

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.156 of 2014
and MP No.1 of 2014

Nagarajan

..Appellant

Vs.

1. Ramasamy

2. Rajathi Ammal

3. Palanivel

4. Kamatchi

..Respondents

(Respondents 2 to 4 remained Ex parte
before the Courts below and hence notice
to them may be dispensed with)

PRAYER: Second Appeal filed under Section 100 of C.P.C., against
the judgment and decree in AS No.17 of 2012 dated 28.10.2013 on
the file of the Principal District Judge, Cuddalore confirming
the Judgment and Decree in O.S.No.79 of 2007 dated 25.1.2012 on
the file of the Subordinate Judge, Panruti.

For Appellant : Mr. N.Suresh

For Respondents: Mr. R.Gururaj for R1

RR 2 to 4 Dispense with

J U D G M E N T

The Second defendant in OS No.79 of 2007 has come up with
this Second Appeal, challenging the decree for specific
performance granted by the Courts below.

2. According to the plaintiff, the defendants entered into
an agreement of sale on 19.05.2005, agreeing to sell the
properties subject matter of the agreement for a total
consideration of Rs.1,40,000/-. On the date of the agreement,
the defendants received a sum of Rs.1,36,000/- as advance
leaving a balance of Rs.4,000/-. A period of one year was fixed
for performance of the agreement. Since the defendants did not

come forward to receive the balance of sale consideration and execute the sale deed despite demands, the plaintiff had issued a notice on 17.04.2006, calling upon the defendants to receive the balance of sale consideration and execute the sale deed. The said notice was replied to on 30.12.2006, by the defendants, denying the suit agreement and claiming that is a rank forgery. It is also stated that the defendants had borrowed monies from the plaintiff and the plaintiff had obtained the signatures of the defendants in non-judicial stamp papers and two blank papers. In view of the said reply, the plaintiff came forward with the suit seeking specific performance on 11.09.2007.

3. The defendants filed a written statement contending that the suit agreement is not true. It is also claimed that the plaintiff is a money lender and the defendants had borrowed monies from the plaintiff on various occasions and in order to secure those debts, the plaintiff obtained the agreement of sale dated 19.05.2005 as a collateral security. It was contended that the agreement of sale is nominal and is not intended to be acted upon. It is also claimed that borrowings were made for the fourth defendant's marriage which took place on 06.07.2003. It was also pointed out by the defendants that there were two other agreements dated 23.04.2005. One such agreement was entered into between the defendants and Muruganantham agreeing to sell the second item of suit properties and another agreement with Anjalaiammal, wife of the plaintiff by the defendants agreeing to sell the first item of suit properties. Since those agreements were also agreements that were executed as security for borrowing on the repayment of the monies due, those two agreements were returned to the defendants.

4. It is further claimed by the defendants that the suit agreement has been materially altered and the suit has been filed. The defendants also claimed that the plaintiff was never ready and willing to perform his part of the contract, even assuming that the agreement is true. On the above contentions, the second defendant sought for dismissal of the suit.

5. At trial, the plaintiff examined himself as P.W.1 and one Ganesan, a typist, was examined as P.W.2 and Exhibits A1 to A3 were marked on the side of the plaintiff. On the side of the defendants, the second defendant Nagarajan was examined as D.W.1 and two other witnesses viz. Dhandapani and Muruganatham, were examined as D.W.2 and D.W.3 and Exhibits B1 to B5 were marked.

6. The Trial Court on a consideration of evidence on record concluded that the defendants have not established the plea of material alteration. The Trial Court arrived at the said conclusion based on the fact that the defendants have admitted their signatures in the suit agreement and in the reply notice they have claimed that the suit agreement is a forged instrument. A suggestion put to P.W.2/the typist on the year of the agreement was also taken note of by the learned Trial Judge to come to the conclusion that the case of material alteration pleaded by the defendants has not been established. The Trial Court further found that since the defendants have admitted their signatures in the suit agreement the suit agreement is true and valid. It also found that the plaintiff was always ready and willing to perform his part of the contract. The plea of the defendants that the suit agreement was executed as collateral security for borrowing was also rejected. On the above conclusion, the learned Trial Judge granted a decree for specific performance. Aggrieved the defendants preferred an Appeal in AS No.17 of 2012.

7. The Lower Appellate Court upon a reconsideration of evidence on record concurred with the findings of the trial Court. Though the Lower Appellate Court observed that the Trial Court had not undertaken the exercise of examining the document on the plea of material alteration it also failed to examine the document. The Lower Appellate Court, however, decreed the suit upon its concurrence with the findings of the Trial court. Aggrieved the second defendant has come up with this Second Appeal.

8. The following substantial questions of law were framed by this Court, while admitting the above Second Appeal on 22.06.2016:

1. Whether the Courts below are right in decreeing the suit for specific performance when on the face of it Ex.A1 is materially altered?

2. Whether the Courts below are right in decreeing the suit for specific performance without even framing an issue regarding the readiness and willingness and without giving any finding regarding the same?

3. Whether the Courts below are right in decreeing the suit for specific performance when the plaintiff has not explained the delay of nearly 2 ½ years in filing the suit for specific performance from the date of the agreement in view of the law laid down by Hon'ble Supreme Court in Saradamani Kandappan Vs.

S.Rajalakshmi & Others reported in 2011 (4) CTC 640?

4. Whether the Courts below are right in decreeing the suit for specific performance when the plaintiff has not approached the Court with clean hands and the remedy of specific performance is an equitable remedy?

9. I have heard Mr.N.Suresh, learned counsel appearing for the appellant and Mr.R.Gururaj, learned counsel appearing for the first respondent.

10. Mr.N.Suresh, learned counsel appearing for the appellant would vehemently contend that the suit agreement has been materially altered with reference to the date of the agreement and date fixed for performance. He would also draw my attention to the fact that the Stamp Papers on which Ex.A1 has written has been purchased on 19.05.2003. According to Mr.N.Suresh, the agreement was actually entered into on 19.05.2003 only, and the plaintiff has materially altered the year of the agreement as 19.05.2005 and the date for performance as one year i.e., 18.05.2006 from 18.05.2004. Claiming that such material alteration in agreement of sale would disentitle the plaintiff from seeking the equitable relief of specific performance. Mr.N.Suresh, learned counsel would submit that the Courts below had not even looked into the document before granting a decree for specific performance.

11. Contending contra, Mr.R.Gururaj, learned counsel appearing for the first respondent would submit that the case of material alteration is an afterthought. He would draw my attention to the reply notice marked as Ex.A3 dated 30.12.2006, wherein, the defendants had not raised the plea of material alteration. He would also point out that the plea regarding material alteration in the written statement is very vague and not specific. It is his further contention that a suggestion was made to P.W.2/the typist to the effect that the date was altered from 2005 to 2003 and not from 2003 to 2005. Therefore, according to him, the defendants who have not specifically raised the plea of material alteration, at the earliest point of time, when they issued a reply notice should not be allowed to defend the suit on the ground of material alteration.

12. I have considered the rival submissions.

13. The defendants have taken a specific plea in the written statement that the suit agreement has been materially altered. At trial also P.W.1 has been cross-examined on the material alteration. P.W.1 had specifically admitted that in the third page of Ex.A1, in the date, viz. 18.05.2006, the space between the second zero and number '6' is large. But he would say that the typist has typed like that. No doubt as pointed out by Mr.R.Gururaj, learned counsel appearing for the first respondent that a suggestion has been made to P.W.2, the typist to the effect that in Ex.A1 the year 2005 was typed first and then it has been corrected as 2003.

14. I have considered the submissions of the counsel on the question of material alteration. I had also examined the original agreement Ex.A1. The stamp papers have been purchased on 19.05.2003. In the very first line of Ex.A1 while mentioning the year as 2005, it is very clearly seen that the number '5' has been retyped by erasing the number that was existing. If the document is looked at from the reverse, the numbers '2' and the '0's following it are very light and the number 5 is darker in shade. This itself would demonstrate that the year has been changed by scraping the paper, so that the paper is thin at that particular spot, hence the reflection of numbers '5' on the rear side of the paper is darker than the other letters found in the same line. Similar is the case in the third page of the agreement also.

15. In the third page of the agreement where it fixes the period and it reads as follows:

"... இந்த உடன்படிக்கையின் கெடு நாள்து 19.05.2005 தேதி முதல் 18.5.2006 தேதி முடிய ஒரு வருஷ கெடுவாகும்..." "

Both the dates viz. 19.05.2005 and 18.05.2006 are found in numerals. Here also it is seen that in the numerals 2005 the numeral '5' has been retyped by scraping the existing number and the numeral '6' has also been retyped by scraping the existing numeral. There is unusual gap between the numerals '200' and numeral '6' found in '2006' typed in page 3 of Ex.A1. These two numbers are also seen in darker shade in the rear side of the sheet which undoubtedly establishes that whatever existing number has been scraped off and the new number has been typed. Therefore, it is clear case where the date of the agreement and date for performance has been altered.

16. The following facts strengthen the contention of the defendants that there has been an alteration:

- The stamp paper has been purchased on 19.05.2003;
- P.W.1 in his evidence has admitted that the agreement was entered into for the purpose of marriage of the fourth defendant.
- He would also admit that the fourth defendant got married on 26.07.2003.

17. This probalises the case of the defendants that the agreement was actually procured or entered into in 2003. The plaintiff as P.W.1 has also admitted the agreement dated 23.04.2005 between the defendants and his wife Anjalaiammal. These factors were completely overlooked by the Courts below and the Courts below without even examining the document that has been placed before them, had come to the conclusion that the document is true and valid, only on the basis that the defendants have admitted their signature in the document. Yet another ground that has been put against the defendants is that they are not raised the question of material alteration in the reply notice.

18. As rightly pointed out by Mr.N.Suresh, the defendants had no chance of having looked at Ex.A1, when they sent a reply notice. The plea of material alteration has been effectively taken in the written statement and a bare look at the agreement Ex.A1 shows that the dates have been materially altered. Mr.R.Guru Raj, would however contend that even if there is a material alteration, if it does not prejudice the cause of the defendants then the same cannot be used to non-suit the plaintiff. The suit is one for specific performance, which is a discretionary relief. If the plaintiff has been shown to have come with the false case, with reference to a vital factor the plaintiff's suit will have to fail dehors the conduct of the defendants.

19. The date of the agreement is definitely a vital factor in the suit for specific performance. If the date of the agreement is taken as 19.05.2003, the plaintiff would be non suited on the ground that the plaintiff was not ready and willing to perform his part of the contract, since he had issued a notice itself on 17.04.2006, after the one year period fixed under the agreement. Therefore, the contentions of the learned counsel for the respondents to the effect that despite there being a material alteration in the agreement of sale, the same

cannot be a ground for non suiting the plaintiff cannot be countenanced.

20. I had an occasion to consider the effect of material alteration in G.Vasantha v. Sri Maharaja Kailesh Benefit Fund Ltd., reported in 2017 (3) MLJ 607. Though the said suit out of which the appeal arose was a promissory notice and it was found that the dates were materially altered the principles laid down therein would definitely apply to the case on hand. The fact that the date of the agreement has been altered would definitely amount to the plaintiff coming with the false case seeking the discretionary relief of specific performance. I therefore find that the plaintiff who has come with unclean hands by altering the date of agreement cannot be favoured with the decree for specific performance. Hence, the first question of law is answered in favour of the appellant and against the respondents.

In view of the answered to the first question of law, I do not think the other questions of law need to be gone into. I find that the plaintiff is not entitled to the relief of specific performance.

21. The Courts below have not even looked at the agreement, while deciding the case of material alteration claimed by the defendants. The Lower Appellate Court would concede that the Trial Court had not look into the agreement, unfortunately the Lower Appellate Court had also not looked into the agreement, before coming to the conclusion the agreement has not been materially altered. This failure, in my considered opinion, would render the findings of the Courts below perverse and liable to be set aside.

22. In view of the same, the Second Appeal is allowed, the judgments and decrees of the Courts below are set aside. The suit in OS No.79 of 2007 will stand dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III MDU)

//True copy//

Sub Assistant Registrar

jv

To

1. The Principal District Judge,
Cuddalore.

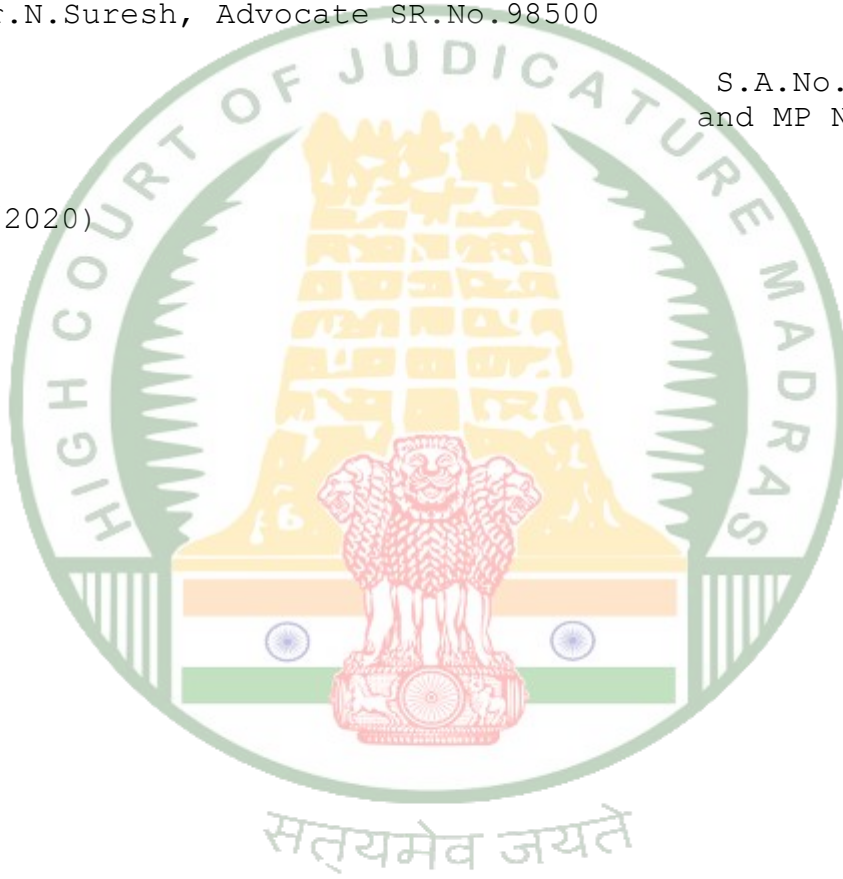
2. The Subordinate Judge,
Panruti.

Copy To : The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.N.Suresh, Advocate SR.No.98500

S.A.No.156 of 2014
and MP No.1 of 2014

GP (CO)
GMY (20/08/2020)



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