



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE **R. HEMALATHA**  
S.A. (MD) No.729 of 2004

1.M.Abdul Wahab  
2.M.Kaleel Ahammed  
3.M.Mohammed Kamaludeen  
4.M.Habeeb Rahuman  
5.Rokkaiya Beebi : Appellants/Respondents/Defendants

Vs.

V.Jeyaram : Respondent / Appellant/Plaintiff

PRAYER :Second Appeal filed under Section 100 of the Code of Civil Procedure, against decree and judgment of the learned Principal District Judge, Dindigul in A.S.No.250 of 1999 dated 28.11.2003 reversing the common decree and judgment of the learned Subordinate Judge, Dindigul in O.S.No.544 of 1993, dated 22.10.1997.

For Appellants : Mr.K.Srinivasan  
Senior Counsel  
for Mr.M.P.Senthil

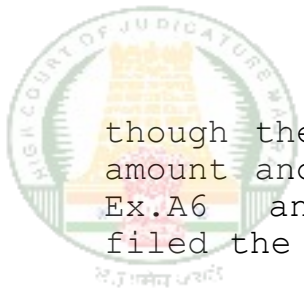
For Respondent : Mr.V.Radha Krishnan  
Senior Counsel  
for Mr.S.Kadarkarai

### **J U D G M E N T**

The first appellant in A.S.No.250 of 1999 is the defendant in O.S.No.544 of 1993 on the file of the learned Subordinate Judge, Dindigul. The respondent/plaintiff filed the above suit for specific performance of the Contract.

2.The case of the respondent/plaintiff in nutshell is as follows:-

2.1.The respondent/plaintiff is a tenant in the suit property since 1977 under the appellant/defendant and also entered into a sale agreement, dated 20.12.1989 (Ex.A5) with the first appellant/defendant (since deceased) for purchase the suit property for a consideration of Rs.1,10,000/- out of which a sum of Rs.31,000/- was paid on different dates and a sum of Rs.75,000/- was paid on the date of the sale agreement (Ex.A5). According to him, the defendant (first appellant) did not execute the sale deed after receiving the balance sale consideration of Rs.4,000/-, even



though the plaintiff was always ready and willing to pay the said amount and get the sale deed executed as evidenced by the notices Ex.A6 and Ex.A8 issued by him to the defendant. He therefore filed the above suit for specific performance of the Contract.

3.The suit was resisted by the first appellant/defendant (since deceased) on the following grounds:-

(i)The sale agreement, dated 20.12.1989 (Ex.A5) is a rank forgery and the first appellant/defendant did not sign the said agreement

(ii)The actual value of the suit property was Rs.4,00,000/- even on the date of the sale agreement i.e. 20.12.1989 and there was no necessity for the first appellant/first defendant to sell his property for such a low value of Rs.1,10,000/- in favour of the respondent/plaintiff.

(iii)Northern portion of the suit property was not leased out in favour of the respondent/plaintiff and the respondent/plaintiff forcibly broke open the lock of the northern veranda portion of the property on 13.10.1992 and occupied the same for which, a criminal complaint was preferred by the first appellant before the Dindigul North Police Station on 15.10.1992.

(iv)There is no privity of contract between the respondent/plaintiff and the first appellant/defendant and the suit filed by the respondent/plaintiff is liable to be dismissed.

4.During the pendency of the first appeal the sole defendant died and therefore his legal heirs were brought on record as respondents 2 to 6 in the first appellate court.

5.The respondent/plaintiff also filed a suit for bare injunction against the first appellant/defendant in O.S.No.30 of 1997 before the same Court. Therefore, O.S.No.30 of 1997 and O.S.No.544 of 1993 were tried jointly and the learned Subordinate Judge, Dindigul, vide his decree and judgment, dated 22.10.1997 dismissed the suit filed by the respondent/plaintiff for specific performance of contract in O.S.No.544 of 1993 and decreed the suit in O.S.No.30 of 1997, which was filed by the respondent/plaintiff for bare injunction.

6.Aggrieved over the same, the respondent/plaintiff preferred an appeal in A.S.No.250 of 1999 before the Principal District Judge, Dindigul against the decree and judgment passed in O.S.No.544 of 1993 by the learned Subordinate Judge, Dindigul.

7.The learned Principal District Judge, Dindigul, after analysing the oral and documentary evidence adduced on both sides allowed the appeal filed by the respondent/plaintiff vide decree and judgment, dated 28.11.2003.

8.Now, the present second appeal is filed under Section 100 of the Code of Civil Procedure by the appellants herein/respondent 2



to 6 in A.S.No.250 of 1999 and the following substantial questions of law were framed by this Court:-

(i) when admittedly none of the ingredients under the Specific Relief Act are complied with by the respondent seeking to enforce Ex.A5 for specific performance, whether the lower court is right in holding that the respondent is entitled for specific performance?

(ii) When the defendant has specifically alleged that the signature contained under Ex.A5 is not his signature and when the defendant has pointed out that his signature is not found in full in the Revenue stamp affixed in Ex.A5, whether the lower court is right in admitting Ex.A5 as evidence, without verifying its authenticity and genuineness by obtaining opinion from the forensic department?

9. For the sake of convenience the parties are referred to as per their ranking in the original suit and at appropriate places their ranks in the second appeal would also be indicated, if necessary.

10. It is admitted by both the parties to the suit that the suit property belonged to the defendant and the plaintiff is a tenant under him. The plaintiff sought for a specific performance of the contract based on a sale receipt, dated 20.12.1989 (Ex.A5). It is pertinent to point out that only the defendant had signed the said document. However, it is settled law that in order to enforce a contract the signature of the party in the contract against whom the contract is sought to be enforced is sufficient. Since the defendant had raised a contention that Ex.A5 is the rank forgery, the validity and genuineness of Ex.A5 had been gone into by both the courts below. When the trial court held that Ex.A5 is not true and valid document the first appellate court held that Ex.A5 is a genuine document executed by the defendant and that the plaintiff is entitled for specific performance of contract.

11. Ex.A1 to Ex.A4 are the receipts showing payments of Rs.31,000/- made by the plaintiff to the defendant. The defendant's contention is that Ex.A1 to Ex.A4 are paid towards rental arrears. It is pertinent to point out that while the defendant admits his signature on Ex.A1 to Ex.A4 did not admit his signature on Ex.A5, the sale agreement.

12. Mr.K.Srinivasan, learned Senior Counsel appearing for the appellants drew the attention of this Court to Ex.A5 wherein the signature of the defendant is found within the revenue stamp affixed on Ex.A5 and contended that Ex.A5 was created by the plaintiff fraudulently. The signature of the defendant found on Ex.A5 when compared with his admitted signatures on Ex.A1 to Ex.A4 and in the written statement and vakalat, a doubt is raised in the



mind of this court whether the defendant had actually signed Ex.A5.

13.Mr.V.Radha Krishnan, learned Senior Counsel appearing for the respondent contended that the signature found on Ex.A5, is the signature of the defendant and though there are natural variations in the signature, the plaintiff has proved his case by examining the attestors (P.W.2 and P.W.3) of Ex.A5, who have clearly deposed about the execution of Ex.A5 by the defendant. He also relied on the decision in S.Nagarathinam Vs. P.Mariappan reported in 1999 MLJ (Supp.) 248 and contended that it is not essential that the court should get the opinion of an expert in each and every case and that the court is empowered to compare the signatures with the admitted signatures under Section 73 of the Evidence Act. Reliance was also placed on the decision in Dhanakodi Padayachi Vs. Muthukumaraswami reported in S.A.No.1417 of 1983, wherein a Single Judge of this Court had held that, the role of the court while exercising the powers under Section 73 of the Evidence Act and the method of approach, to be adopted, would vary depending upon the relative facts and circumstances of the case. The learned counsel appearing for the respondent/plaintiff would therefore contend that the findings recorded by the first appellate court by comparing the signature of the first appellant/ defendant with his admitted signature cannot be said to be wholly erroneous in law.

14.At this stage, it is relevant to point out that the defendant issued a notice, dated 23.04.1992, through registered post before filing R.C.O.P.No.41 of 1992 (Ex.A12) before the Rent Controller, Tiruchirappalli, seeking for eviction of the plaintiff from the suit premises. The address of the present defendant, who is the petitioner in the R.C.O.P is shown as Door No.1, Asok Nagar, Karumandapam, Viswasa Nagar Extension, Tiruchirappalli. The notices dated 05.04.1990 (Ex.A6) 21.01.1991 (Ex.A8) issued by the plaintiff requesting the defendant to execute the sale deed as per the sale agreement dated 23.12.1989 (Ex.A5) are sent to the address "R.M.Colony, Dindigul". The plaintiff did not send these notices by registered post with acknowledgment due. Only a certificate of posting along with Ex.A6 and Ex.A8 are filed as Ex.A7 and Ex.A9. This assumes importance since the defendant contends that he did not receive any reply notice from the plaintiff.

15.A perusal of Ex.A5 shows that the balance sale consideration of just Rs.4,000/- out of Rs.1,10,000/- can be paid by the plaintiff on any date and on the said date the defendant would execute the sale deed. The first notice, even assuming that it was actually addressed to the defendant is sent only on 05.04.1990 i.e. four months after the execution of sale agreement (Ex.A5). It is not known as to why the plaintiff took such a long time to pay the balance sale consideration of Rs.4,000/- to the defendants. It is also not known as to why the plaintiff did not approach the defendant in person when according to him the defendant never sent reply to his notices dated 05.04.1990 (Ex.A6)

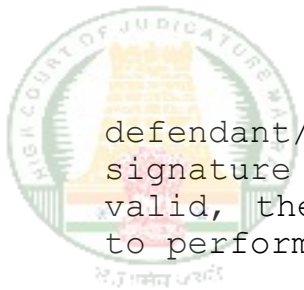


and 21.01.1991 (Ex.A8). The address indicated in Ex.A6 and Ex.A8 is not very far off from the suit premises, in which the plaintiff is running his business on day to day basis. Curiously enough the plaintiff as P.W.1 had deposed that he did not know whether the defendant was residing in the said address at the time of executing Ex.A5. The address of the defendant is not also mentioned in Ex.A5. Furthermore, the plaintiff also admitted during the course of cross-examination that there are several houses in R.M.Colony, Dindigul and that he did not indicate the Door Number, where the defendant is residing in R.M.Colony, Dindigul in the notices in Ex.A6 and Ex.A8. Mere filing of Certificates of posting (Ex.A7 and Ex.A9) will not absolve the plaintiff from proving the fact that the requests in writing made by him to the defendant to perform his (defendant's) part of contract were sent to the proper address of the defendant. Therefore, the readiness and willingness on the part of the plaintiff has not been proved by the plaintiff even assuming that Ex.A5 is true and valid. It is also highly unbelievable that the plaintiff was waiting for more than a year for getting the sale deed executed in his favour, even though according to him he paid a sum of Rs.1,06,000/- out of the total sale consideration of Rs.1,10,000/-. If really Ex.A5 is true, the plaintiff would not have kept quiet for such a long time.

16.Furthermore, the defendant had also lodged a complaint with the Inspector of Police, Dindigul Town Police Station, for the alleged encroachment made by the plaintiff in a portion of the suit property on 13.10.1992 (Ex.B4). When it is so, the first appellate court had observed that "the plaintiff's friendly nature and attitude is evident from his notice dated 22.04.1992 (Ex.A10)". It has further observed that the plaintiff wanted to have "cordial relationship" with the defendant even after filing R.C.O.P. by the defendant.

17.A comparison of the signature of the defendant found on Ex.A1 to Ex.A5 with that of his admitted signatures on written statement and vakalat would clearly go to show that the signature found on Ex.A5 is not the signature of the defendant. Merely based on the evidence of P.W.2 and P.W.3 it cannot be held that Ex.A5 is a genuine document especially when P.W.2 and P.W.3 are admittedly closely related to the plaintiff. Though the close relationship of P.W.1 and P.W2 with the plaintiff alone may not be the sole ground to discard their evidence, the facts and circumstances of the present case are such that their evidence cannot be considered to be a gospel truth to hold that Ex.A5 is true and valid.

18.The learned counsel appearing for the first respondent/plaintiff contended that since the first appellate court had himself compared the signatures of the defendant and found that the signature on Ex.A5 is that of the defendant, this Court cannot interfere with the said finding under Section 100 of the Code of Civil Procedure. It has already been observed that the signature found on Ex.A5 when compared with the admitted signatures of the



defendant/first appellant clearly shows that it is not the signature of the defendant. Even assuming that Ex.A5 is true and valid, the plaintiff has not proved his readiness and willingness to perform his part of the contract.

19.All the observations made by the first appellate court are totally perverse warranting interference by this Court.

20.In the result,

(i)the second appeal is allowed. No costs.

(ii)the decree and judgment dated 28.11.2003 passed by the learned Principal District Judge, Dindigul in A.S.No.250 of 1999 is set aside.

(iii)the decree and judgment dated 22.10.1997 in O.S.No.544 of 1993 passed by the learned Subordinate Judge, Dindigul, is restored.

(iv)O.S.No.30 of 1997, passed by the learned Subordinate Judge, Dindigul is dismissed with costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

Ls

To

1.The Principal District Judge, Dindigul.

2.The Subordinate Judge, Dindigul.

3.The Section Officer, VR Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 COPIES)

+1CC TO MR.M.P.SENTHIL, Advocate Sr. No.58281

+1CC TO MR.S.KADARKARAI, Advocate Sr. No. 58406

S.A. (MD) No.729 of 2004  
01.04.2019

KM(CO)

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