IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.02.2018

PRONOUNCED ON: 20.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1737 of 2003

Vaidyalingam ... Appellant/Appellant/Defendant

Vs.

1. Angammal
2. Nainamalai (Deceased)
3. Thillaikarasi
4. Elango
5. Manickam
6. Rajeshwari
7. Saranya
8. Loganayagi
9. Rajavel ... Respondents/Respondents/Plaintiffs

(R6 to R9 brought on record as LRs of the deceased R2 vide order of the Court dated 02.02.2018 made in C.M.P. Nos.1821 to 1823 of 2018)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District Judge of Namakkal (Fast Track Court, Namakkal) made in A.S.No.11 of 2002 dated 30.07.2002 confirming the judgment and decree of the District Munsif Court, Rasipuram, made in O.S.No.542 of 1988 dated 28.01.1993.

For Appellant : Mr.K.Kuppusamy

For Respondents: Mr.R.Vasudevan
for Mr. E.Kannadasan

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JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 30.07.2002, passed in A.S.No.11 of 2002, on the file of the Additional District Court, Namakkal (Fast Track Court, Namakkal), confirming the judgment and decree dated 28.01.1993, passed in O.S.No.542 of 1988, on the file of the District Munsif Court, Rasipuram.

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

3. Suit for specific performance.

4. The case of the plaintiffs, in brief, is that on 28.05.1976, the defendant had entered into an agreement of sale with the deceased Muthusamy in respect of the suit property and the said Muthusamy had died on 06.08.93 and the first plaintiff is the widow and the plaintiffs 2, 4 and 5 are the sons and the third plaintiff is the daughter of the deceased Muthusamy and the plaintiffs are the legal heirs of the deceased Muthusamy and as per the terms of the sale agreement dated 28.05.1976, the defendant had agreed the sell the suit property within a period of six months after the possession was delivered, relating to the other half which the deceased Muthusamy had agreed to buy from Su.Natesan, the elder brother of the defendant and the consideration of the sale is fixed at Rs.10,500/-and the deceased Muthusamy had paid Rs.8,000/- on the date of the sale agreement and had agreed to pay Rs.2,500/- within a period of one year and eight months and accordingly, the defendant had also agreed to take the balance sale consideration of Rs.2,500/- within the above said stipulated period from the date of delivery of possession from Natesan and the delivery of possession was effected through Court by Natesan only on 1988 and the plaintiffs were ready and willing to perform their part of their agreement at all point of time and inasmuch as the defendant's brother Natesan dragged from 1978 to 11.06.1988, the plaintiffs had no other go than to wait such time till Natesan gave possession of his half share to the plaintiffs and accordingly, the plaintiffs were driven to the necessity to obtain the possession from Natesan only through the Court process and thereafter, the plaintiffs requested the defendant to come for registration of the suit property in their favour and deliver the same and instead of executing the sale deed as requested, the defendant had filed a false complaint before the police suppressing the true facts and also filed a false suit in O.S.No.304 of 1985, on the file of the Court suppressing the sale agreement dated 28.05.1976 and hence the plaintiffs were constrained to issue a registered notice dated 22.07.1988,

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calling upon the defendant to be ready for the execution of the sale deed before the Sub-Registrar Rasipuram on 29.07.1988. However, the defendant failed to appear on the said date and on the other hand, sent a reply with false allegations challenging the genuineness of the sale agreement and it is false to state that the sale agreement dated 28.05.1976 is a forged document and the plaintiffs had always been ready and willing to perform their part of the agreement and hence, the plaintiffs had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts and the sale agreement projected by he plaintiffs in the suit is a forged document and not a true one and invalid and also barred by limitation and hence, the plaintiff has come forward with the false suit for seeking unjust enrichment and the defendant also reserves his right to file additional written statement and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case PWs 1 to 3 were examined Exs.A1 to A8 were marked. On the side of the defendants DW1 was examined and Ex.B1 was 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 plaintiffs' case and decree the suit as prayed for. Impugning the same, the present second appeal has come to be laid.

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

1. Whether the lower appellate Court was right in recording a finding under Order VIII Rules 3 and 5 CPC without considering the application in I.A. No.10 of 2002 on its file seeking to receive additional written statement.

2. Whether the Courts below erred in drawing an adverse inference under Order 8 Rules 3 and 5 CPC and have failed to note that when the very agreement itself was denied as a rank forgery then it was not necessary to deny separately each and every averments made in the plaint.

9. It is not in dispute that the suit property belong to the defendant. Now, according to the plaintiffs, the deceased Muthusamy, the husband of the first plaintiff and the father of the plaintiffs 2 to 5, entered into a sale agreement in respect

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of the suit property with the defendant on 28.05.1976, which document has come to be marked as Ex.A1 and as per the terms of the said sale agreement, the defendant had agreed to sell the suit property to the deceased Muthusamy for a sale consideration of Rs.10,500/- and accordingly, accepting the same, the deceased Muthusamy had paid a sum of Rs.8,000/- to the defendant, on the date of the sale agreement itself and both the parties had agreed to complete the sale transaction within a period of one year and eight months, from the date of the delivery of possession of the property by Su.Natesan, the brother of the defendant with whom the deceased Muthusamy had entered into an agreement of sale and accordingly, it is the case of the plaintiffs that they had been able to obtain the delivery of possession of the property from Natesan only on 11.06.1988, after the intervention of the Court process by filing execution petition against Natesan and thereupon, when the plaintiffs requested the defendant to complete the sale transaction, pursuant to the sale agreement dated 28.05.1976 and called upon him by a registered notice to complete the sale transaction as promised, according to the plaintiffs, the defendant instead of complying with their request, started challenging the sale agreement as a forged document by issuing a reply and inasmuch as the plaintiffs had been always ready and willing to fulfil their part of the contract as per the terms entered into as per Ex.A1, according to them, they had been necessitated to lay the suit for appropriate reliefs.

10. To the above case of the plaintiffs, the only defence putforth by the defendant is that the sale agreement dated 28.05.1976 is a forged document and therefore, according to him, on the basis of such a forged document the plaintiffs are not entitled to obtain the reliefs sought for. Further, the defendant has also taken the plea of limitation to resist the plaintiffs action.

11. In the light of the above defence set out by the defendants, it is found that the burden is heavy upon the plaintiffs to establish that the sale agreement dated 28.05.1976 had come into existence between the deceased Muthusamy and the defendant as pleaded by them or in other words, the plaintiffs have to establish that the sale agreement dated 28.05.1976 is a genuine document. In this connection, to establish that Ex.A1 agreement had not come into existence between the deceased Muthusamy and the defendant as projected by them, it is found that the plaintiffs have examined PWs 2 and 3 and accordingly, it is seen that the attestor Chinnusamy examined as PW3 in his evidence has deposed that he had attested the sale agreement Ex.A1 and by way of the same, the defendant, who is the owner of the suit property had agreed to sell the same to the deceased Muthusamy and as directed by the defendant, he had attested the

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sale agreement Ex.A1 and both Muthuswamy as well as the defendant had requested him to stand as a witness for the said transaction and accordingly, they had entered into the sale agreement Ex.A1, containing the terms thereof as recited thereunder and on the date of the sale agreement, the defendant was paid a sum of Rs.8,000/- by the deceased Muthusamy and the defendant and the deceased Muthusamy had signed the sale agreement Ex.A1 and apart from him, Chinnusamy had also attested the sale agreement and after the execution of Ex.A1, the contents thereof were read over by PW2, the scribe of the sale agreement and the terms contained therein as read out by PW2 were accepted by the deceased Muthusamy and the defendant and accordingly, he and the other attestor had attested the sale agreement and the agreement was scribed by PW2, Arthanari and after completing the sale agreement, he had also signed in the said document and also deposed that the deceased Muthusamy and the defendant's brother Natesan also entered into an agreement of sale and accordingly, it is found that as rightly determined by the Courts below, the plaintiffs have clearly established the genuineness of Ex.A1 sale agreement, through the clear, acceptable, reliable and unimpeachable evidence of PW3 and despite the cross examination of PW3, nothing has been elucidated from his mouth to discredit his testimony, with reference to the same and therefore, it is found that the Courts below have placed correct reliance upon the evidence of PW3, for upholding the authenticity of the sale agreement marked as Ex.A1. Corroborating the evidence of PW3, the scribe of the document. Arthanari, examined as PW2, has deposed that both the deceased Muthusamy and the defendant has signed in his presence and both of them had narrated the contents of the document to him and accordingly, the deceased Muthusamy had parted with a sum of Rs.8,000/- to the defendant on the date of sale agreement itself and the balance sale consideration of a sum of Rs.2,500/- was agreed to to parted with, within a period of twenty months from the date of sale agreement entered into between the deceased Muthusamy and Natesan and further also testified that only after the contents of Ex.A1 were read over to both the deceased Muthusamy and the defendant, they had executed the document and he had written Ex.A1 at the office of the Sub-Registrar, Rasipuram and it is thus found from the evidence of PW2 also that both the deceased Muthusamy and the defendant had agreed to enter into a sale agreement transaction in respect of the suit property by way of Ex.A1 and the deceased Muthusamy paid a sum of Rs.8,000/- on the date of Ex.A1 and the parties had agreed to complete the sale transaction within a stipulated period after the possession of the property had been handed over to the deceased Muthusamy by the defendant's brother Natesan and despite the cross examination of PW2, as rightly found by the Courts below, nothing has been elucidated from him to disbelieve his version with reference to the aspects spoken

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to by him as regards Ex.A1 sale agreement. Accordingly, it is found that the plaintiffs have established the genuineness of Ex.A1 through the evidence of the scribe also and in such view of the matter, it is found that the Courts below were right in accepting the plaintiffs case that Ex.A1 sale agreement had been indeed entered into between the deceased Muthusamy and the defendant pertaining to the suit property accepting the terms contained therein and in such view of the matter, the defence projected by the defendant that the said sale agreement is a forged document is found to be raised without any basis or foundation.

12. It is found that, on the basis of the evidence of the defendant examined as DW1, he has not chosen to peruse Ex.A1 sale agreement from the Court and on the other hand, proceeded to raise the defence that the said sale agreement is a forged document. Apart from the above said bare pleading, the defendant has not challenged the terms entered into between the parties under the said document as recited therein and therefore, it is found that as regards the terms contained in the said document, no specific denial has been made by the defendant with reference to the same and accordingly, it is found by the Courts below rightly that the defendant had admitted the terms contained in the document and when the plaintiffs have established the genuineness of Ex.A1 sale agreement through the evidence of PWs 2 and 3, as above discussed, it is found that, in toto, the plaintiffs have established that the sale agreement Ex.A1 is a true, valid document and binding upon the defendant in full force.

13. As rightly discussed and determined by the Courts below, apart from the cryptic defence projected by the defendant that the sale agreement is a forged document, when it is found that he has not thrown a challenge to the terms contained therein and when as per the provisions contained under Order 8 Rules 3 to 5 of the Code of Civil Procedure, the defendant is incumbent upon to deal with the allegations of the facts, specifically in his written statement, which he does not admit and the defendant cannot remain content by making an evasive denial of the same and in the case of the failure of the defendant to deny the allegations of the facts contained in the plaint specifically or by necessary implication, it is found that as per the provisions contained therein, the defendant is deemed to have admitted the same and inasmuch as the defendant is not a person with any disability, as rightly found by the Courts below, the provisions contained in Order 8 Rules 3 to 5 of the Code of Civil Procedure in all aspects apply to the defendant and accordingly, when the defendant has not specifically or by necessary implication denied the material facts putforth by the plaintiffs in the plaint, as regards the

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terms of the sale agreement entered into between the deceased Muthusamy and the defendant and on the other hand, has only raised the plea of forgery of the said sale agreement and when the plaintiffs have clearly established the genuineness of the sale agreement Ex.A1, as above pointed out, it is seen that the plaintiffs have also established the terms of the sale agreement Ex.A1 through the evidence of PWs 2 and 3, coupled with the fact that inasmuch as the defendant has not denied the same in specific, it is found that the defendant has also accepted the terms contained in the sale agreement as such and bound by the same.

14. As above seen, from the terms contained in the sale agreement marked as Ex.A1, the parties had agreed to complete the sale transaction within a stipulated period from the date of the entrustment of the possession of the property by the defendant's brother Natesan and when according to the plaintiffs, they were able to get the possession from Natesan only on 11.06.1988, through the intervention of the Courts process, by way of levying the execution proceedings in E.P.No.193/87 in O.S.No. 123/1982 on the file of the District Munsif Court, Rasipuram, which documents have come to be marked as Exs.A2 to A5 by the plaintiffs and accordingly, it is found that thereupon the plaintiffs had called upon the defendant to abide by the terms of the sale agreement by executing sale deed in their favour and as the defendant did not respond to the same favourably, it is found that immediately thereafter, the plaintiffs had issued a legal notice dated 22.07.1988 marked as Ex.A6 calling upon the defendant to come forward with the execution of the sale deed and the defendant instead of complying with the above said request of the plaintiffs, seem to have issued a reply marked as Ex.A7 repudiating the case of the plaintiffs contending that the sale agreement is a forged document and accordingly, it is found that left with no other alternative, the plaintiffs have been necessitated to lay the suit for appropriate reliefs.

15. As above discussed, when the plaintiffs have established the genuineness of Ex.A1 sale agreement and also the terms contained therein and the defendant had also not in specific denied the terms contained in the sale agreement and thereby deemed to have accepted the same as per law as above discussed, it is found that as the parties have agreed to complete the sale transaction only on the delivery of the possession of the property by Su.Natesan, the defendant's brother and when it has been established by the plaintiffs without any doubt that they were constrained to take possession of the property from Natesan only through the intervention of the Courts process as could be evidenced from Exs.A2 to A5 and finally, the plaintiffs were able to obtain the possession of

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the property only on 11.06.1988, it is found that accordingly, immediately thereafter the plaintiffs took further steps to accomplish the sale transaction and as the defendant failed to accede to their request, following to the issuance of the legal notice Ex.A6, it is seen that the plaintiffs have immediately come forward with the suit for the relief of specific performance. Accordingly, it is found that the plaintiffs have clearly established the readiness and willingness on their part to complete the sale transaction right from the inception of the sale agreement and only due to the above said intervening factors, they were not able to get the delivery of the possession of the property from Natesan. It is found that the plaintiffs were prevented to lay action against the defendant for getting the sale deed and in such view of the matter, as rightly determined by the Courts below, considering the terms of the sale agreement entered into between the parties not being repudiated by the defendant and also established by the plaintiffs, it is found that the Courts below had rightly determined that the suit laid by the plaintiff is not barred by time and accordingly, found acceptance with the plaintiffs case. In the light of the above position, there is no material to warrant any interference with the determination of the Courts below and as such, it is seen that the Courts below have properly appreciated the materials placed on record in the right perspective, both factual and legal aspects and rightly decreed the suit in favour of the plaintiffs as prayed for.

16. During the course of the second appeal, the counsel for the defendant vehemently argued that at the first appellate stage, the defendant has preferred an application for the reception of the additional written statement in I.A. 10/2002 and even though the same had been resisted by the plaintiffs, according to him, inasmuch as the first appellate Court has not considered the said application on merits and on the other hand, the first appellate Court after the dismissal of the appeal preferred by the defendant, chosen to dismiss the said application as unnecessary, according to him, the above said approach of the first appellate Court in declining the relief sought for by the defendant for the reception of the additional written statement, seriously affects the defence projected by him, it is contended that the judgment and decree of the Courts below requires reversal and hence, prayed for entertainment of the second appeal. However, the above contentions putforth by the defendant's counsel are found to be of no substance.

17. If really the defendant had intended to raise additional pleas in support of his defence, nothing prevented him from raising such additional pleas during the trial Court stage itself. However, the defendant for the reasons best known to him has chosen to contest the plaintiffs case based on the

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original written statement filed by him and accordingly, as above discussed, suffered the decree before the trial Court. Thereafter, he had preferred the first appeal before the first appellate Court and only therein he had chosen to prefer an application to receive the additional written statement. However, it is found that the first appellate Court had chosen to dispose of the main first appeal preferred by the defendant, accordingly finding that no valid ground, as such, has been projected by the defendant by way of the additional written statement warranting acceptance of the same, decided to dismiss the application as unnecessary on the footing that the first appeal itself has been disposed of.

18. On a perusal of the additional written statement projected by way of the above said interlocutory application, it is found that the defendant has not raised any new pleas in support of his defence by way of the additional written statement and on the other hand, it is found that he had only reiterated the pleas already putforth in the written statement in an elongated manner and such being the position, when even according to the defendant's counsel, the pleas projected in the written statement are only legal pleas and when the said legal pleas had been addressed to by the trial Court as well as the first appellate Court in all aspects and when as per Order 8 Rule 9 of the Code of Civil Procedure, the reception of the additional written statement is not a matter of right and additional pleas can be entertained only with the leave of the Court, accordingly, it is seen that the first appellate Court having not chosen to grant the leave to the defendant, it is seen that it has rejected the request of the defendant and in particular, when it is found that no fresh pleas had been set out by the defendant in the additional written statement other than the reiteration of the earlier pleas made by him in the original written statement in a detailed manner. In the light of the above legal and factual position, I do not find any valid reason to interfere with the dismissal of the application preferred by the defendant for the reception of the additional written statement by the first appellate Court by way of the dismissal of the said interlocutory application, no serious prejudice has been caused to the defendant, inasmuch as no fresh pleas of defence had been raised by him warranting any interference with the judgment and decree of the Courts below impugned in this second appeal. Therefore, the above aspects of the matter projected by the defendant for interfering with the concurrent judgment and decree of the Courts below, in my considered opinion, cannot be given weightage and acceptance in any manner for the reasons aforestated.

19. In the light of the above discussions, the determination of the Courts below in rejecting the defence

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projected by the defendants, considering the materials placed on record coupled with the provisions of law contained under Order 8 Rules 3 to 5 of Code of Civil Procedure and also Order 8 Rule 9 of the Code of Civil Procedure and the determination of the first appellate Court in not entertaining the application preferred by the defendant in I.A.No.10/2002 for the reception of the additional written statement found to be not against the provisions of law in any manner and also found to be not having seriously prejudiced the defence projected by the defendant as no acceptable fresh pleas had been projected by the defendant by way of the additional written statement, other than repeating the earlier defence set out by him in the original written statement, it is found that the Courts below had rightly accepted the plaintiffs case by the well considered reasonings given by them and in such view of the matter, the reasonings and conclusions of the Courts below for rejecting the defendant's version and accepting the plaintiffs case do not warrant interference and accordingly, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiffs and against the defendant.

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

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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To

1. The Additional District Court, Namakkal,
(Fast Track Court, Namakkal).

2. The District Munsif Court,
Rasipuram.

3. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.K.KUPPUSAMY, Advocate, S.R.No. 13264
+1cc to Mr.E.KANNADASAN, Advocate, S.R.No. 12933

Judgment in
S. A.No.1737 of 2003

GJ(CO)
TR(22/03/2018)

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