994. Now, according to the plaintiff, she had paid a sum of Rs.45,000/- as advance to the defendant on the date of the sale agreement and the abovesaid case of the plaintiff has not been specifically denied by the defendant in the written statement. Though the defendant has, in the written statement, disputed all the other facts, in specific, she had not disputed that the plaintiff had not paid a sum of Rs.45,000/- as advance on the date of the sale agreement as put forth in the plaint. All that, she would state is that the plaintiff not being a wealthy person, has no means to pay the alleged advance amount being a huge sum and this is the only averment contained in the written statement as regards the payment of the advance amount pursuant to the sale agreement marked as Ex.A2. Thus, it is found that in specific,

there is no denial of the payment of Rs.45,000/- by the plaintiff to the defendant as advance in terms of the sale agreement Ex.A2.

12. In any event, inasmuch as Ex.A2 sale agreement itself is being put to challenge by the defendant, it is for the plaintiff to establish the genuineness of the same. In this connection, the plaintiff, in support of her version, has tendered evidence as PW1 and during the course of evidence, PW1 has clearly deposed about the proposal made by the defendant to sell the property to her for a sum of Rs.85,000/- and based upon the acceptance of the same by the plaintiff, the parties had ventured to execute the sale agreement in respect of the same for a sum of Rs.85,000/- being the sale price fixed and accordingly, she has also stated that she had paid a sum of Rs.45,000/- on the date of the sale agreement and only, on the receipt of the advance amount, the defendant had executed the sale agreement Ex.A2. As regards the abovesaid factors, despite the cross examination of PW1, the defendant has not culled out any favourable answer from her mouth in support of her defence to sustain the plea of the sale agreement being a fabricated document as claimed in the written statement.

13. That apart, the plaintiff in order to establish that Ex.A2 sale agreement has come to be executed between the parties concerned has also chosen to examine the scribe of the document Soundararajan as

PW2 and PW2, in his evidence, has testified that as he is a document writer and Ex.A2 document has been written by him and he has read the contents of the same to the parties concerned and both had agreed to the same and signed the document and the plaintiff's husband and one Balakrishanan had attested the sale agreement and the advance amount had been paid on the date of the sale agreement. Though PW2 has been cross-examined by the defendant, nothing has been elucidated from him in support of the defence version and further, no motive has been attributed against PW2 in deposing favourably in favour of the plaintiff and against the defendant.

14. The plaintiff examined as PW1 has deposed during the course of evidence that she had made ready the advance amount of Rs.45,000/- by selling the jewels and for the remaining amount, her brother Amanulla helped her and further, she has also testified that the advance amount was paid at the residence of Amanulla. Thus, according to PW1, the advance amount of Rs.45,000/- has been paid to the defendant at the residence of Amanulla. PW2, the scribe, has deposed that the document Ex.A2 has been written at his residence in Pudupalayam and as above seen, also deposed that the advance amount had been paid on the date of the sale agreement Ex.A2. No doubt, during the course of cross examination, he would depose that no amount had been disbursed in his presence at the time of the execution of Ex.A2. On that basis, it cannot

be construed that Ex.A2 agreement is a fabricated document and that, no advance amount was paid on the date of the said agreement by the plaintiff to the defendant. When it has been specifically deposed by PW1, the plaintiff that the advance amount of Rs.45,000/- was paid to the defendant at the residence of her brother Amanulla and when according to PW2, the sale agreement had come to be executed in his house located at Pudupalayam and when further according to PW1, the defendant had executed the sale agreement, only after the receipt of Rs.45,000/-, accordingly, it is found that the plaintiff's case cannot be held to be a false one, merely on the footing that PW2, the scribe, had not witnessed the passing of the advance amount under the sale agreement on the date of the execution of the same. When the materials placed on record go to disclose that prior to the execution of the sale agreement itself, the advance amount of Rs.45,000/- had been disbursed to the defendant by the plaintiff at her brother's residence and only after the same, the document has come to be executed at the residence of PW2, it is natural that PW2 would not have witnessed the passing of the advance amount at the time of the execution of the sale agreement and in such view of the matter, he has deposed that he had not witnessed the passing of any amount at the time of the execution of the sale agreement. Therefore, the above piece of evidence tendered by PW2, during the course of cross-examination, as rightly determined by the Courts below, would not in any manner undermine the plaintiff's case,

particularly when the evidence of PW1 as well as the evidence of PW2 are read in toto.

15. That apart, it is found that the plaintiff has issued a pre suit notice, prior to the institution of the suit, which has come to be marked as Ex.A5, dated 07.11.1994 and the receipt of the said notice has not been controverted by the defendant. In Ex.A5, the plaintiff has clearly averred about the sale agreement as putforth in the plaint and also averred about the adjustment of the sale consideration to the extent of Rs.78,000/- and further averred that only a sum of Rs.7,000/- remains to be paid and when the defendant has not challenged the said notice by way of sending a reply, it is found that as rightly putforth by the plaintiff's counsel as well as determined by the Courts below, inasmuch as the sale agreement Ex.A2, had come to be executed between the parties concerned and as per the terms thereof, the plaintiff had paid the advance amount and also agreed to discharge the two promissory notes executed by the defendant as putforth in the plaint, it is found that the defendant had not chosen to repudiate the notice Ex.A5 by sending a reply and the abovesaid conduct of the defendant also would go to establish that she had received the sum of Rs.45,000/- as advance by way of the sale agreement Ex.A2 and also agreed for the discharge of the two promissory notes executed by her, the principle and interest with reference to the same amounting to Rs.33,000/-, by the plaintiff. The

above factors also would go to establish the genuineness of the plaintiff's case as such.

16. No valid reason has been assigned by the plaintiff for not sending a reply to the notice sent by the plaintiff marked as Ex.A5. According to the defendant, in the written statement, on the receipt of the notice, she had met the lawyer, who had issued the same, at Villupuram and the said lawyer promised to settle the dispute and get back the document and blank papers and believing that promise, it is the case of the defendant that she had not chosen to send any reply to Ex.A5. However, quite inconsistent to the abovesaid pleas, the defendant examined as DW1 would state that on the receipt of the notice, she had met Balakrishnan, husband of Samyuktha and further, she has also admitted her signature in the acknowledgement card marked as Ex.A6 and also admitted about not sending any reply to the notice issued by the plaintiff and further, according to the defendant, she is not aware whether the advocate, who had issued the notice is related to Balakrishnan and in addition to that, she has also admitted having knowledge about the paper advertisement given by the plaintiff marked as Ex.A7 and also admitted that she had not controverted the same by giving a contra publication in the newspapers and this how she has deposed about the reasons for not sending the reply to the notice sent by the plaintiff. When according to the defendant in the written statement,

the advocate, who had issued the notice Ex.A5, is related to Samyuktha and accordingly, she had also approached the advocate and the said advocate had assured her to settle the dispute and get back the document and blank papers, during the course of cross examination, as above stated, the defendant would only depose that she is not aware whether the advocate, who had issued the notice, is related to Balakrishnan, husband of Samyuktha. Thus, it is found that no valid reason, whatsoever, has been offered by the defendant in not sending the reply to the notice issued by the plaintiff and accordingly, it is found that the defendant unable to controvert the case of the plaintiff as projected in Ex.A5 notice, chosen not to repudiate the same by sending a reply.

17. Though the defendant would claim during the course of evidence that she is not even aware as to who the plaintiff is, however during the course of evidence has admitted having seen the plaintiff prior to the execution of the sale agreement and according to the defendant, she had seen the plaintiff at the residence of Samyuktha. In addition to that, the plaintiff has also identified the defendant during the Court proceedings. In such view of the matter, the case of the defendant that she is not aware of about the plaintiff in any manner prior to the execution of the sale agreement as such cannot be accepted in any manner.

18. Though the defendant has disputed that the sale agreement Ex.A2 is a fabricated document, during the course of her evidence, she has admitted that her signatures are available in Ex.A2 agreement and further, according to the defendant, she had borrowed money from Samyuktha and in this connection, the defendant, during the course of cross-examination, would state that she had received a sum of Rs.11,000/- from Samyuktha and at the time of borrowal, Samyuktha had obtained signed blank stamp papers and blank papers from her and on that basis, the defence has been projected by the defendant as if Samyuktha had fabricated the sale agreement in the name of the plaintiff making use of the signed blank stamp papers and blank papers. Materials placed on record go to show that it is only the plaintiff, who had discharged the promissory notes executed by the defendant in favour of Prabakaran and Samyuktha, which have come to be marked as Exs.A3 & A4. Now, according to the plaintiff, he had retrieved the abovesaid promissory notes from the concerned persons after settling the amount due under the same, pursuant to the sale agreement Ex.A2. The defendant, during the course of her evidence, has admitted that her signatures are available in Exs.A3 & A4. Though the defendant in the written statement as well as during the course of chief examination would claim that she had borrowed a sum of Rs.11,000/- on two occasions from Samyuktha during the course of cross examination has testified that she had discharged the debt incurred by her by way of Exs.A3 & A4 to

Samyuktha and according to her, she had discharged the same, 2 or 3 months after she had purchased the suit property and however, would state that she does not remember whether she had averred about the same in the written statement. As rightly put forth by the plaintiff's counsel, nothing has been averred by the defendant in the written statement about the discharge of the debt borrowed from Samyuktha on two occasions. All that she would state in the written statement is that though she had been always ready to discharge the borrowed sum, inasmuch as Samyuktha demanded exorbitant interest for the borrowed sum, she was unable to discharge the same. Quite inconsistent to the abovesaid case, the defendant, during the course of cross examination, would claim that she had discharged the borrowed amount that too borrowed by way of Exs.A3 & A4. According to the defendant, in the written statement as well as during the course of the chief examination, she had borrowed only Rs.11,000/- from Samyuktha, whereas, by way of Exs.A3 & A4, it is found that she had borrowed a sum of Rs.12,000/- and Rs.20,000/- respectively and therefore, when according to the defendant, in the course of evidence, she had discharged the amount borrowed by way of Exs.A3 & A4, it is found that the defendant has not come forward with a clear defence as to the quantum of amount actually borrowed by her from Samyuktha. Thus, it is found that the defence version, as regards the borrowal of Rs.11,000/- only from Samyuktha cannot be believed and found to be a false story.

19. Now, according to the defendant, at the time of borrowal from Samyuktha, Samyuktha had obtained her signatures in blank stamp papers and blank papers and thereby, a defence version has been projected by the defendant that Samyuktha had fabricated the sale agreement in the name of the plaintiff, who was her tenant. Now, according to the defendant, in the course of evidence, she had discharged the borrowed sum received from Samyuktha. If the abovesaid case of the defendant has any element of truth, on the discharge of the borrowed sum, as a prudent person, the defendant would have demanded Samyuktha to return back the promissory notes executed by her in evidence of the borrowal and also have demanded the return of the signed blank stamp papers and other blank papers alleged to have been given by her to Samyuktha at the time of the borrowal. However, as per the version of the defendant, at the time of discharging the alleged borrowed sum, she had not obtained the promissory notes and the other blank stamp papers entrusted by her to Samyuktha. Further, she has also admitted that she had not sent any notice demanding the return of the same from Samyuktha. All these facts would only go to show that inasmuch as the defendant had been scheming to avoid the sale agreement executed by her in favour of the plaintiff one way or the other, she seems to have been building her case somehow or the other to stifle the plaintiff's case, without any foundation. On the other hand, as rightly

putforth by the plaintiff, inasmuch as the defendant had agreed to the plaintiff discharging the promissory notes executed by her in favour of Prabakaran and Samyuktha by way of Exs.A3 & A4, it is found that the plaintiff had discharged the same and obtained the said promissory notes and exhibited the same in the suit and that apart, the plaintiff has also averred about the same in the pre suit notice and as above seen, the same has not been repudiated by the defendant by sending a reply. Thus, it is found that the defendant has come forward with the false case as if the sale agreement had been created by Samyuktha with the assistance of the plaintiff for snatching the suit property from her.

20. No valid reason has been projected by the defendant as to how come the plaintiff has come to be in the custody of the sale deed in respect of the suit property, which has come to be marked as Ex.A1. With reference to the same, the defendant would state that Samyuktha and her husband had promised to avail loan from the Cuddalore Permanent Fund and on their said assurance, she had entrusted the title deed to them and accordingly, it is the case of the defendant that the plaintiff had obtained the sale deed from Samyuktha. If really, the defendant had entrusted the title deed of the suit property to Samyuktha as claimed in the written statement, on Samyuktha failing to secure the loan as promised, the defendant, as a prudent person, would have taken further steps as per law for retrieving the title deed stated to have been

entrusted by her to Samyuktha. However, it is found that no steps had been taken by the defendant in securing the title deed from Samyuktha. Accordingly, it is found that inasmuch as the title deed had been entrusted to the plaintiff by the defendant at the time of the sale agreement, it is found that the defendant had not endeavoured to secure the title deed from Samyuktha for the reasons alleged by her in the written statement. Likewise, it is further seen that unable to resist the sale agreement executed in favour of the plaintiff as claimed in the pre suit notice marked as Ex.A5, it is found that the defendant had also not chosen to send any reply repudiating the same and all these facts would go to show that inasmuch as the sale agreement had come to be executed between the plaintiff and the defendant as putforth by the plaintiff, it is found that the defendant is unable to project a steady and consistent defence in support of her case and on the other hand, seems to have been projecting inconsistent pleas as regards the defence version in the written statement as well as during the course of evidence.

21. Though the defendant would claim that the plaintiff is not a woman of sufficient means to pay the advance amount as well as capable of discharging the promissory notes marked as Exs.A3 & A4, with reference to the abovesaid defence, the defendant, during the course of cross examination, has only stated that she is not aware whether the plaintiff was possessed of sufficient means to purchase the suit property

based upon Ex.A2 sale agreement. It is thus found that the defendant is not aware of the status and solvency of the plaintiff and without any foundation, she has come forward with the defence in the written statement as if the plaintiff is not possessed of sufficient means to pay the advance amount and complete the sale transaction as recited in the sale agreement Ex.A2. On the other hand, as seen from the evidence of the plaintiff, it is found that her husband is working in the Health Department and her brothers are also stationed at abroad and earning income and another brother Amanulla is also a man of means and above seen, it is only Amanulla, who had assisted the plaintiff in also arranging the advance amount. The above factors put together would go to show that the plaintiff has sufficient solvency to pay the advance amount and also discharge the promissory notes Exs.A3 & A4 and complete the sale transaction by paying the balance sale amount and in such view of the matter, it is found that the defence version projected by the defendant as if the plaintiff is not a woman of sufficient means is made only for the purpose of the case without any foundation.

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22. Though the materials placed on record would go to show that the plaintiff was an erstwhile tenant of Samyuktha, on that basis we cannot hold that Samyuktha had fabricated the sale agreement in the name of the plaintiff for snatching the suit property from the defendant.

If that be so, as rightly put forth, the defendant would have sent a

suitable reply to the pre suit notice and also placed acceptable and reliable evidence in support of her defence version projected to resist the plaintiff's case. However, when the defendant is found to have not sent a reply to the pre suit notice and also unable to place any material in support of her defence version and on the other hand, found to be projecting inconsistent pleas in the written statement and during the course of evidence, as above discussed, it is found that the defendant has come forward with a false defence only to prevent the plaintiff from enforcing the sale agreement one way or the other.

23. The defendant's counsel would content that the plaintiff has purchased the suit property on 16.04.1994 by way of Ex.A1 and soon thereafter, on 20.06.1994 itself, she would not have ventured to sell the suit property to the plaintiff and therefore, on that premise, the Court should hold that the sale agreement Ex.A2 is a fabricated document. No doubt, within a period of two months from the acquisition of the suit property, the defendant had come forward to sell the suit property to the plaintiff by way of Ex.A2 sale agreement. As regards the abovesaid factor, it is for the defendant to explain as to why she had ventured to sell the suit property to the plaintiff within a short time, after her acquiring the property by way of Ex.A1. Merely because, the defendant had ventured to sell the suit property within two months after acquiring the same by way of Ex.A1 that by itself would not lead to the conclusion

that the sale agreement projected by the plaintiff is a fabricated document.

24. Further the argument has also been putforth by the defendant's counsel that the sale agreement has been engrossed on stamp papers purchased on 09.02.1994 in the name of the defendant and therefore, according to him, the sale agreement would not have arrived at between the parties concerned on 20.06.1994. No doubt, the sale agreement had come to be engrossed on stamp papers dated 09.02.2994 in the name of the defendant. However, as regards the said factor alone, we cannot conclude that Ex.A2 sale agreement is a forged document. When there is no material placed to hold that the defendant had borrowed the sum from Samyuktha on 09.02.1994 as claimed in the written statement and on the other hand, when the materials placed on record go to show that the defendant had borrowed the sum from Prabakaran and Samyuktha as depicted in Exs.A3 & A4 and when there is no material to hold that the defendant had entrusted signed blank stamp papers and blank papers to Samyuktha dated 09.02.1994 and when the same is not her case also in the written statement as such and when according to the defendant, in the written statement, all that, she would state is that her signatures had been obtained in blank stamp papers and blank papers at the time of borrowal by Samyuktha and when the said case of the defendant has not been established in any manner, merely because, the stamp papers, on

which the sale agreement had come to be engrossed bear the date 09.02.1994 and standing in the name of the defendant, that by itself, would not lead to the conclusion that the sale agreement is a forged one.

25. As rightly put forth by the plaintiff's counsel the sale agreement could be written even on blank papers and not required to be written on stamp papers and when the parties, at the relevant point of time, had agreed to write the sale agreement on the stamp papers available with their custody, at the relevant point of time, it is found that merely on the footing that the sale agreement had come to be engrossed on stamp papers dated 09.02.1994 standing in the name of the defendant would not be the sole factor for determining that the defence version is a true one. Further, the sale agreement written on the stamp papers in the name of the defendant bearing an anterior date by itself would not lead to the conclusion that the document should only be a fabricated one and on the other hand, when the facts and circumstances involved in the case are seen cumulatively and in view of the above discussions, when there is no material placed on record worth acceptance by the defendant to accept her defence version and on the other hand, when it is found that inconsistent pleas had been raised by the defendant with reference to her version as above pointed out, it is found that the above factor of the sale agreement being written on a stamp paper with an anterior date and also in the name of the defendant by itself would not in any manner

undermine the said document, which it is found that the plaintiff has adduced acceptable and reliable evidence as regards the genuineness of the same as above pointed out.

26. The argument has also put forth by the defendant's counsel that the attestors of Ex.A2 sale agreement have not been examined by the plaintiff to sustain her case. As rightly put forth, Ex.A2 document is not required to be compulsorily attested by the witness and in such view of the matter, when as per Section 72 of the Indian Evidence Act, an attested document not required to be lawfully attested may be proved by the other evidence available other than examining the attestors concerned, in such view of the matter, when the plaintiff has chosen to examine the scribe of the sale agreement, whose evidence, remains unchallenged as above discussed in material aspects, it is found that the plaintiff has established the genuineness of the said sale agreement without any doubt as such. That apart, when one of the attestors to the sale agreement happens to be the defendant's husband and the other attestor being Balakrishnan, the husband of Samyuktha and when the materials placed on record go to show that at the time of the institution of the suit, in particular, the plaintiff's husband and Balakrishnan, husband of Samyuktha are not in good terms as could be evidence from the Exs.A8 & A9, it is found that the non examination of the attestors to the sale agreement would not in any manner affect the plaintiff's case.

27. As regards the readiness and willingness on the part of the plaintiff in completing the sale transaction, as above stated, PW1 has clearly deposed about her readiness and willingness to pay the balance sale consideration and complete the sale transaction. Moreover, as above pointed out, she has also issued the pre suit notice calling upon the defendant to accept the balance sale consideration and execute the sale deed and even on the receipt of the same, it is found that the defendant has not come forward to perform her part of the contract and not only that the defendant has not even responded to the said notice and accordingly, it is seen that the plaintiff has established her readiness and willingness to complete the sale transaction right from the inception as determined by the Courts below and in such view of the matter, it is seen that the plaintiff would be entitled to obtain the discretionary relief of specific performance and her suit cannot be declined by invoking the provisions contained in Section 20 of the Specific Relief Act as contended by the defendant's counsel.

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28. In the light of the above discussions, on an analysis of the abovesaid facts and discussions, it is found that the Courts below had on proper reasonings and conclusions, by way of the analysis of the materials placed on record, held that the sale agreement Ex.A2 is a genuine document and the plaintiff has paid the advance amount as

recited therein and also discharged the promissory notes debts incurred by the defendant as recited therein and further, also has rightly determined that the plaintiff has always been ready and willing to perform her part of the contract as provided under section 16-C of the Specific Relief Act and that the plaintiff has also been possessed of sufficient means to complete the sale transaction by paying the balance sale transaction as well as in also paying the adjusted sale consideration as recited in the sale agreement and accordingly, it is found that the Courts below are justified in granting the relief of specific performance in favour of the plaintiff and accordingly, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiff and against the defendant.

29. In support of his contentions, the plaintiff's counsel relied upon the decisions reported in **2012-5-L.W.171 (The Executive Officer, Arulmigu Yoganarasimmar Devasthanam, Velacherry, Chennai – 42, Saidapet Taluk Vs. S.Kuppan), (2001) 9 Supreme Court Cases 521 (Pakeerappa Rai Vs. Seethamma Hengsu Dead By LRs. And others), (2000) 9 Supreme Court Cases 219 (Govind Das Vs. Kanhiya Lal and another), (1999) 7 Supreme Court Cases 288 (Hari Singh Vs. Kanhaiya Lal), (2006) 1 Supreme Court Cases 729 (Saraswati Devi gupta (SMT) Vs. Har Narain Johari And Others), AIR 1973 Supreme Court 559 (Dr.Jiwan Lal and others, Vs. Brij**

Mohan Mehra and another), AIR 1979 Supreme Court 1241 (Jprakash Chandra Vs. Angadlal and others), 2010-1-L.W.569 (A.Jayalakshmi and three others Vs. M.Ramalingam), 2010-4-L.W.57 (S.Sambandam Vs. P.Daivasigamani), AIR 1999 Supreme Court 864 (Dnyanoba Bhaurao Shemade Vs. Maroti Bhaurao Marnor), (1999) 7 Supreme Court Cases 288 (Hari Singh Vs. Kanhaiya Lal) and AIR 1999 Supreme Court 2213 (Kondiba Dagadu Kadam Vs. Savitribai Sopan gujar and others). Similarly, in support of his contentions, the defendant's counsel placed reliance upon the decisions reported in **AIR 1987 Supreme Court 2328 (Parakunnan Veetill Joseph's Son Mathew Vs. Nedumbara Kuruvila's Son and others), (2008) 6 MLJ 587 (Periyaya Vs. M.Rajagopal and Another), the order of the Supreme Court dated 19.02.2008 passed in W.P.(Civil) 290 of 2001 (Thiruvengada Pillai Vs. Navaneethammal & Anr.), the order of the Allahabad High Court dated 27.05.2013 passed in Civil Revision No.214 of 2013 (Dr.Dinesh Chandra Vs. Krishna Kumar Goel) and the order of this Court dated 19.06.2014 passed in S.A.No.965 of 2004 (Samporanam and two others Vs. R.Senapathi and another).** The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

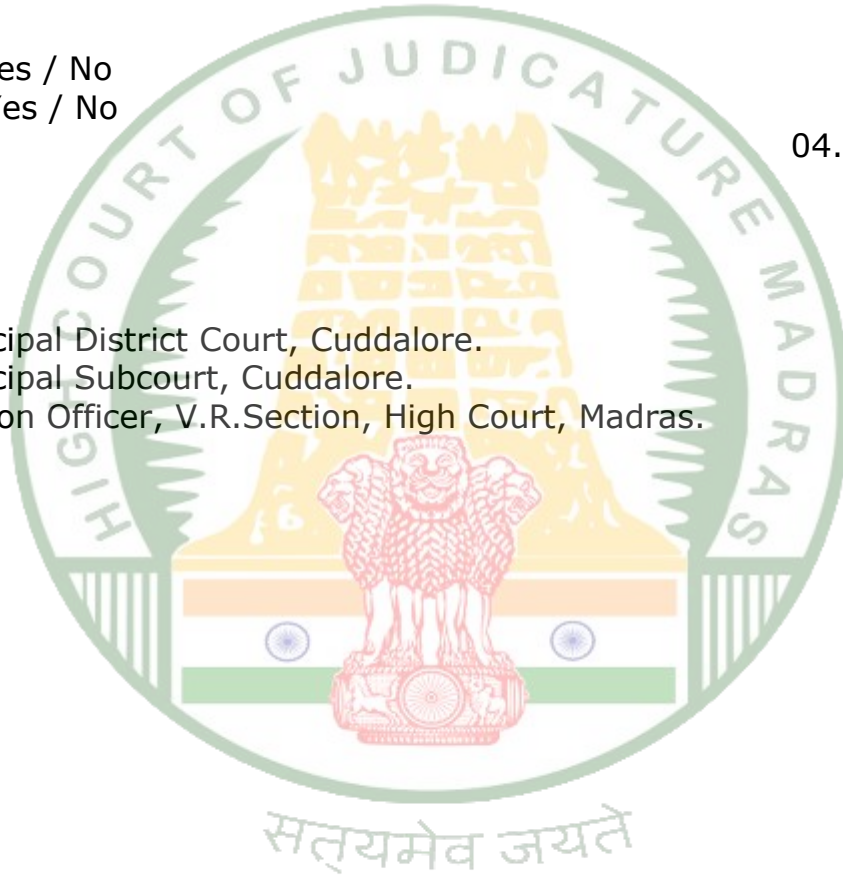
In conclusion, the second fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No

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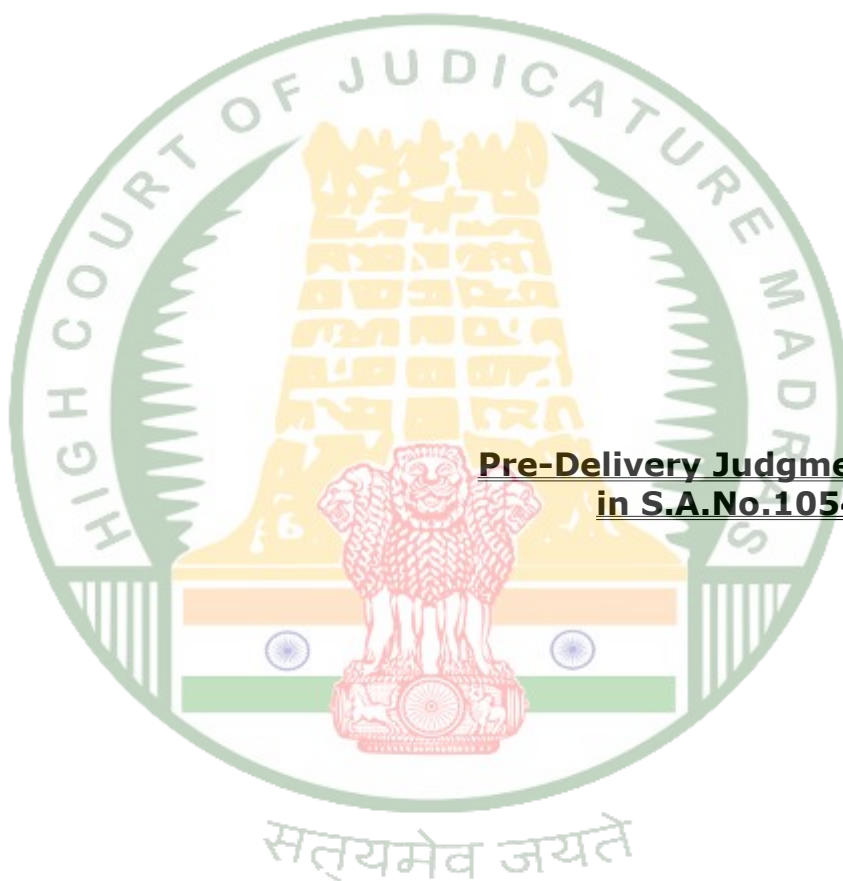
1. The Principal District Court, Cuddalore.
2. The Principal Subcourt, Cuddalore.
3. The Section Officer, V.R. Section, High Court, Madras.



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T.RAVINDRAN, J.

sms



**Pre-Delivery Judgment made
in S.A.No.1054 of 2004**

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