

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2018

PRONOUNCED ON : 03.08.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2319/04 and 259/05

SA.NO.2319/2004

Thalammal ... Appellant/
2nd respondent /2nd Defendent

Vs.

1. Ayyamperumal (Died)
2. Chinnathambi ...1st Respondent/Appellant/Plaintiff
3. Pattu
4. Kolanji ammam ... Respondents/Defendents

(R3 & R4 brought on record as Lrs of
the deceased R1 vide order of Court dated
23.1.12 made in C.M.P. No.892/2011)

Prayer: Second Appeal filed under Section 100 of Civil
Procedure Code, against the judgment and decree of the Sub-
Court, Ariyalur, passed in A.S.No.31 of 2000 dated
16.08.2004 reversing the judgment and decree of the
Additional District Munsif (Incharge) Court, Ariyalur,
passed in O.S. No.290 of 1996 dated 12.07.1999.

For Appellant : Mr. N.Rajan

For R1 : Mrs. Mythili Suresh
for M/s. Sarvabhauman Associates

For R3 & R4 : Mr. M.Thomas Aquinas

S. A.No.259 of 2005

1. Ayyamperumal (Died)
2. Pattu
- 3.Kolanjiammal ...
Appellant/Respondent/Respondent/Defendent

(Appellants 2 and 3 brought on record
as Lrs of the deceased sole appellant vide
order of Court dated 18.1.12 made
in C.M.P. No.895/2011)

For Appellants : Mr. M.Thomas Aquinas

For R1 : Mrs. Mythili Suresh
for M/s. Sarvabhauman Asso

For R2 : Mr. N.Rajan

C O M M O N J U D G M E N T

Auging the judgment and decree dated 16.
n A.S.No.31 of 2000, on the file of the Sub
Ariyalur, reversing the judgment and decr
99, passed in O.S. No.290 of 1996, on the
ditional District Munsif Court, Ariyal
d second appeals had been preferred respect
nd defendant and the first defendant.
Parties are referred to as per their ranking
urt.

Suit for specific performance.

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Sub-Court, Ariyalur, passed in A.S.No.31 of 2000 dated 16.08.2004 reversing the judgment and decree of the Additional District Munsif (Incharge) Court, Ariyalur, passed in O.S. No.290 of 1996 dated 12.07.1999.

For R1 : Mrs. Mythili Suresh
for M/s. Sarvabhauman Associates

COMMON JUDGMENT

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

4. The case of the plaintiff, in brief, is that the first defendant is the owner of the plaintiff schedule properties and he had offered to sell the same to the plaintiff and the plaintiff accepted the said offer and accordingly, the parties had reduced their agreement in writing by way of a written agreement dated 16.11.91 and as per the same, both parties agreed that the price of the suit property should be fixed at Rs.26,950/- and pursuant thereof, the plaintiff had paid a sum of Rs.15,000/- to the first defendant as advance on the date of the sale agreement and the parties had agreed that the first defendant should execute a registered sale deed within one month i.e., 16.12.91 after the plaintiff had paid the balance purchase amount i.e., 11,950/- to the first defendant and the agreement also contained the usual deterrent clauses and as per the agreement, the first defendant had surrendered the suit property to the plaintiff and after the execution of the agreement, the plaintiff had gathered information that the second

defendant and her relatives had designed to knock off the suit property by hook or crook and with that illegal design, the first defendant has issued a notice to the plaintiff on 19.11.91 and the contents of the said notice are all false, frivolous and vexatious and the allegations made by the first defendant in the said notice that the sale agreement abovestated is a concocted one and the first defendant had been coerced to execute the same under threat in the presence of the police officials etc., are all false and the further allegations that the first defendant had orally agreed to sell the suit property to the second defendant for a price at Rs.1225/- per cent and had received a sum of Rs.5,000/- from the second defendant as advance are false and the further allegations that one Ponnusamy prevailed over the first defendant to execute the agreement against his wish and resultantly, at his behest, the first defendant had been taken to the police station with the help of the constables and the first defendant was threatened to sell the suit property to the plaintiff and thereby, the first defendant had been forced to sign two blank stamp papers and the stamp papers were taken by an Ex.M.L.A and the first defendant apprehending that some agreement would be written up on the basis of the abovesaid signed stamp papers are all false and on the other hand, the first defendant had executed the sale agreement dated 16.11.91, as above narrated after receiving the advance amount from the plaintiff in the presence of the witnesses. The notice date 19.11.91 sent by the first defendant had been designed in such a manner in order to avoid the sale agreement entered into between the plaintiff and the first defendant. There has been no oral agreement between the defendants 1 and 2 as put forth in the abovesaid notice and if the same had been true, the plaintiff would not have ventured to purchase the suit property from the first defendant and the oral agreement has been fabricated for the purpose of the case and inasmuch as the first defendant appears to be not a willing person to execute the sale deed as per the written agreement, according to the plaintiff, inasmuch as he has been ready and willing to pay the balance purchase amount and get the sale deed and as the second defendant is also found to be a necessary party for the lis, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The first defendant had never entered into any agreement with the plaintiff on 16.11.91 as regards the sale of the suit property and as averred in the plaint and the abovesaid sale agreement is a false and concocted document and in this connection, the first defendant had already issued notice to the plaintiff, Sub-Inspector of police and others and also followed by a

telegram to the higher officials and it is false to state that the first defendant had agreed to sell the suit property to the plaintiff for Rs.26,950/- and received a sum of Rs.15,000/- as advance pursuant to the sale agreement and it is further false to state that the first defendant agreed to execute the sale deed within one month after receiving the balance purchase amount and on the other hand, the first defendant had not received even a single pie as advance amount from the plaintiff towards the alleged sale consideration and the first defendant had not surrendered the possession of the suit property as claimed in the plaint. The fact remains that the first defendant orally agreed to sell the suit property to the second defendant on 02.11.91 for a sale price of Rs.33,000/- and had received Rs.5,000/- as earnest money deposit and the same is known to the witnesses named in the written statement and there has been exchange of notices between the parties and the defendant was taken to the police station on 17.11.91 at about 5 pm with the help of the constables and at the police station, the defendant was enquired by the Sub-Inspector of police and at that time including the Ex.M.L.A. Thiyagasubramanian and in the presence of others, all had threatened the first defendant to sell the suit property to the plaintiff and the first defendant, on the abovesaid threat and fearing action, signed his name in the 2 blank stamp papers which had been taken by the Ex.M.L.A. and hence, the sale agreement could have been created with the help of the abovesaid signed stamp papers and inasmuch as there had been an oral agreement between the defendants 1 and 2 as regards the sale of the suit property, the present suit laid by the plaintiff on the basis of the concocted sale agreement is not sustainable and there is no cause of action to the plaintiff and hence, the suit is liable to be dismissed.

6. The case of the second defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is false to state that the first defendant had agreed to sell the suit property to the plaintiff as averred in the plaint and a written agreement had been entered into between the parties with reference to the same on 16.11.91 and all the allied facts with reference to the same as narrated in the plaint are all false and unacceptable and it is further false to state that the possession of the property was surrendered to the plaintiff and on the other hand, the first defendant had entered into an oral agreement with the second defendant in respect of the suit property on 02.11.91 for a sum of Rs.33,000/- and received a sum of Rs. 5,000/- as advance on the date of the agreement and pursuant thereof, the sale agreement had been executed in respect of the suit property in favour of the second defendant on 26.11.91 and the sale deed comprises a further extent of 0.2½ cents and accordingly, the sale was completed for a sum of

Rs.36,750/- and knowing the abovesaid transaction, the plaintiff, with a view to grab the suit property from the second defendant, out of ill will and malice, has created the fictitious sale agreement to achieve his object and has laid a vexatious suit and hence, the plaintiff is not a bonafide person and on the other hand, the second defendant being a bonafide purchaser for value without notice, according to the second defendant, the suit laid by the plaintiff is liable to be dismissed.

7. In support of the plaintiff's case, PWs 1 to 4 were examined, Exs.A1 to A18 were marked. On the side of the defendants, DWs 1 to 3 were examined, Exs.B1 to B7 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. On appeal by the plaintiff, the first appellate Court, on an appreciation of the materials placed on record, was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Impugning the same, the defendants 2 and 1 have preferred the abovesaid second appeals respectively.

9. At the time of admission of the second appeal No.2319 of 2004, the following substantial question of law was formulated for consideration:

"Whether the finding of the lower appellate Court that the appellant had notice of Ex.A1 agreement is not perverse, in the absence of any specific plea of proof, from the second respondent."

10. At the time of admission of the second appeal No.259 of 2005, the following substantial questions of law were formulated for consideration:

"1. Whether the lower appellate Court has not committed a legal error by decreeing the suit for specific performance on the basis of a fabricated agreement for sale as against a bonafide purchase for value without notice, in the light of Proviso 2 of Section 40 of the Transfer of Property Act.

2. Whether the lower appellate Court has rightly appreciated the legal implication arising from the legal notice Ex.A2, issued by the appellant herein."

11. It is not in dispute that the suit property belong to the first defendant. As per the case of the plaintiff, the first defendant offered to sell the suit property to him for a price of Rs.26,950/- and he having agreed to the same, according to the plaintiff, the parties had entered into a written sale agreement on 16.11.1991 with reference to the abovesaid agreement, which document has come to be marked as Ex.A1 and according to the plaintiff's case, on the date of the sale agreement, he had tendered a sum of Rs.15,000/- to the defendant as advance and the parties had agreed that the plaintiff should part with the balance sale consideration within one month from the date of the sale agreement and that the first defendant, on the receipt of the same, should executed the sale agreement in favour of the plaintiff and as per the plaintiff's case, inasmuch as the first defendant had sent a notice dated 19.11.1991 impugning the abovesaid sale agreement as if the same had been created by the plaintiff with the help of his henchmen and the influence of the police officials from the first defendant by coercing him to sign some blank stamp papers and had created the document on the strength of the signed stamp papers, however, it is stated by the plaintiff that the abovesaid allegations had been made by the first defendant with a view to avoid the sale transaction with the plaintiff one way or the other and further, according to the plaintiff, the case of the first defendant that he had entered into an oral agreement with the second defendant in respect of the sale of the suit property on 02.11.1991 for a sum of Rs.33,000/- is false and the said theory had been projected in order to avoid the written sale agreement dated 16.11.1991 and it is also the further case of the plaintiff that the case of the defendants 1 and 2 that pursuant to the abovesaid oral sale agreement, the first defendant had alienated the suit property to the second defendant on 26.11.1991 is false and hence, according to the plaintiff, inasmuch as he has been always ready and willing to part with the balance sale consideration and complete the sale transaction and on the other hand, as the first defendant had been avoiding the same on some pretext or other as above narrated and not willing to come forward to execute the sale deed, hence, according to the plaintiff, he has been necessitated to institute the suit for appropriate reliefs.

12. The defence projected by the first defendant is that there has been no agreement between the plaintiff and him with reference to the sale of the suit property as alleged in the plaint and on the other hand, according to the first defendant as well as the second defendant, an oral agreement has been entered into between the defendants on 02.11.1991 with reference to the sale of the suit property for a sum of Rs.33,000/- and on the date of the said sale agreement, a sum of Rs.5,000/- had been received

as advance by the first defendant from the second defendant and the plaintiff, on coming to know the same, with a view to grab the suit property, with the help of his henchmen, prevailed upon the first defendant to convey the suit property in his possession and as the first defendant was not willing to the abovesaid course, according to the defendants, in particular, the first defendant, he was taken to the police station with the assistance of the policemen and at the police station, he was coerced to sign two blank stamp papers in the presence of Ex.M.L.A. and others and apprehending action, according to the first defendant, he had signed the blank stamp papers and thus, it is contended that making use of the abovesaid signed blank stamp papers, the plaintiff had created the sale agreement Ex.A1 and it is contended that the sale agreement EX.A1 is not a true and valid document and not enforceable as per law and hence, the plaintiff is not entitled to the reliefs sought for. Further, the defendants had also taken the defence that pursuant to the oral sale agreement dated 02.11.1991, the first defendant, along with the further extent of 0.2½ cents land, had conveyed the suit property to the second defendant by executing a sale deed dated 26.11.1991 and hence, accordingly, it is contended that the second defendant is a bonafide purchaser for value without notice and the plaintiff therefore cannot seek the relief of specific performance as put forth in the plaint.

13. The sale agreement dated 16.11.1991 said to be executed in favour of the plaintiff by the first defendant, as per the plaintiff's version has been marked as EX.A1. On a perusal of the same, it is found that the plaintiff and the defendants had agreed to fix the sale price as Rs.26,950/- and as per the terms contained therein, it is found that that the plaintiff had paid a sum of Rs.15,000/- to the first defendant and it is further seen that the parties had agreed that the balance sum of Rs.11,950/- should be paid within one month from the date of sale agreement and on receipt of the same, the first defendant should execute the sale conveyance in favour of the plaintiff with reference to the suit property. However, it is found that on 19.11.1991 itself a notice has come to be issued by the first defendant to the plaintiff and it is stated that the said notice has also been issued to others, which document has come to be marked as EX.A2 and in the said notice, it has been alleged that the plaintiff, with a view to grab the suit property from the first defendant and despite knowing about the oral sale agreement between the defendants 1 & 2 as regards the suit property, had coerced the first defendant with the help of his henchmen to sell the suit property to him and as the first defendant was not willing to the abovesaid course, it is alleged in the notice EX.A2 that the first defendant was forcibly taken to

the police station with the help of the policemen and at the police station, he was coerced to put his signature in the blank stamp papers in the presence of Ex.M.L.A. and others and out of fear and threat, it is alleged in the notice that the first defendant had signed in the blank stamp papers and accordingly, by way of the above said notice, the persons named in the notice including the plaintiff had been directed to return the signed stamp papers, failing which, the plaintiff and others had been threatened that necessary action would be taken against them. It is found that following the abovesaid notice sent by the first defendant and on coming to know of the definite stand of the first defendant, as regards his unwillingness to come forward to execute the sale deed in favour of the plaintiff, it is seen that, according to the plaintiff, though he was ready willing to offer the balance sale consideration and complete the sale transaction, on coming to know of the abovesaid firm stand of the first defendant in not willing to execute the sale deed, it is found that the plaintiff has come to lay the present suit against the first defendant on 26.11.1991 i.e., almost within 7 days from the date of EX.A2. Thereafter, it is found that the plaintiff had sent a reply notice to the first defendant on 17.12.1991, which document has come to be marked as EX.A16 and thereunder, the plaintiff had repudiated the oral sale agreement alleged to have been entered into between the defendants 1 & 2 with reference to the sale of the suit property and also repudiated the case of the first defendant as regards the alleged coercion put on him and the obtainment of his signatures in the blank stamp papers at the police station by using police force, etc., and on the other hand, by way of the said reply notice, the plaintiff has reiterated his case by way of the sale agreement dated 16.11.1991 entered into between him and the first defendant as regards the sale of suit property. No doubt, EX.A2 had been instituted after the institution of the suit and however, considering the turn of events as above narrated, the sale agreement having taken place on 16.11.1991, the notice dated 19.11.1991, sent by the first defendant repudiating the same and the institution of the suit immediately thereafter by the plaintiff and accordingly, it is found that the plaintiff had been necessitated to issue the reply notice only after the institution of the suit and accordingly, it is found that he has issued the reply notice EX.A16 repudiating the allegations made in EX.A2 notice sent by the first defendant.

14. Material placed on record would go to show that as per the defence version, the first defendant had executed the sale deed in favour of the second defendant in respect of the suit property on 26.11.1991 and the said sale deed has come to be marked as EX.B2.

15. From the pleas put forth by the respective parties and the materials placed on record, it is found that as such the first defendant has not disputed his signatures available in the sale agreement EX.A1. All that he would state is that he had been coerced to sign the blank stamp papers by the plaintiff and his henchmen at the police station and fearing action, he had signed in the blank stamp papers. Thus, according to the first defendant, the abovesaid signed blank stamp papers had been made use of by the plaintiff for creating the sale agreement EX.A1. No doubt, as could be seen from the materials placed on record, on 19.11.1991, the first defendant, through his Advocate, had sent a notice as regards the alleged coercion exerted on him by the plaintiff and his henchmen with the help of police in obtaining his signature in the blank stamp papers. Immediately, thereafter the suit has come to be laid by the plaintiff. Further, as above seen, the plaintiff has repudiated the allegations contained in EX.A2 notice by way of the reply sent by him marked as EX.A16. However, considering the fact that the signatures of the first defendant contained in EX.A1 having been admitted and the defence been taken by the first defendant that the same had been obtained using coercion and force as put forth by him and as above stated, as rightly determined by the first Appellate Court, the onus is heavy upon the first defendant to establish that he had been forced to put his signatures in the blank stamp papers at the police station at the instigation of the plaintiff and his henchmen and as alleged by him in the written statement. However, as regards the abovesaid case of the first defendant, other than sending EX.A2 notice, it is found that thereafter he had not initiated any appropriate action against the plaintiff and others with reference to his abovesaid defence. In this connection, it is found that a complaint has come to be lodged by the first defendant against the plaintiff and others before the Judicial Magistrate Court, Jayamkondan on 06.08.1994 and it is found that the said complaint preferred by the first defendant had come to be dismissed as not maintainable by the Judicial Magistrate Court, Jayamkondan on 11.04.1996 and thereby, it is found that the plaintiff and others including the police officials against whom the first defendant had made several allegations with reference to the obtainment of signatures in the blank stamp papers using force, threat etc., and all the persons including the plaintiff had been acquitted by the Criminal Court and the copy of the judgement passed in the abovesaid case has come to the marked as EX.B1. Thus, it is found that the criminal action said to have been initiated by the first defendant as regard the obtainment of his signatures in blank papers using threat, force, coercion, etc., had come to be rejected and all the persons who are alleged to have been indulged in the said

occurrence had been acquitted by the Criminal Court. It is thus found that inasmuch as the first defendant has no case to sustain with reference to his defence version as such, accordingly, the Criminal Court had rejected his complaint with reference to the same.

16. Be that as it may, when according to the first defendant, he had been taken to the police station on 17.11.1991 at about 5 p.m. with the help of the policemen and at the police station at around 9 p.m his signatures had been forcibly obtained in blank stamp papers using threat, coercion, force, etc., and if the abovesaid version of the first defendant has any semblance of truth, immediately thereafter, the first defendant would have initiated necessary legal action against the persons involved in the abovesaid illegal acts. No doubt, the first defendant had sent the notice on 19.11.1991 marked as EX.A2, with reference to the same, to the plaintiff and others. But, by merely sending the notice, it cannot be held that the first defendant has satisfied all the legal requirements expected of him as regards the case projected by him, with reference to the obtainment of signatures in blank stamp papers using threat, force, etc. If really, the first defendant's case had any authenticity and particularly, when the allegations contained in EX.A2 notice had been repudiated by the plaintiff on 17.12.1991 by way of EX.A16 notice, definitely, the first defendant, on coming to know of the stand of the plaintiff and others with reference to his case and if really the case of the first defendant is true, immediately, after the receipt of EX.A16 notice, the first defendant would have preferred necessary complaint against the persons involved in the illegal acts as spoken to by him and sought necessary legal redressal. On the other hand, it is found that, nearly three years after the alleged incident i.e., three years after 17.11.1991, it is seen that, on 06.08.1994, the first defendant had chosen to prefer a complaint against the plaintiff and others in the Magistrate Court as could be seen from EX.B1 and as above narrated, the said complaint preferred by the first defendant against the plaintiff and others had been held to be unsustainable in the eyes of law by the Magistrate and accordingly, the Magistrate concerned had acquitted the plaintiff and others and thus, it is found that inasmuch as the case put forth by the first defendant is devoid of merits and has no element of truth in the same, it is seen that the first defendant had not initiated any criminal action immediately after the alleged incident and on the other hand, very belatedly has initiated the criminal action which ended in rejection and even thereafter, the first defendant had not thrown any challenge to the rejection of his complaint by the Judicial Magistrate under EX.B1. The first defendant has not endeavoured to prefer any criminal revision or appeal as

the case may be against the rejection of his complaint by the Judicial Magistrate, Jayamkondam.

17. In the light of the above position, it is found that the allegations put forth by the first defendant that he had been forced to put his signatures in the blank stamp papers at the police station using threat, coercion, etc., at the instigation of the police and others, remains only on paper without there being any material to sustain the same. Accordingly, it is found that when the signatures of the first defendant in EX.A1 had been not controverted and the only defence taken by the first defendant is that the signatures had been made use of by the plaintiff obtained in the blank stamp papers and secured at the police station and when the said case of the first defendant has no legs to stand and there is no proof placed by the first defendant with reference to the same, it is found that the first defendant, with a view to avoid the sale agreement EX.A1, has concocted a version as if he had been forced to put signatures in blank stamp papers at the police station at the instance of the plaintiff and others and the plaintiff had made use of the same in preparing the sale agreement. In this connection, the first defendant had chosen to examine one Ponnusamy as DW2. On seeing the evidence of DW2, it is found that he would claim that he had also been to the police station on the relevant date and further according to DW2, he was asked to wait outside the police station and thereafter, it is his version that the signature of the first defendant had been obtained using force in blank stamp papers at the police station. However, during the course of cross examination, DW2 has admitted that the first defendant's daughter had been given in marriage to his son and thus, it is seen that DW2 is the sambandhi of the first defendant. Further, DW2 has also admitted during the cross examination that he does not know whether the first defendant has put signatures in the stamp papers or blank papers and according to him, at that point of time, he was waiting outside the police station and only Thiyaagasubramanian, Sankaran, Murugesan were inside and does not know whether they had put their signatures and further according to him, he had not seen the scribe of the instrument and further according to him, he had not questioned the first defendant as to why his signature has been obtained and also he has stated that even the others had not questioned the first defendant with reference to the same and such being the evidence of DW2, it is found that, he being the close relative of the first defendant, on the basis of his abovesaid unreliable and unsatisfactory evidence, we cannot uphold the case projected by the first defendant.

18. The first defendant examined as DW1, during the course of cross examination has admitted that he has no

enmity with Thiyagasubramanian, Murugesan and the writer Sankaran and further, when as per the case of the first defendant in the course of his evidence that the incident which had occurred at the police station is known to Manickam, Narayanasamy, Periyasamy and Sarvadhigaari and further according to him, on coming to know that he had been taken to police station, they had followed him in a bus and after the incident, when he came out crying from the police station, the abovesaid parties had taken him to his home and despite the abovesaid evidence of the first defendant, it is found that that the none of the abovesaid persons had been chosen to be examined by the first defendant to buttress his version and on the other hand, he had only chosen to examine his close relative Ponnusamy as DW2 and when DW2 is unable to throw light as regards the abovesaid incident, as above discussed, as rightly determined by the first appellate Court, the first defendant without endeavouring to examine the persons who are alleged to have been acquainted with the incident and on the other, having chosen to examine only DW2 with reference to the same and inasmuch as the defence projected by the first defendant has no element of truth, it is seen that, in all, the first defendant is unable to establish his case by placing acceptable and reliable evidence. Accordingly, it is found that as above seen, only three years after the alleged incident, the first defendant has chosen to lay the criminal complaint against the plaintiff and others which however ended in dismissal as above pointed out.

19. In the light of the above discussions, it is evident that there is absolutely no material on record placed by the first defendant that his signatures had been obtained at the police station using force, threat, etc., at the instigation of the plaintiff and others and such being the position, the further case of the first defendant that the plaintiff had made use of the abovesaid signed stamp papers for creating the sale agreement EX.A1, as such, cannot be accepted in any manner and accordingly, when the signatures of the first defendant is found to be containing in the sale agreement and not disputed as such and the theory projected by the first defendant as to how his signature had come to be put in EX.A1 having not been made out, it is seen that, with a view to avoid the sale agreement one way or other, the first defendant had come forward with a case as if he had been threatened to put his signatures in the blank stamp papers and the plaintiff had made use of the same for creating Ex.A1 sale agreement.

20. As regards the proof of his case, the plaintiff has examined himself as PW1 and PW1 has tendered evidence that the first defendant had agreed to sell the suit property to him for a sum of Rs.26,950/- and pursuant thereto, they had

entered into a sale agreement EX.A1 and on the date of sale agreement, he had paid a sum of Rs.15,000/- to the first defendant and the parties had agreed to complete the sale transaction within one month thereafter as recited in the sale agreement EX.A1 and accordingly, on coming to know the attitude of the first defendant in not exhibiting his willingness to complete the sale transaction following Ex.A2, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs. Despite cross examination, nothing has been elicited from the plaintiff PW1, to discredit his evidence in any manner. In support of his case, the plaintiff has examined the scribe of the sale agreement EX.A1 Kumar as PW2 and PW2 in his evidence has deposed that it is he who had written the sale agreement EX.A1 on 16.11.1991 and he had written the said sale agreement for the plaintiff Chinnathambi and the defendant Ayyam Perumal and it is only the defendant who had furnished the information for the contents of the sale agreement including the description of the suit property and the parties had agreed for a sale price of Rs.26,950/- and on the date of sale agreement, the plaintiff had paid a sum of Rs.15,000/- to the defendant and after he had written the sale agreement, he read over the contents of the same and the same had been accepted by the first defendant and others. He had also read the description of the suit property written in the sale agreement and read over the same and the defendant put signatures in the sale agreement, which was witnessed by Sankaran, Murugesan, Thiyyagasubramanian and another and he had also witnessed the same and the plaintiff was present at that time and he had accordingly completed the written agreement by putting his signature. Thus, it is found that in a clear manner, the scribe Kumar has deposed about the execution of the sale agreement Ex.A1 between the plaintiff and the defendant as projected by the plaintiff. Even though PW2 has been subjected to cross examination, nothing has been culled out from him in support of the defence version and PW2 during the course of cross examination has also reiterated the factum of the execution of the sale agreement between the plaintiff and the defendant as narrated by him during the chief examination and accordingly, it is found that the plaintiff has reinforced his case by examining the scribe of the document as PW2.

21. Not stopping there, in order to substantiate his case, the plaintiff has also examined one of the attestors of the sale agreement Sankaran as PW3 and PW3 has also during the course of evidence has narrated about the execution of the sale agreement EX.A1 dated 16.11.1991 between the plaintiff and the defendant as regards the sale of the suit property, fixing the sale price at Rs.26,950/- and the payment of a sum of Rs.15,000/- by the plaintiff to the defendant as advance on the date of sale agreement and

the arrangement agreed to between the parties to complete the sale transaction within one month from the date of sale agreement by tendering the balance sale amount and the execution of the sale deed and accordingly, he has stated that the scribe had written the sale agreement as dictated by the defendant Ayyam Perumal and thereafter, the scribe had read over the contents of the same and after the same, Ayyam Perumal had signed the same, thereafter, he and others had signed witnessing the sale agreement and the defendant and others including him had witnessed the completion of the sale agreement by the scribe by putting the signature and also deposed that, it is only the defendant who had furnished the details of the suit property to the scribe for writing in the sale agreement and the scribe had also read over the description of the suit property to the defendant and accordingly, he and others had witnessed the same. Even during the course of cross examination, PW3 has reiterated the facts as regards the sale agreement as deposed by him during the course of chief examination and despite being cross examined, the defendants were unable to elicit anything from him and it is thus found that PW3 has been very firm in tendering evidence as regards the execution of the sale agreement between the plaintiff and the defendant and as projected by the plaintiff. Further, the plaintiff has also chosen to examine the other attesor Murugesan as PW4 and PW4 has also in similar lines deposed about the execution of the sale agreement between the plaintiff and the defendant in all material particulars as deposed by PW3 and accordingly, it is found that his evidence could not shown to be untrustworthy or unreliable. Despite being subject to cross examination by the defendants, PW4 had stressed that the sale agreement EX.A1 had come to be executed between the plaintiff and the first defendant as projected by the plaintiff with reference to the suit property.

22. Thus, it is found that on a conjoint reading of PWs 1 to 4, in all material aspects, they had concurred with reference to the execution of the sale agreement between the plaintiff and the defendant and their evidence being trustworthy, reliable and satisfactory in all counts and accordingly, it is seen that the first Appellate Court had rightly taken into consideration their evidence in toto and thereby upheld that the plaintiff and the first defendant had indeed entered into a sale agreement with reference to the sale of the suit property as put forth by the plaintiff and accordingly concurred with the plaintiff's case in toto. The Trial Court, it appears, has disbelieved the evidence of PWs 2 to 4 on the footing that there is no need for the sale agreement EX.A1 to be written at Udaiyarpalayam, the residence of the scribe PW2, when the other scribes are very much available at Sendhurai Registrar office. Accordingly, on that basis, mainly,

disbelieved their evidence coupled with the fact, that as per the appreciation of the evidence of PWs 2 to 4 by the trial court, their evidence is not reliable. However, when as above seen, the evidence of PWs 1 to 4 is found to be in tandem in all aspects as regards the sale agreement EX.A1 and when it is further seen that the first defendant examined as DW1, during the course of cross examination has deposed that he has no enmity with Thiyagasubramanian, Murugesan and Sankaran and accordingly, when it is seen that admittedly PWs 3 and 4 are not shown to be inimically disposed of towards the first defendant, thus, it is seen that inasmuch as EX.A1 sale agreement had been executed between the plaintiff and defendant as put forth by the plaintiff and the same having been witnessed by PWs 3 and 4 and the said sale agreement had been written by PW2, accordingly, it is found that PWs 2 to 4 in conjunction with the plaintiff PW1 has clearly tendered evidence with reference to the genuineness of the sale agreement EX.A1, which had been entered into between the plaintiff and the defendant as recited therein. Such being the position, it is found that the trial Court appears to have discarded the evidence of PWs 1 to 4 on frivolous grounds, which are found to be unsustainable and it is found that the first Appellate Court, on a proper appreciation of the oral evidence coupled with the materials placed on record and as above discussed, held that the evidence of PWs 1 to 4 are cogent, convincing and trustworthy and accordingly, upheld the plaintiff's case on the basis of the same and other allied factors.

23. It is the case of the defendants that the defendants 1 & 2 had entered into an oral sale agreement of sale with reference to the suit property on 02.11.1991 for a sum of Rs.33,000/- and pursuant thereof, a sum of Rs.5,000/- has been paid on the date of the sale agreement and it is seen that, pursuant to the same, according to the defendants' case, the sale deed had been executed on 26.11.1991. According to the plaintiff, the above said oral agreement has been projected by the defendant with a view to defeat the sale agreement EX.A1 projected by him. In this connection, according to the defendants' version, the factum of oral sale agreement between the defendants 1 & 2 is known to Vasudeva padayachi, Manickam padayachi and Narayanasamy. The plaintiff in the plaint has disputed the oral sale agreement projected by the defendants and according to the plaintiff, the same had been put forth by the defendants only to stifle the sale agreement EX.A1. Despite the above stand of the plaintiff, the first defendant having failed to establish his theory of obtainment of signatures in the blank stamp papers at the police station, as above pointed out, had not chosen to examine any of the persons associated with the oral sale agreement dated 02.11.1991. As above noted, when according

to the defendants, as put forth in the written statement of the first defendant, the factum of oral sale agreement entered into between the defendants on 02.11.1991 for a sum of Rs.33,000/- is known to Vasudeva padayachi, Manickam padayachi and Narayanasamy, none of the abovesaid witnesses has been chosen to be examined by the defendants for the reasons best known to them. Particularly, when the plaintiff has impugned the alleged oral sale agreement dated 02.11.199, despite the same, the defendants had not endeavoured to examine the above said persons to establish that such an oral sale agreement had really taken place between the defendants 1 & 2 with reference to the sale of the suit property. Further, with reference to the parting of the sum of Rs.5,000/- by the second defendant to the first defendant on 02.11.1991, there is no proof whatsoever placed. However, it is found that the defendants 1 & 2 had chosen to complete the sale deed on 26.11.1991 marked as EX.B2. No doubt, the reference about the oral sale agreement had been incorporated in Ex.B2, but when the plea of oral sale agreement has not been established by the defendants by examining the independent persons associated with the same, it is seen that merely on incorporation of the said facts in the sale deed Ex.B2, we cannot presume that such an oral agreement had indeed been entered into between the defendants 1 & 2 as put forth by them.

24. In this connection, the second defendant seems to have obtained the sale deed Ex.B2 for the suit property plus an extent of 2½ cents and accordingly, it is contended by the plaintiff, to give a true colour to EX.B2 sale deed, the defendants 1 & 2 had chosen to include the extent of 2½ cents in the sale deed and the said case of the plaintiff as such cannot be easily discarded. When, according to defendants 1 & 2, they have entered into an oral sale agreement only as regards the sale of suit property, their endeavour to execute Ex.B2 sale agreement for an additional extent of 2½ cents along with the suit property creates a doubt in their endeavour and it is thus seen that the defendants 1 & 2 had chosen to execute EX.B2 sale deed despite knowing the existence of the sale agreement dated 16.11.1991 marked as Ex.A1.

25. In addition to that, as determined by the First Appellate Court, it is found that the plaintiff on coming to know of the alleged oral sale agreement between the defendants 1 & 2 following EX.A2 notice and their endeavour to execute the sale deed with reference to the suit property, the plaintiff had chosen to send his objections to the Sub Registrar concerned and in this connection, it is found that the plaintiff on 26.11.1991, has preferred his objections to the purported registration of the sale deed in respect of the suit property between the defendants

1 & 2 with the Sub Registrar, Sendhurai. On the said objections, it is found that the Sub Registrar had informed the plaintiff by way of Ex.A8 that due action would be taken with reference to the objections put forth by the plaintiff as per the Registration Act and also informed the plaintiff to pursue his further remedies in the Court of law as he may deem fit. Accordingly, it is found that even prior to the registration of EX.B2 sale deed, the objection had been put forth by the plaintiff with reference to the registration of any document in connection with the suit property. It is found that EX.B2 has come to be registered only on 26.11.1991. Accordingly, it is the reasoning of the first Appellate Court that the Sub Registrar concerned would have been in the know of things about the objections put forth by the plaintiff with reference to the registration of the sale deed between the defendants 1 & 2 as regards the suit property and accordingly opined that the second defendant would have been put on notice by the Sub Registrar concerned as regards the objections put forth by the plaintiff as found in EX.A8 and on that footing held that the second defendant would not be a bonafide purchaser for value without notice of the sale agreement EX.A1. No double, the objections put forth by the plaintiff to the Sub Registrar has not been addressed to the second defendant as such, but the fact remains, as could be seen from EX.A8, the objections had been put by the plaintiff to the Sub Registrar, Sendhurai on 26.11.1991 and to the same, the Sub Registrar had informed the plaintiff that necessary action would be taken with reference to the same as per the Registration Act. Accordingly, it is found that the first appellate Court has held that at the time of the registration of EX.B2 sale deed, the Sub Registrar, Sendhurai would have apprised the same to the second defendant and thereby, the second defendant would have been put on notice about EX.A1 sale agreement. Furthermore, when according to the first defendant, much prior to EX.B2 sale deed, he had been taken to the police station and his signatures had been obtained in the blank stamp papers using threat, force, etc., and had apprehended that on the basis of the same, the sale agreement would have been created by the plaintiff and others and if really, the first defendant had entered into an oral sale agreement with the second defendant on 02.11.1991, immediately after the alleged incident which took place on 17.11.1991, if the said incident had any semblance of truth, the first defendant as a prudent person would have briefed and updated the same to the second defendant and on the other hand, the first defendant examined as Dw1, during the course of examination has admitted that he had not informed the second defendant about the approach made by the plaintiff and others with reference to the sale of the suit property to them from him and the refusal of the same by him to the said proposal. This attitude of the first

defendant is found to be not natural. If really, the first defendant had entered into an oral sale agreement with the second defendant on 2.11.1991 itself and subsequent thereto, the plaintiff and others had approached the first defendant for the purchase of the suit property and on the refusal of the same by the first defendant, the first defendant had been taken to the police station and using force, his signatures had been obtained in blank stamp papers, the first defendant, at the foremost, would have only had consultation with reference to the same with the second defendant who had entered into an oral sale agreement with him on 02.11.1991 itself. On the other hand, it is found that as per the version of the first defendant, he had not informed anything to the second defendant. All these facts would only go to show that inasmuch as no such oral agreement had been entered into between the defendants 1 & 2 with reference to the suit property, it is found that the first defendant had not shown any inclination to enlighten the alleged incident to the second defendant. The first appellate Court in the nature of preponderance of probabilities had determined that by way of EX.A8 notice, the second defendant would have been put on notice about the sale agreement EX.A1. Accordingly, on that footing held that the second defendant cannot be termed as a bonafide purchaser for value. The abovesaid approach of the first appellate Court, in my considered opinion, cannot be faulted and when the civil action could be decided on the preponderance of probabilities, it is seen that there is every possibility of the Sub Registrar putting the second defendant on notice as regards the sale agreement EX.A1 to the second defendant at the time of the registration of EX.B2 and despite the same, when it is found that the second defendant had not been cautious and still endeavoured to proceed with the execution of the sale deed EX.B2 and further, when the factum of oral sale agreement between the defendants 1 & 2 had not been established as above discussed, all the above facts taken cumulatively would only lead to conclusion that the defendants 1 & 2 had colluded together to defeat the sale agreement EX.A1 entered into between the plaintiff and the first defendant and accordingly, it is seen that with that endeavour, had proceeded with the execution of EX.B2 sale deed and in such view of the matter, it is found that the determination of the First Appellate Court that the second defendant cannot be held to be a bonafide purchaser for value without notice cannot be assailed in any manner.

26. The counsel for the defendants contended that the plaintiff had failed to establish a concluded contract / agreement between the plaintiff and the first defendant as the sale agreement EX.A1 contains only the signatures of the first defendant and in this connection, reliance is placed upon the decisions reported in 2017 (6) CTC 785

(CSEPDII - Trishe Consortium Vs. Tamil Nadu Generation and Distribution Corporation Ltd.) and 2005 (2) CTC 609 (Board of Control for Cricket in India (BCCI) Vs. Zee Telefilms). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand. However, considering the above discussions, it is found that the first defendant having failed to establish his defence version as regards the obtainment of his signatures in the blank stamp papers in the police station as put forth by him and when the abovesaid version is found to be false and when it is further seen that the plaintiff has established his case through the testimonies of PWS 1 to 4 as well as the other documents projected in the matter, it is seen that only following the offer and acceptance between the parties concerned, the sale agreement EX.A1 had come to be executed and such being the position, the contentions put forth by the defendants' counsel that no concluded contract/agreement had been entered into between the plaintiff and the first defendant as such cannot be believed in any manner. Merely because the plaintiff's signature is not found in EX.A1 sale agreement, it would not lead to the conclusion that the sale agreement EX.A1 is not a concluded contract between the two. In this connection, the plaintiff's counsel placed reliance upon the decision of the Apex Court reported in (2009) 2 SCC P 582 (Aloka bose Vs. Parmatama Devi and others) wherein, it has been held that the agreement of sale, if signed by the one of the parties, the same could be enforced and the said decision of the Apex Court has also been followed by our High Court in the decisions reported 2014 (1) CTC 603 (Muthukrishna Gounder Vs. Gowri others), 2016-5-LW.268 (A.Sankariah Vs. V.Ravichandran and others) as well as in the recent decision of the Division Bench of this Court dated 04.07.2018 in O.S.A.No. 247 of 2015 (J.Vincent Vs. S.Srinivasan). Accordingly, it is found that considering the materials placed on record and in the light of the above discussions, it is found that following the concluded agreement between the parties, namely, the plaintiff and the first defendant, it is found that EX.A1 sale agreement had come to be effected between them and accordingly, it is seen that the first defendant accepting the terms thereof, had put his signature in the said agreement and in such view of the matter, merely because the signature of the plaintiff is not obtained in EX.A1 sale agreement, that would not in any manner diminish or lessen the validity of the EX.A1 sale agreement and in such view of the matter, the sale agreement EX.A1 is found to be a valid one.

27. The defendants' counsel further contended that merely because the plaintiff had put forth his objection to the Sub Registrar, Sendhurai and the Sub Registrar in turn had issued a letter marked as EX.A8, the same cannot be

attributed as notice to the second defendant and in this connection reliance is placed upon the decision reported in AIR 2002 Supreme Court 1711 (Zorawar Singh and another Vs. Sarwan Singh (Dead) by Lrs and another). In the abovesaid decision, it is found that the objections put forth by the plaintiff in the concerned case had been returned by the Sub Registrar and there was no record of entry of the alleged objections put forth by the plaintiff in the concerned case. Accordingly, in that decision, it has been held that the third party purchaser has no prior notice of the agreement of sale entered into between the plaintiff and the vendor. However, in so far as our case is concerned, it is found that the objection put forth by the plaintiff had been acknowledged by the Sub Registrar, Sendhurai and following the same, he had also communicated to the plaintiff that suitable action would be initiated with reference to the same as per the Registration Act as could be seen from Ex.A8 and such being the position, when on the same date, EX.A2 had come to be registered in the Sub Registrar office, in such view of the matter, in the nature of the preponderance of probabilities, the first appellate Court had deemed it fit to hold that the Sub Registrar, Sendhurai would have informed the second defendant of the objections put forth by the plaintiff to the impending registration of document, vis-a-vis the suit property. In such view of the matter, it is found that the abovesaid decision projected by the defendants' counsel would have no application to the facts and circumstances of the present case. In any event, as above discussed, when it is found that the defendants 1 & 2 have failed to establish the oral sale agreement between them having made on 02.11.1991 and accordingly, when it is seen that much prior to EX.B2, the plaintiff and the first defendant having entered into the sale agreement on 16.11.1991, marked as Ex.A1, accordingly, it is found that the sale transaction Ex.B2 having come into effect subsequent to Ex.A1 sale agreement, as rightly determined by the first appellate Court, in all aspects, the second defendant cannot be held to be a bonafide purchaser for value without notice and accordingly, it is found that the plaintiff is entitled to obtain the relief of specific performance as regards the suit property from the defendants 1 & 2 as claimed by him.

28. As regards the readiness and willingness aspect on the part of the plaintiff and considering the turn of events which had occurred in this case, it is seen that immediately after the execution of sale agreement, as the first defendant had thrown a challenge to the genuineness of the same, left with no other alternative, it is seen that the plaintiff had been necessitated to institute the suit on 26.11.1991 itself. Further, it is put forth by the plaintiff that he has been all along ready to part with the

balance sale consideration and complete the sale transaction. When it is found that the plaintiff has levied the suit well within the time stipulated under the sale agreement fixed for completing the sale transaction and the plaintiff is also found to be a man of means and ready to part with the balance sale consideration as projected by him and further, the plaintiff having established the genuineness of the sale agreement EX.A1 as above pointed out, in all aspects, it is found that the plaintiff is entitled to obtain the relief of specific performance as claimed by him.

29. In view of the above discussions, no error is found to have been committed by the first appellate Court in upholding the sale agreement Ex.A1 and accordingly, on the appreciation of the materials placed on record, rightly determined that the second defendant is not a bonafide purchaser for value without notice. It is found that the first appellate Court has rightly analysed the materials placed on record in the correct perspective, both factually as well as legally and determined that the plaintiff is entitled to obtain the relief of specific performance as prayed for. The sale agreement EX.A1 having been held to be a genuine document and having been established to be executed by the first defendant following the agreement between the plaintiff and first defendant with reference to the sale of suit property and the determination of the sale agreement EX.A1 to be a genuine document and legally enforceable one by the first appellate Court is based on the proper appreciation of the materials placed on record, it is found that the judgement and decree of first appellate Court upholding the plaintiff's case do not warrant any interference. The substantial questions of law formulated in this second appeals are accordingly answered against the defendants 1 & 2 and in favour of the plaintiff.

30. In the light of the above reasons, the second appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/--
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Subordinate Court, Ariyalur.

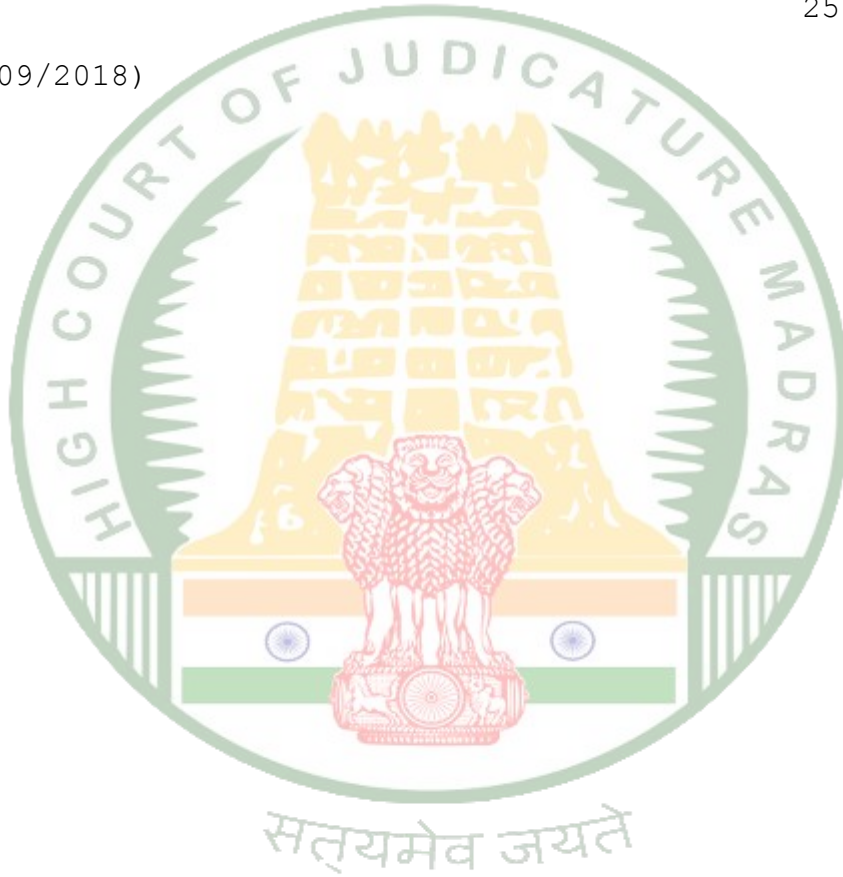
2. The Additional District Munsif Court,
Ariyalur.

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

+2cc to Mr.N.Rajan , Advocate SR.No.53331, 53029
+1cc to Mr.Sunbramanian Associates, Advocate SR.No. 53958
+1cc to Mr.M/s. Sarvabhauman , Advocate SR.No. 53172
+1cc to Mr.M.Thomas Aquinas , Advocate SR.No. 53330

Judgment in
S. A.Nos.2319 of 2004 &
259 of 2005

ASK (27/09/2018)



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