

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 23.11.2017
PRONOUNCED ON : 18.01.2018
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1635 of 2001

1.Chenraya Gounder
2.Chennammal (Deceased)
3.Varadarajan (Deceased)
4.Kamala
5.Prema

6.Satishkumar ...Appellants/Defendants and
(Appellants 4 to 6 recorded as Lrs LRS of the defendants
of the deceased 2nd Appellant vide
order of Court dated 10.04.2015
made in S.A.No.1635 of 2001. Memo
recorded (CSSR No.2028 of 2015)
dated 27.03.2015)

(2nd appellant recorded and 5th
and 6th appellants brought on
record as Lrs of the deceased
3rd appellant vide order of
Court dated 30.07.2012 made
in CMP.52/12 in S.A.1635/2001)

Vs.

Duraisamy

... Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of the Civil Procedure against the Judgment and decree dated 22.02.2001 made in A.S.No.86 of 2000 on the file of the Second Additional District Court, Salem, reversing the judgment and decree dated 18.01.2000 made in O.S.No.522/1990 on the file of the Additional Sub Court, Salem.

For Appellant : Mr.S.Kalyanaraman

For Respondent : Mr.P.Jagadeesan

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 22.02.2001 passed in A.S.No.86 of 2000 on the file of the Second Additional District Court, Salem, reversing the judgment and decree dated 18.01.2000 passed in O.S.No.522/1990 on the file of the Additional Sub Court, Salem.

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

3. Suit for Specific performance or in the alternative to return of the advance amount with interest.

4. The case of the plaintiff, in brief, is that on 14.02.1990, the plaintiff and the first defendant entered into an agreement of sale in respect of the suit property belonging to the first defendant, whereunder, the first defendant agreed to sell the same to the plaintiff or his assignee for a sale consideration of Rs.65,000/- and a sum of Rs.10,000/- was paid by the plaintiff as advance and accordingly, as per the terms of the agreement, it was agreed that the sale has to be effected within 5 months from the date of the agreement and the first defendant has to execute the sale deed in favour of the plaintiff. But at the end of the agreement, it was recited that the sale deed has to be executed before 30th of Chitrai, 1990. The plaintiff has always been ready and willing to perform his part of the contract and called upon the first defendant to execute the sale deed as per the agreement through a legal notice dated 07.05.1990 fixing the date of sale on 11.05.1990. The first defendant received a notice and sent a reply dated 11.05.1990 containing false allegations alleging that the first defendant did not execute the sale agreement nor received the advance amount of Rs.10,000/- and the allegations are false and not true and further, the first defendant has also stated that he has entered into an agreement of sale with the second defendant in respect of the suit property on 13.11.1989 itself and the said alleged agreement is a fabricated one with a view to defeat the rights of the plaintiff. Hence, the second defendant has been impleaded as a party in the proceedings and the plaintiff to show his readiness and willingness has deposited the balance sale consideration in the bank and pending the suit, the first defendant died leaving behind the defendants 3 to 5 as his legal representatives and hence, the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that the suit is not maintainable either in law or on facts and it is false to state that the plaintiff and the first defendant entered into an agreement of sale in respect of the suit

property on 14.12.1990, whereunder, the first defendant received a sum of Rs.10,000/- as advance and agreed to execute the sale deed on receiving the balance sale consideration etc., It is stated that there was no such agreement entered into between the parties and the alleged agreement of sale is a fabricated and created document and not binding upon the first defendant. It is further false to state that the plaintiff has been always ready and willing to perform his part of the contract and only the first defendant was delaying the execution of the sale deed. It is further false to state that the agreement recites that the sale deed has to be executed before 30th of Chithirai, 1990 at the end of the agreement and to the notice sent by the plaintiff, a reply notice contained the true facts has been sent by the defendant and as stated in the reply notice, the agreement entered into between the first defendant and the second defendant in respect of the suit property is true and valid one and not created and on the basis of the same, the plaintiff cannot seek and obtain the relief of specific performance and the plaintiff has laid the suit in collusion with the brokers, who are inimically disposed of towards the first defendant and hence, the suit is not maintainable and liable to be dismissed.

6. The case of the defendants 3 to 5, in brief, is that the suit is not maintainable either in law or on facts and the first defendant had no necessity to execute the sale agreement in favour of the plaintiff as recited in the plaint and even on the date of the alleged agreement, the suit property was worth more than Rs.3,00,000/- and on enquiry with the two attestors of the sale agreement, it was informed that they never knew about the alleged agreement and on the other hand, they were requested by the land broker Palaniappan to attest the document, which they did, without knowing the contents of the same and therefore, it is false to state that the first defendant and the plaintiff entered into a sale agreement in respect of the suit property for a sum of Rs.60,000/- and that, the first defendant received a sum of Rs.10,000/- as advance. The suit property is worth Rs.6,00,000/-. The plaintiff cannot take advantage of an invalid agreement and seek to enforce the same much belatedly and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case, Pws1 & 2 were examined and Exs.A1 to A8 were marked. On the side of the defendants, no oral and documentary evidence has been adduced.

8. The trial Court, on a consideration of the oral and documentary evidence adduced in the matter and the submissions made, was pleased to dismiss the suit laid by the plaintiff. On appeal preferred by the plaintiff, the first appellate Court was pleased to set aside the judgment and decree of the trial Court

and accordingly, by allowing the appeal preferred by the plaintiff, granted the relief of specific performance in favour of the plaintiff as prayed for. Aggrieved over the same, the present second appeal has come to be preferred.

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

" (i) Whether the Lower Appellate Court had misdirected itself in believing Ex.A1 when the plaintiff had not discharged of onus of proving Ex.A1 as genuine document by satisfactory evidence viz., by examining the attestors who are available and by sending Ex.A1 to expert to get the opinion regarding the genuineness of the signature of Perumal and the LTI and signature of D2 and D4?

(ii) Whether the Lower Appellate Court misdirected itself in accepting the evidence of P.W.2 as an attestor to the Ex.A1 in the face of his admission that he had signed Ex.A1 as a drafter and not as an attestor?

(iii) Whether the Lower Appellate Court was right in placing the onus on the defendants to prove that Ex.A1 is not a true and valid document when the execution thereof had been denied?"

10. The plaintiff has laid the suit for the relief of specific performance on the basis of the sale agreement dated 14.02.1990. According to the plaintiff, the first defendant being the owner of the suit property agreed to sell the same to him for a sum of Rs.65,000/- and accordingly, the parties had entered into the above said sale agreement, whereunder, the first defendant received a sum of Rs.10,000/- from the plaintiff as advance and accordingly, as per the terms entered into, the plaintiff has to make the balance payment within 5 months i.e. on or before 14.07.1990 and get the sale deed executed from the first defendant free from encumbrance and it is further stated that at the end of the agreement, it has been recited that the sale deed has to be executed before the 30th of Chithirai, 1990 and though the plaintiff has been always ready and willing to perform his part of the contract by making the payment of the balance sale consideration and as the first defendant evaded to complete the sale transaction, it is stated that the legal notice has been issued to the first defendant and to the same, the first defendant has sent a reply containing false allegations, as if the first defendant and the second defendant

had entered into a sale agreement in respect of the suit property on 13.11.1989 itself and the above said agreement of sale is projected falsely, only to defeat the plaintiff's rights and the plaintiff has also, to show his readiness and willingness, deposited the balance amount into the bank and hence, the suit for appropriate reliefs.

11. The sale agreement projected by the plaintiff dated 14.02.1990 has been marked as Ex.A1. Now, according to the first defendant, the sale agreement Ex.A1 is not true, valid and binding upon him and according to him, he had not agreed to sell the suit property in favour of the plaintiff by way of the same for a sum of Rs.65,000/- and also not received a sum of Rs.10,000/- as advance from the plaintiff under the same and on the other hand, according to him, he had entered into a sale agreement with the second defendant on 13.11.1989 itself and hence, it is stated that the plaintiff is not entitled to seek the relief sought for in the plaint. It is further seen that pending the suit, the first defendant had died leaving behind the defendants 3 to 5 as his legal representatives and the defendants 3 to 5 also adopted the plea of the first defendant and contested the suit laid by the plaintiff stating that the sale agreement dated 14.02.1990 is not true, valid and the plaintiff is not entitled to obtain the reliefs sought for in the suit by way of the said agreement.

12. In the light of the above defence set forth by the defendants, it is seen that the plaintiff has to establish the truth and validity of the sale agreement marked as Ex.A1. It is found that on a perusal of the sale agreement Ex.A1, it had been attested by five attestors and drafted by a person, who has been examined as PW2 and typed by M.Kalavathi. In the light of the defence taken by the defendants contesting the truth and validity of Ex.A1 and if really, Ex.A1 sale agreement had come to be executed between the plaintiff and the first defendant as put forth by the plaintiff and if really, five persons, as named in the sale agreement, had witnessed the transaction and attested the document, it would be natural on the part of the plaintiff to establish his case by examining at least one of the attestors to the document to sustain his case. However, it is noted that the plaintiff has not chosen to examine any one of the attestors to Ex.A1 in support of his case. It is further seen that as admitted by the parties, one of the attestors viz., Dhandapani had died. Therefore, it is seen that the said attesor could not be examined by the plaintiff. It is nowhere stated in the plaint that the defendants 3 & 4 had attested the sale agreement Ex.A1. However, it is found, as per the case of the plaintiff as disclosed during the course of evidence, that the defendants 3 & 4 have also attested the sale agreement. According to the plaintiff's case, if really, the defendants 3 &

4 had attested the sale agreement as put forth, necessary recitals, with reference to the same would have been incorporated in the plaint in specific by the plaintiff either in the original plaint or at least in the amended plaint filed by way of impleading the defendants 3 to 5 as the Legal representatives of the deceased first defendant, who had died pending the suit. However, other than stating that the defendants 3 to 5 are the legal representatives of the deceased first defendant, nothing has been averred in specific that the defendants 3 to 4 had also attested the sale agreement for witnessing the said transaction. In such view of the matter, it is found that as rightly found by the trial Court, there would have been no opportunity or scope on the part of the defendants 3 to 5 to deny in specific in their written statement that they had not attested the sale agreement Ex.A1 projected by the plaintiff. In any event, it is found from the written statement filed by the defendants 3 to 5 on a reading the same in entirety, they have challenged the case of the plaintiff by contending that Ex.A1 sale agreement is not a true and valid agreement and that, it is a fraudulent document created by the plaintiff. In the light of the above position, the contention, now put forth by the plaintiff's counsel that inasmuch as the defendants 3 & 4 have not denied their attestation in Ex.A1 in specific in the written statement filed by them and also not endeavoured to enter into the witness box to deny the same during the course of trial, that an adverse inference should be drawn against them and thereby, the Court should uphold the validity of the sale agreement Ex.A1, as such, cannot be accepted. As rightly argued by the defendants' counsel, when the attestation of the sale agreement by D3 & D4 has not been averred in specific, accordingly, it is seen that there is no scope at all on their part to deny the same in the written statement. Further, when it is seen that the defendants 3 to 5 have contested the plaintiff's suit by alleging that the sale agreement Ex.A1 is a fraudulent document, it is for the plaintiff to establish his case by adducing acceptable and reliable evidence and in such view of the matter, the failure of the defendants 3 & 4 to enter into the witness box to establish their version, in my considered opinion, would not in any manner buttress the plaintiff's case, as the plaintiff having come forward with the case, has to stand or fall on the strength of the merits of his case and he cannot expect the defendant to establish his case or in other words, it is found that the plaintiff cannot be allowed to pick holes in the defendants' case and thereby, endeavour to succeed in his case without establishing the pleas put forth by him in his plaint. Accordingly, it is found that as according to the plaintiff, during the course of evidence, two of the attestors to the sale agreement being the defendants 3 & 4, it is found that the plaintiff would not be in a position to examine them in support

of his case. It is thus seen that only the remaining two attestors are available to establish the plaintiff's case.

13. If really, as seen above, the sale agreement Ex.A1 had come to be executed between the parties concerned as pleaded by the plaintiff and been attested by five attestors to establish the plaintiff's case, at least, prima facie, the plaintiff should have endeavoured to examine the attestors to the document, at least, either of the two attestors as above pointed out. However, for the reasons best known to the plaintiff, it is found that the plaintiff has not chosen to examine the attestors to the document for sustaining his case. It is found further from the written pleas of the defendants 3 to 5 that on an enquiry by them, the two attestors viz., Selvam and Dhandapani have denied any sale agreement entered into, as such, between the plaintiff and the first defendant in respect of the suit property and it is stated that they had represented that they had signed the document as requested by a broker without knowing the contents thereof. Therefore, even assuming that the named attesor viz., Selvam referred to in the written pleas of the defendants 3 to 5 is associated with the defendants, still it is seen that the remaining attesor Palaniappan, at least, should have been examined on behalf of the plaintiff to sustain the plaintiff's case. It is not the case of the plaintiff that the attesor Palaniappal is not available to be examined in the Court to throw light on the matter as regards the issue between the parties. However, it is found that neither Palaniappan nor Selvam has been examined by the plaintiff to sustain his case.

14. However, in this connection, the plaintiff's counsel contended that as per Section 68 of the Indian Evidence Act, only the documents, which are compulsory required to be attested are required to be established by examining the attesting witness and inasmuch as the sale agreement is not required to be compulsorily attested as per law, it is his contention that as per Section 72 of the Indian Evidence Act, an attested document not required by law to be attested may be proved as if it was unattested and accordingly, it is argued that as the sale agreement Ex.A1, though attested, but, not required under Law to be attested as such, it is his contention that like any other mode, it would be sufficient for the plaintiff to establish the truth and validity of the said document by examining the other witnesses and accordingly, it is the contention of the plaintiff that inasmuch as he has examined the drafter of the agreement Ex.A1 as PW2 and as he has spoken about the agreement entered into between the parties in all aspects, it is contended that the first appellate Court has rightly relied upon the evidence of PW2 and accepted the plaintiff's case and therefore, no interference is called for

with reference to the same at the stage of the second appeal. In this connection, the plaintiff's counsel placed reliance upon the decisions reported in AIR 1975 MADRAS 221 (Karuppiah Mooppanar Vs. Muthukaruppan Servai), AIR 1995 MADRAS 415 (Kamakshi Ammal Vs. Rajalakshmi and others), 1999 (3) MLJ 22 (Iswar Bhai C.Patel alias Bachu Bhai Patel Vs. Harihar Behera and another) and VII L.W. 241 (Paramasiva Udayan Vs. Krishna Padayachi and another). In the last decision referred to above, it is stated that the question whether a scribe is also an attester to the document depends upon the intention with which he had signed the document and the same depends upon the facts of each case. It is further seen that as per the decision reported in AIR 1995 MADRAS 415 (Kamakshi Ammal Vs. Rajalakshmi and others) above referred to, the scribe of the document could also be an attesting witness thereof, if he had signed the document with the requisite animus to attest and similarly, in the decision reported in AIR 1975 MADRAS 221 (Karuppiah Mooppanar Vs. Muthukaruppan Servai), it has been held that where a document does not require compulsorily attestation, the said document may be proved without examining attesting witness and therefore, it could be seen that from the above said decisions, as the sale agreement does not require compulsory attestation as per law, the plaintiff can very well establish the truth of the said sale agreement by examining the other witnesses who could speak about the same and accordingly, it has to be seen whether the evidence of the scribe PW2 would be sufficient to accept the truth and validity of Ex.A1.

15. The drafter of the document Ex.A1 examined as PW2 has during the course of cross examination clearly admitted that he has not signed the document as a witness. It is therefore seen that he has signed the document Ex.A1 only as a person having draft the original sale agreement. Therefore, it is seen that PW2 would not have signed in Ex.A1 sale agreement with the intention of the signing the same as a witness to the transaction. If really PW2 had signed the said document with the above said intention, as put forth in the above said authorities, he could have very well signed the document both as the scribe as well as the witness. However, PW2 has chosen to sign the document only in the capacity of a person, who had draft the document. Therefore, it is seen that PW2 cannot be equated to the status of an attesting witness to the document.

16. From the evidence of PW2, it is seen that he is very well acquainted with the plaintiff and knew him for several years and it is further seen that he had seen the first defendant only on the date of the alleged sale agreement. Therefore, it is seen that PW2 is a person much and more associated with the plaintiff and accordingly an obliging witness. That apart, PW2 would claim to have drafted the sale

agreement entered into between the parties. On a perusal of the sale agreement Ex.A1, it is found that there are interalienations in the document as admitted by PW2 himself and in particular, though the time limit has been specified therein for completing the sale transaction before the expiry of 5 months from the date of the sale agreement, it is found that at the end of the sale agreement i.e. before the description of the property, interalienation has been made in the same as if the parties had agreed to complete the sale transaction on or before 30 th Chithirai 1990. Similarly, in the same, there is an another inter alienation / addition that in case, the failure of the plaintiff to perform his part of the contract, he has to forfeit advance amount paid by him and the sale agreement thereby would become invalid. If really, the first defendant had drafted the sale agreement and the interalienations as above referred to had been agreed to between the parties concerned at the time of entering into the sale agreement, as rightly put forth by the defendants' counsel, with reference to the abovesaid interalienations incorporated in the document, necessary endorsements or initials of the parties concerned would have been obtained and the same would have also been noted by the scribe of the document and on the other hand, it is found that such endorsements or initials of the parties concerned had not been obtained with reference to the interalienations / additions found in the document and PW2 has also not referred to about the same in the document by making necessary endorsements while completing the document. Pertaining to the same, PW2 on cross examination would only state that inasmuch as the sale agreement had been subsequently typed based on his draft agreement and the interalienations had been made thereof, in such type of document, there is need for obtaining the initials /endorsements of the parties concerned or the scribe of the document. However, as rightly found by the trial Court, the above said explanation offered by the first defendant could not be accepted as it is seen that there cannot be any such distinction between the documents written in pen or type written and therefore, it is seen that the failure on the part of part of PW2 to note or refer the interalienations /additions found in the sale agreement or obtain the endorsements or the initials of the parties concerned, would itself go to show that as would not have been present at the time of the completion of the alleged sale agreement as such and accordingly, it is seen that he has not referred to the same in the sale agreement nor obtained the attestation of the parties concerned with reference to the same in the agreement. Therefore, it is highly doubtful, whether, PW2 would have been a direct witness to the alleged transaction and would be a competent person to speak about the sale agreement.

17. It is found that according to PW2, the sale agreement drafted by him has been typed subsequently and it is thus seen that Ex.A1 sale agreement is a typed agreement. In the typed agreement, PW2 has not signed the document as an attesting witness as admitted by him and only signed the document as a person, who had drafted the agreement. Such being the position, it is found that as rightly found by the trial Court, no safe reliance could be attached to the evidence of PW2 for upholding the truth and validity of Ex.A1.

18. It is found that PW2 is the person, who had signed at the bottom of the sale agreement and when considering the facts and circumstances of the case as above discussed, it is highly doubtful, whether, PW2 would have signed the document as and when the same had been really concluded between the parties on 14.02.1990 as put forth by the plaintiff or whether his signature had been subsequently obtained by the plaintiff to suit his case on seeing the defence put forth by the first defendant as well as the other defendants contesting the truth and validity of the sale agreement. It is found that the plaintiff has not averred in the plaint that the sale agreement had been drafted by PW2 and as such, he knew about the facts and circumstances of the case and competent to speak about the sale agreement. Equally, the plaintiff has not whispered that the sale agreement had been attested by any particular person in the plaint and therefore, the facts being above, it is highly doubtful whether PW2 would be competent to speak about the truth and validity of Ex.A1 and hence, it is seen, thus, that the trial Court has rightly not placed safe reliance upon his evidence.

19. PW1, the plaintiff would claim that terms of the sale agreement had been discussed in the office of Palaniappan and accordingly, it is found that Palaniappan would in the better know of things as regards the sale agreement, however, it is seen that the plaintiff has not chosen to examine the said Palaniappan in support of his case, though it is the case of the plaintiff that Palaniappan is also one of the attesting witnesses to the agreement. Further, according to the plaintiff examined as PW1, the first defendant had subscribed his signature and LTI in all the pages of the sale agreement and thus, it is found that according to the plaintiff's case, the first defendant had put his signature and LTI in all the pages of the sale agreement. However, it is seen that on a perusal of Ex.A1 sale agreement, only the signature of the first defendant is found in all the pages, whereas, the LTI of the first defendant is available only in the last page. That apart, it is found that the LTI of the first defendant has not been obtained at the bottom of the last page after the witnesses and the

scribe and the typist had signed the document. However, when according to the plaintiff, the LTI of the first defendant had been obtained in all pages of the document Ex.A1 and when Ex.A1 belies his above version, it is highly doubtful whether at all Ex.A1 agreement would have been entered into between the parties concerned as put forth by the plaintiff. In such view of the matter also, it seen that Ex.A1 cannot be held to be established to be a true and valid document on the part of the plaintiff.

20. As regards the contention of the plaintiff that the defendants failure to enter into witness box and thereby, an adverse inference should be drawn against them, considering the facts and circumstances of the case, it is seen that when the onus of proof is heavy upon the plaintiff and not upon the defendants as such, when the said onus has not been discharged by the plaintiff in a satisfactory manner, there is no need or necessity on the part of the defendants to establish their defence version as such and therefore, no adverse inference could be drawn against the defendants for not entering the witness box in this matter. In such view of the matter, the decision relied upon by the plaintiff's counsel reported in 1999 (3) MLJ 22 (Iswar Bhai C.Patel alias Bachu Bhai Patel Vs. Harihar Behera and another) as rightly argued would not be applicable to the facts and circumstances of the case at hand.

21. The trial Court has rightly found that the plaintiff has not endeavoured to establish his case by examining the attesting witnesses viz, the attstors of the sale agreement and on the other hand, chosen to sustain his case only by examining PW2, who is only a person, who had drafted the sale agreement. Considering the above facts, when PW2 is found to be not in the real know of things and when further found that it is highly doubtful whether PW2 would have been present at the time of the conclusion of the agreement between the parties and when it is further found that there is a possibility of the plaintiff obtaining the signature of PW2 at a later stage and when Ex.A1 has been strongly challenged by the defendants as a fraudulent document, it is seen that the plaintiff's case cannot be held to be established through the evidence of PW2 alone.

22. The plaintiff's contention that the description of the property had been incorporated in the document only based upon the encumbrance certificate marked as Exs.A4 & A5, which, according to the plaintiff, are stated to have been entrusted by the first defendant at the time of the sale agreement, however, as rightly found by the trial Court, it is found that the above said encumbrance certificates had not been obtained by the first defendant and the same had been obtained by one Sriramulu and in such view of the matter, it is highly doubtful whether the

first defendant would have entrusted the same to the plaintiff at the time of the alleged agreement between the parties.

23. The defence put forth by the defendants is that Ex.A1 sale agreement has not been executed by the first defendant and the same had been fabricated by the plaintiff to enrich himself. Despite the above plea, the plaintiff has not chosen to examine the attestors to the document to sustain his case. Further, the plaintiff's witness viz., PW2 is only a drafter of the agreement and not the attesting witness and his evidence has also been found to be not reliable and satisfactory. Despite the above position, to sustain the case of the plaintiff, particularly, in the light of the resistance put forth to the same by the defendants, the plaintiff had not endeavoured to compare the signature and LTI of the first defendant said to be available in Ex.A1 through an expert. The plaintiff, for the reasons best known to him, had not chosen to submit Ex.A1 for the expert's scrutiny and this aspect of the matter also would expose the weakness of the plaintiff's case. It is seen that inasmuch as the first defendant had not subscribed his signature and LTI in the sale agreement Ex.A1 and accordingly, no effort has been taken by the plaintiff to submit the document for expert's scrutiny and in such view of the matter, it is seen that an adverse inference has to be drawn only against the plaintiff with reference to the same.

24. In the light of the above discussions, it is found that the first appellate Court has misdirected itself by holding that the plaintiff has discharged his onus by examining the drafter of the agreement. When admittedly he had not signed the document as an attesting witness and also when his evidence found to be highly doubtful and unreliable, it is further found that the first appellate Court has erred in upholding the plaintiff's case, despite the failure of the plaintiff to examine the attestors to the document or sending the document for expert's opinion with reference to the signatures and LTI of the first defendant alleged to be found in the said document. At least, the alleged signatures of D3 & D4 said to be available in the document should have been subjected to expert's scrutiny in the manner known to law. Even the said step has not been taken by the plaintiff for the reasons best known to him. On the other hand, it is found that the first appellate Court has erred in placing the burden of proof on the part of the defendants as if they had failed to establish that Ex.A1 is not a true and valid document, despite the fact that they had denied the execution of the sale agreement tooth and nail, styling it as fabricated document created by the plaintiff. In such view of the matter, the substantial questions of law formulated for consideration in this second appeal are answered against the plaintiff and in favour of the defendants.

In conclusion, the Judgment and decree dated 22.02.2001 passed in A.S.No.86 of 2000 on the file of the Second Additional District Court, Salem, are set side and the judgment and decree dated 18.01.2000 passed in O.S.No.522/1990 on the file of the Additional Sub Court, Salem, are confirmed. Resultantly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Second Additional District Judge, Salem.
2. The Additional Sub Judge, Salem.

+1cc to Mr.P.JAGADEESAN, Advocate, S.R.No. 4341

+1cc to Mr.S.KALYANARAMAN, Advocate, S.R.No. 3722

Order made in
S.A.No.1635 of 2001

KGK(CO)
TR(15/03/2018)

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