



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2021

PRONOUNCED ON : 19.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.94 of 2008

&

C.M.P.No.24471 of 2019

N.Sankaran ... Appellant/Defendant

Vs.

R.Shanmuga Raj ...Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 29.09.2006 passed in A.S.No.112 of 2005 on the file of the Principal District Court, Coimbatore, confirming the judgment and decree dated 20.11.2004 passed in O.S.No.108 of 2001 on the file of the II Additional Subordinate Court, Coimbatore.

For Appellant : Mr.Haja Naziruddeen,
Senior Counsel,
for M/s.R.Tholgappian

For Respondent: Mr.S.Parthasarathy
Senior Counsel,
for M/s.J.Ramakrishnan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 29.09.2006 passed in A.S.No.112 of 2005 on the file of the Principal District Court, Coimbatore, confirming the judgment and decree dated 20.11.2004 passed in O.S.No.108 of 2001 on the file of the II Additional Subordinate Court, Coimbatore.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The defendant in O.S.No.108 of 2001 is the appellant in this second appeal.

4.Suit for specific performance.



defendant is the owner of the suit property and on 22.06.1998, the defendant agreed to sell the suit property to the plaintiff and he entered into an agreement of sale on the same date with the plaintiff and the total sale consideration was fixed at Rs.5,00,000/- and the sale transaction had been agreed to be completed within 10 months therefrom and the defendant received a sum of Rs.4,00,000/- as advance under the agreement on 22.06.1998. Subsequently, the defendant, on 03.08.1998, received a further sum of Rs.1,00,000/- and in respect of the said payment, due endorsement has been made in the sale agreement and thus, the entire sale consideration had been paid by the plaintiff towards the purchase of the suit property as per the terms of the sale agreement. Though a period of 10 months had been fixed for the completion of the sale transaction, the defendant has been repeatedly seeking time to perform his part of the contract representing that he had to pay and clear certain liabilities in respect of the suit property and also wanted time to vacate the tenant M/s.Sri Krishna Sweets from the suit property and the endorsements, evidencing the extension of time as sought for by the defendant, were made in the sale agreement by way of the endorsements dated 31.05.1999 and 30.03.2000. The plaintiff has been always ready and willing to take the sale deed as per the terms of the sale agreement but the defendant had been postponing the same for one reason or the other and the defendant also agreed to execute the sale deed along with the tenant on 30.01.2001 and based on the said assurance of the defendant, the plaintiff proceeded to prepare the sale deed and also waited for the defendant at the Registrar's Office on 30.01.2001, but, contrary to the assurance, the defendant failed to turn up. The plaintiff issued a legal notice by way of a telegram dated 30.01.2001 setting out the facts and giving one more opportunity to the defendant to appear before the Registrar on 31.01.2001 at 4.00 p.m. and execute the sale deed in favour of the plaintiff and the plaintiff was waiting at the Registrar's office on 31.01.2001, however, the defendant failed to appear and execute the sale deed in favour of the plaintiff qua the suit property. The defendant is wilfully avoiding and refusing to execute the sale deed and the defendant issued a reply telegram on 31.01.2001 contending that the agreement of sale was executed only by way of security for an alleged loan. The abovesaid contention of the defendant is false and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate relief.

6.The defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and denied the case of the plaintiff that he had agreed to sell the suit property to the plaintiff for Rs.5,00,000/- and the parties had entered into the agreement of sale with reference to the same on 22.06.1998 and that the plaintiff had paid a sum of Rs.4,00,000/- as advance on the date of the agreement and further, denied that the plaintiff



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paid a further sum of Rs.1,00,000/- on 03.08.1998 and the endorsement pointing to the same has been made in the sale agreement and the defendant had been postponing the execution of the sale deed by representing that he had to pay and clear certain liabilities and also sought time for vacating the tenant M/s.Sri Krishna Sweets and also denied that endorsements seeking for extension of time had been made in the sale agreement by way of the endorsements dated 31.05.1999 and 30.03.2000. The plaintiff is a financier and on 22.06.1998, the plaintiff advanced a loan of Rs.4,00,000/- to the defendant for interest. As a matter of security, the plaintiff obtained signature of the defendant in blank promissory note, stamp papers and blank green sheets. The defendant had not executed any sale agreement in favour of the plaintiff on 22.06.1998 as alleged in the plaint. Along with the blank promissory notes and other papers mentioned supra, the defendant also produced the original sale deed and parental documents to the plaintiff and the defendant was not having intention to sell the property in favour of the plaintiff and he has not received any amount from the plaintiff towards the sale consideration. The case of the plaintiff that he has been always ready and willing to perform his part of the contract is false. The suit property is a commercial property in the possession of the tenant M/s.Sri Krishna Sweets and the tenant has paid Rs.20,00,000/- to the defendant as advance of tenancy and the abovesaid facts would go to expose the commercial potential of the suit property. Therefore, the suit property being located in the prime locality, will easily get Rs.1 Crore, in case if it is referred to sale. Hence, the case of the plaintiff that the defendant had agreed to part with the suit property for a sum of Rs.5,00,000/- is totally false and unacceptable. The plaintiff is not bonafide and not entitled to the relief sought for.

7.On receipt of the telegram dated 30.01.2001, the defendant gave a reply on 31.01.2001 denying the claim of the plaintiff on the basis of the alleged sale agreement and it is false to state that the plaintiff had been waiting in the Registrar's Office as claimed in the plaint. The defendant is not liable to execute any sale deed to the plaintiff based on the sale agreement put forth in the plaint. The plaintiff has no cause of action and the suit is liable to be dismissed.

8.In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A13 were marked. On the side of the defendant, DWs1 & 2 were examined and no documentary evidence has been marked.

9.On an appreciation of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the second appeal has been preferred by the defendant.



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following substantial questions of law were formulated for consideration:

"1. Whether the document Ex.A1 could be treated as an agreement of sale even in the absence of the signature of the plaintiff?

2. Would there be any presumption that the defendant had knowledge of contents of Ex.A1, just because he admitted the signature subscribed by him in Ex.A1?"

11.CMP.No.24471 of 2019:

Petition filed under Order 41 Rule 27(1) R/w. Section 151 C.P.C. Briefly stated, the case of the petitioner/appellant is that he had in the written statement specifically taken the plea that the tenant in the suit property had paid Rs.20,00,000/- as advance for the lease and further deposed that in a suit filed by the tenant in O.S.No.1174 of 2000, a decree had been passed on 26.04.2002 directing to refund the abovesaid amount of Rs.20,00,000/- and that as against the judgment, he had preferred the appeal in A.S.No.720 of 2002, which is pending on the file of the Hon'ble High Court and he had filed the copy of the judgment duly notarized during examination of DW1 but the same was not allowed to be marked and exhibited. Therefore, according to the petitioner/appellant, the abovesaid judgment rendered in O.S.No.1174 of 2000 dated 26.04.2002 being an indisputable document and as the same would throw valuable light upon the potential market value of the suit property even on the date of the sale agreement and as the Courts below had failed to consider whether the plaintiff is entitled to seek and obtain the discretionary relief of specific performance in terms of Section 20 of the Specific Relief Act, therefore, according to the petitioner/appellant, the abovesaid judgment is required to be marked as an additional evidence in the second appeal. Further, he would put forth that the respondent/plaintiff is a financier and the petitioner recently came to know that the respondent had been filing several cases under the Negotiable Instrument Act before the criminal Courts and accordingly, obtained the certified copy of the criminal complaints laid by the respondent and thus, those documents are necessary for adjudicating that the respondent is a financier and as the abovesaid complaints had come into existence subsequent to the disposal of the first appeal and as the petitioner had acquired information about the same, the same could not be filed before the Courts below and accordingly, sought for the reception of the abovesaid documents as additional evidence in the second appeal.

12. The respondent resisted the abovesaid petition laid by the petitioner contending that all the averments contained in the petition are totally false and put forth the case that the



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Courts below had, on a proper appreciation of the oral and documentary evidence adduced in the matter, decreed the suit in favour of the plaintiff and the petitioner has not placed any documentary evidence to prove his claim that the sale agreement in question has emanated based on the loan transaction and from the averments contained in the petition, it is evident that the petitioner is aware of the judgment dated 26.04.2002 passed in O.S.No.1174 of 2000 even during the pendency of the trial and therefore, the petitioner should have endeavoured to produce the said document before the trial Court and not stated the reasons which prevented him from filing the same before the trial Court and also not endeavoured to file the same before the first appellate Court and therefore, the petitioner cannot be permitted to produce the said document as an additional evidence at a belated stage in the second appeal proceedings. The case of the petitioner that the respondent is a financier is totally false and a case under the Negotiable Instruments Act can be filed by any one when a cheque has been bounced and therefore, the complaints in C.C.No.117/2012 and 257/2011 would not prove that the respondent had been lending money and the claim of the petitioner that he came to know about the abovesaid complaints laid by the respondent only recently is totally false. The documents already available on record are sufficient to conclude the matter and therefore, the additional documents would not, in any manner, be useful to decide the issues involved in the same and the petitioner has also not projected a valid cause to file the documents belatedly in the second appeal proceedings both on factual matrix as well as legally and accordingly, prayed for the dismissal of the petition.

13.The point that has to be determined in the abovesaid CMP is whether the petition is entitled for acceptance.

14.The suit has been laid by the plaintiff for the relief of specific performance. Briefly stated, according to the plaintiff, the defendant, being the owner of the suit property, had agreed to sell the same to the plaintiff for Rs.5,00,000/- and the plaintiff having agreed to the same, the parties had entered into a sale agreement on 22.06.1998 and the plaintiff had paid Rs.4,00,000/- as advance on the date of the sale agreement and the sale agreement has been marked as Ex.A1 and further according to the plaintiff, he had paid a sum of Rs.1,00,000/- to the defendant on 03.08.1998 and the endorsement pointing to the same made in the sale agreement has been marked as Ex.A2 and thus, according to the plaintiff, he has performed his part of the contract i.e. he has paid the entire sale consideration at the earliest and it is only the defendant, who had been seeking time to execute the sale deed on the footing that he had to clear certain liabilities and for vacating the tenant from the suit property and accordingly, sought for extension of time and the endorsements made by the defendant seeking for the extension of time dated 31.05.1999 and 30.03.2000 made in the sale agreement are



marked as Exs.A3 & A4 and further it is stated that based on the assurance given by the defendant that he would execute the sale deed in his favour, on 30.01.2001 the plaintiff waited at the Registrar's office but the defendant failed to turn up and the plaintiff sent a legal notice by way of a telegram dated 30.01.2001 setting out the abovesaid facts and calling upon the defendant to come forward and execute the sale deed on 31.01.2001 and the abovesaid telegram has been marked as Ex.A5 and to the same, the defendant sent a reply telegram contending that the agreement of sale was executed only by way of security for the alleged loan transaction and hence, according to the plaintiff, inasmuch as the defendant had failed to come forward and execute the sale deed in terms of the sale agreement Ex.A1, he has been necessitated to institute the suit against the defendant for appropriate relief.

15.The defendant would resist the plaintiff's case contending that he had not executed any sale agreement in favour of the plaintiff on 22.06.1998 qua the suit property agreeing to convey the suit property to the plaintiff for Rs.5,00,000/- and not received Rs.4,00,000/- on the date of the sale agreement and also further not received Rs.1,00,000/- on 03.08.1998 and made the endorsement Ex.A2 as put forth in the plaint and also not sought for the extension of time as claimed in the plaint by way of the endorsements marked as Exs.A3 & A4 and according to the defendant, he had received a sum of Rs.4,00,000/- as loan from the plaintiff as a financier and at that time of financing the abovesaid loan, as a security, the plaintiff had obtained the defendant's signature in the blank promissory note, green papers and blank green sheets and therefore, it is put forth by the defendant that the sale agreement Ex.A1 had not been executed by the defendant in favour of the plaintiff with the intention of selling the suit property for Rs.5,00,000/- and further put forth the case that the suit property is lying in a prime area and the tenant occupying the suit property had paid Rs.20,00,000/- as advance on tenancy and therefore, contending that the suit property would easily get Rs.1 crore if offered for sale and therefore, the case of the plaintiff that the defendant had agreed to sell the suit property for Rs.5,00,000/- is totally false and unacceptable and put forth that to the telegram sent by the plaintiff, he had issued a reply telegram and therefore, contended that the plaintiff is not entitled to seek and obtain the equitable relief of specific performance.

16.The contention has been raised by the defendant's counsel in the second appeal that Ex.A1 cannot be treated as an agreement of sale in the absence of the signature of the plaintiff in the same. On a perusal of Ex.A1, it is found that the same contains only the signature of the defendant and not the signature of the plaintiff. On that basis, it is the argument of the defendant's counsel that inasmuch as the plaintiff had not subscribed his signature, the sale agreement



Ex.A1 cannot be relied upon for any purpose and on that score alone, the plaintiff's case is liable to be dismissed.

17. Per contra, according to the plaintiff's counsel, the sale agreement is not required to contain the signature of the purchaser viz., the plaintiff and it is sufficient to contain the signature of the seller viz., the defendant and accordingly, put forth that the abovesaid contention raised by the defendant's counsel is totally unfounded and liable to be rejected.

18. The contention raised by the defendant's counsel that Ex.A1 sale agreement cannot be treated as a valid sale agreement in the absence of the signature of the plaintiff, the purchaser, has to be repelled, in view of the decision of the Apex Court reported in (2009) 2 Supreme Court Cases 582 (Aloka Bose Vs. Parmatma Devi and others, wherein it has been clearly held that an agreement of sale signed only by the vendor is valid and enforceable by the purchaser and the position of law has been outlined by the Apex Court in the abovesaid decision as follows:

"A. Specific Relief Act, 1963 - Ss. 9, 10 and 20 - Specific performance of agreement to sell - Agreement signed/executed only by vendor, and not by purchaser - Validity and enforceability of - Use of format in agreement for execution by both parties - Intention of parties to the contrary - Evidence of existence of oral contract - Effect - Considering S.10, Contract Act and its proviso and the fact that attention of court not drawn to any law applicable in the State concerned at the relevant time which required an agreement of sale to be made in writing or in the presence of witnesses or to be registered, held, even an oral agreement to sell will be valid - If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid - In India, an agreement of sale signed by vendor alone and delivered to purchaser, and accepted by purchaser, has always been considered to be a valid contract - In the event of breach by vendor, it can be specifically enforced by purchaser - There is, however, no practice of purchaser alone signing an agreement of sale. - In the present case, facts indicated that the intention of the parties was that the agreement should be complete on



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signature of vendors only - Thus, in view of the aforesaid, the agreement of sale signed only by vendors, held, valid and enforceable by the purchaser - Contract and Specific Relief - Formation of contract - Formal requirements - Contract Act, 1872 - Ss.2(e) & (h) and 10 - Transfer of Property Act, 1882 - Ss.54 & 5.

Held:

An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it.

Considering Section 10 of the Contract Act, 1872 and the proviso thereto, no attention has been drawn to any law applicable in the State concerned at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of the purchaser alone signing an agreement of sale.

From the facts it is clear that the intention of the parties was that the



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agreement should be complete on signature by only the vendor. Even though the draftsman who prepared the agreement might have used a format intended for execution by both vendor and purchaser, the manner in which the parties had proceeded, clearly demonstrated that it was intended to be executed only by the vendor alone. Thus, in view of the aforesaid it is held that the agreement of sale signed only by the vendors was valid and enforceable by the purchaser."

19. In the light of the abovesaid position of law enunciated by the Apex Court that the sale agreement signed only by the vendor is valid and enforceable by the purchaser, resultantly, the first substantial question of law formulated in the second appeal is accordingly answered against the defendant and in favour of the plaintiff.

20. Considering the pleas and the materials placed on record in toto, as rightly held by the Courts below, the defendant having disputed the truth and validity of Ex.A1 sale agreement, the burden is upon the plaintiff to sustain his case that the defendant had really offered to sell the suit property to the plaintiff for Rs.5,00,000/- and the plaintiff agreeing to the same, resultantly, the parties had entered into the sale agreement on 22.06.1998 marked as Ex.A1 and the plaintiff paid a sum of Rs.4,00,000/- on the date of the sale agreement and further, the plaintiff had paid Rs.1,00,000/- on 03.08.1998 by way of the endorsement marked as Ex.A2 and that the defendant had sought for extension of time by way of the endorsements marked as Exs.A3 & A4. On a perusal of the sale agreement and the endorsements marked as Exs.A2 & A4, it is found that the defendant has not averred in the written statement disputing his signatures contained in Exs.A1 to A4. Furthermore, as rightly held by the Courts below, particularly, the first appellate Court, considering the sale agreement that had been executed between the parties, particularly, the space of the averments contained in the sale agreement as well as the space available in the endorsements marked as Exs.A2 to A4 and the subscription of the same by the defendant as well as the attesting witnesses in Exs.A1 to A4, in toto, the same inspire confidence and acceptability, particularly when the plaintiff, through his reliable and acceptable testimony, has sustained his case of the execution of the sale agreement by the defendant as well as the endorsements marked as Exs.A2 to A4 and also the factum of his payment of Rs.4,00,000/- on the date of the sale agreement and Rs.1,00,000/- by way of Ex.A2 endorsement. The plaintiff has also examined one of the attestors to the sale agreement Ex.A1 as well as the endorsements Exs.A2 to A4 viz., one K.Ramasamy as PW2. PW2 in his evidence has clearly deposed about the factum of the execution of the sale agreement by the defendant in favour of the plaintiff for Rs.5,00,000/- and the receipt



of Rs.4,00,000/- by the defendant on the date of the sale agreement and also the payment of Rs.1,00,000/- by the plaintiff to the defendant on 03.08.1998 and the endorsement made by the defendant with reference to the same marked as Ex.A2 and also the endorsements made by the defendant marked as Exs.A3 & A4 qua the extension of time for executing the sale deed based on the sale agreement. In fact, PW2 has clearly deposed that in Exs.A1 to A4, the first attestor is the defendant's wife and he is the second attestor and accordingly, the evidence of PW2 being totally reliable and convincing, inspires confidence and despite the cross examination, nothing has been culled out from PW2 to discredit his testimony on any aspect to undermine the plaintiff's case qua Exs.A1 to A4. In such view of the matter, the Courts below are found to be justified in placing reliance upon the evidence of PW2 in toto to sustain the plaintiff's case. In addition to that, as analysed and discussed by the Courts below and as mentioned supra, the plaintiff has also tendered evidence with reference to Exs.A1 to A4 in a clear and acceptable manner as PW1 and therefore, through the evidence of PWs1 & 2, it is found that the plaintiff has established his case as put forth in the plaint.

21.The defence has been put forth by the defendant is that he had not executed any sale agreement in favour of the plaintiff agreeing to convey the suit property for Rs.5,00,000/- and according to him, he had only received a sum of Rs.4,00,000/- as loan from the plaintiff on 22.06.1998 and as a security for the abovesaid loan, it is his case that the plaintiff had obtained his signature in the blank promissory note, stamp papers and blank green sheets and would also state that he had produced the original document pertaining to the suit property to the plaintiff along with the abovesaid papers and therefore, according to the defendant, he has not received any amount from the plaintiff towards the sale price of the suit property under the sale agreement projected by the plaintiff and hence, the plaintiff's case is liable to be dismissed.

22.When as above seen, the plaintiff has sustained his case through his evidence as well as the evidence of PW2 and when it is found that in Exs.A1 to A4, the defendant's wife being the first attestor and when the same is not controverted by the defendant during the course of his evidence as such and on the other hand, the defendant examined as DW1 during the course of cross examination, though would state that his wife's signature is not available in Exs.A1 to A4 and that he is ready to produce the true signature of his wife and also examine his wife and further admitted that in the written statement, he has not averred that his wife has not attested in Exs.A1 to A4, in view of the abovesaid position, as above noted when PW2 has clearly tendered evidence that the first attestor of Exs.A1 to A4 is only the defendant's wife, in such view of the matter, the defendant to sustain his defence version should have endeavoured to examine his wife, as his



witness to show that she had not attested to Exs.A1 to A4 as put forth by the plaintiff and as deposed by PWs1 & 2. However, though the defendant would admit that he is ready to examine his wife and also ready to produce his wife's true signatures, for the reasons best known to the defendant, he had not endeavoured to examine his wife as well as produce her signature in the Court. Therefore, it is found that no contra evidence has been adduced by the defendant to the evidence of PW2, despite the position that the witness is available with the defendant to throw more light on the issue whether Ex.A1 sale agreement had been truly executed by the defendant in favour of the plaintiff for the sale of the suit property for Rs.5,00,000/-. The failure of the defendant to examine his wife in support of his defence version, as rightly held by the Court below, would only undermine his case in toto, particularly, when the plaintiff has established his case through his evidence as well as the evidence of PW2 coupled with the documents projected by him on his side.

23. In the written statement, the defendant has not disputed his signatures in Exs.A1 to A4. Even during the cross examination, the defendant examined as DW1 would not dispute his signature found in Exs.A1 to A4. He would only state that when he had put the signatures, nothing has been written in the papers where the signatures had been obtained. Further, the defendant has admitted the receipt of Rs.4,00,000/- from the plaintiff on 22.06.1998. However, would state that the said amount had been received from the plaintiff only as a loan and not towards the sale price under the sale agreement Ex.A1. The defendant in the written statement has not, in specific, disputed that he had not received Rs.1,00,000/- on 03.08.1998 under Ex.A2 endorsement.

24. According to the defendant, the plaintiff is a financier and he had received a sum of Rs.4,00,000/- from the plaintiff for a loan on 22.06.1998. However, the abovesaid case of the defendant, as such, cannot be accepted in the absence of any material pointing to the same and as above pointed out, the defendant has not marked any document in support of his case. He has examined only himself as DW1 and another person as DW2. As rightly concluded by the Courts below, if really the plaintiff had advanced a loan of Rs.4,00,000/- to the defendant on 22.06.1998, nothing would have prevented the defendant from obtaining the promissory note or any other document as per law evidencing the loan transaction at the earliest. There is no material to hold that the plaintiff is a financier. The defendant would only state that he had received Rs.4,00,000/- from the plaintiff on 22.06.1998. If that be so, the loan transaction would have been witnessed by a third party either known to the plaintiff or the defendant. However, the defendant would not come forward with any case that the loan transaction pleaded by him had been witnessed by any one. The defendant would claim that at the time of extending the loan, the plaintiff had obtained



the signature in the blank promissory note, stamp papers and blank green sheets. If really, any sum had been received by the defendant as loan from the plaintiff as put forth by him, the defendant would have come forward with the case as to what are the terms of the loan transaction, particularly, the interest to be paid on the loan, the period within which the same should be discharged and what is the action to be taken in the event of the failure of the defendant to repay the borrowed sum coupled with the interest within the time agreed to between the parties etc. The defendant has not whispered anything about the particulars of the loan transaction and would only barely aver that a sum of Rs.4,00,000/- had been received as loan from the plaintiff on 22.06.1998. When pointing to the same, there is no material whatsoever had been projected on the part of the defendant, the Courts below are found to be justified in not accepting the abovesaid case projected by the defendant. It is also pleaded by the defendant that he had also entrusted the title deeds pertaining to the suit property along with the signatures obtained in the blank promissory note and other papers. If the abovesaid case projected by the defendant has any element of truth, the defendant, thereafter, would have endeavoured to discharge the alleged loan said to have been received by him from the plaintiff and accordingly, would have been in a position to place materials pointing to the repayment of the loan. The defendant has not come forward with any case as to whether he had paid any amount towards the alleged loan received from the plaintiff and on what dates he had made the payment and under what mode he had paid the amount etc. Therefore to say that the defendant had received a loan of Rs.4,00,000/- from the plaintiff on 22.06.1998 in the absence of a third party and without any material in support of the same, as such, cannot be accepted in any manner. If the abovesaid case of the defendant is true, when according to the defendant the plaintiff had obtained his signature in blank promissory note, stamp papers and green sheets and also obtained the title deeds, as a prudent person, the defendant should have atleast thereafter endeavoured to retrieve the same from the plaintiff in the manner known to law.

25. The defendant has not endeavoured to take any steps as per law against the plaintiff to retrieve the abovesaid papers and not evinced any interest to issue notice and initiate civil or criminal action against the plaintiff. With reference to the abovesaid case of the defendant, no prudent person would remain silent after entrusting the title deeds of his property to the third party without any supporting document in evidence thereof. Therefore, the case of the defendant that he had parted with the signature in blank promissory note, stamp papers and green sheets and also parted with the title deeds of his property to the plaintiff without any materials whatsoever, as such, cannot be believed and accepted and accordingly, it is found that the defendant is unable to substantiate anything with reference to the alleged loan transaction either by giving details of the alleged loan



transaction or placing any materials pointing to the alleged loan transaction. As above pointed out, the defendant has failed to establish, at the foremost, that the plaintiff is a financier. Therefore, the alleged loan theory projected by the defendant is found to be made only for the purpose of the case, with a view to extricate himself from the liability of the execution of the sale deed based on the sale agreement put forth by the plaintiff. Now, according to the plaintiff, as the defendant had agreed to execute the sale deed in favour of the plaintiff, it is his case that he had been waiting at the Registrar's Office on 31.01.2001 and however, the defendant has failed to turn up and execute the sale deed accordingly, it is found that the plaintiff had issued the telegram to the defendant marked as Ex.A5. In the telegram, the plaintiff has clearly set out that the defendant had executed the sale agreement on 22.06.1998 qua the suit property for Rs.5,00,000/- and the receipt of Rs.4,00,000/- by the defendant on the date of the sale agreement as advance and also the receipt of Rs.1,00,000/- by the defendant on 03.08.1998 and also the extension of time sought for by the defendant for executing the sale deed and the endorsements made by him with reference to the abovesaid fact in the sale agreement and the receipt of the telegram Ex.A5 has not been disputed by the defendant. In the reply telegram sent by the defendant marked as Ex.A7, the defendant has only mentioned that no sale agreement by intention and only security for loan, not liable for execution, detailed notice follows. However, no reply notice has been sent by the defendant other than the abovesaid reply telegram. Therefore, in the reply telegram, the defendant, as such, has not repudiated the receipt of Rs.4,00,000/- on 22.06.1998, the receipt of Rs.1,00,000/- on 03.08.1998 and the endorsements made in the sale agreement Exs.A2 to A4 and only pleaded that no sale agreement had been executed by intention and the same had been taken as security for loan and therefore, not liable for executing the sale deed. When as above pointed out, the defendant has miserably failed to establish his loan theory in any manner, in such view of the matter, when the plaintiff has established his case through the evidence of PWS1 & 2 as well as the documents projected by him in toto and accordingly, the resultant conclusion that could be taken is that the defendant has subscribed his signatures in Exs.A1 to A4 only after noting the contents of the same and in such view of the matter, as rightly concluded by the Courts below Exs.A1 to A4 had been executed/made by the defendant after knowing the contents of the same and in such view of the matter, the determination of the Courts below that the defendant is barred from raising the pleas contrary to the recitals contained in Exs.A1 to A4 as provided under Section 92 of the Indian Evidence Act is found to be totally correct and justified.

26.As regards the readiness and willingness on the part of the plaintiff in obtaining the sale deed based on Ex.A1 sale agreement, considering the fact that the plaintiff has



paid the entire sale consideration at the earliest point of time i.e. Rs.4,00,000/- on the date of the sale agreement and Rs.1,00,000/- under Ex.A2 endorsement on 03.08.1998, it is found that the plaintiff has completed his performance of the agreement and what remains to be done is only the execution of the sale deed on the part of the defendant. In such view of the matter, the contention raised by the defendant that the plaintiff has not been ready and willing to perform his part of the contract totally falls to the ground.

27.The case has been projected by the defendant that the suit property is lying in the prime locality and accordingly would fetch more than Rs.1 core and therefore, the plaintiff is not entitled to takeaway the suit property for a sum of Rs.5,00,000/-. However, with reference to the abovesaid case of the value of the suit property other than the ipsi dixit evidence of the defendant no material is forthcoming on the part of the defendant. In view of the above, when the plaintiff has established his case that the defendant had voluntarily come forward to convey the suit for Rs.5,00,000/- and the parties had entered into the sale agreement and the plaintiff having performed his part of the contract and it is only the defendant, who had been seeking extension of time to execute the sale deed one way or the other by way of Exs.A3 & A4 and inasmuch as the defendant had failed to come forward and execute the sale deed even after the issuance of the telegram sent by the plaintiff, it is found that the plaintiff had been necessitated to institute the suit against the defendant for appropriate relief. Therefore, there is no lax on the part of the plaintiff in approaching the Court for the relief of specific performance. The plaintiff is found to have come forward with the suit within the time allowed by law and as above pointed out, the plaintiff has also established his readiness and willingness throughout in obtaining the sale deed from the defendant and it is only the defendant, who had been evading the execution of the sale for one reason or the other.

28.In the light of the abovesaid discussions, it has to be held that the plaintiff has established that the defendant had subscribed to the sale agreement knowing the contents of the same and thereby, had agreed to convey the suit property to the plaintiff for Rs.5,00,000/- as averred in Ex.A1 sale agreement and accordingly, the defendant is unable to dispute the signature made by him Ex.A1 sale agreement and as above pointed out, the defendant has also miserably failed to establish the loan theory projected by him and accordingly, the second substantial question of law formulated in the second appeal is answered in favour of the plaintiff and against the defendant.

29.CMP.No.24471 of 2019 has been laid by the petitioner/appellant for the reception of the additional evidence. Now, according to the defendant, he has taken the plea in the written statement that the tenant in the suit property had paid Rs.20,00,000/- as advance on tenancy and



therefore, contended that the suit property would not have been agreed to be conveyed for Rs.5,00,000/- and that the value of the suit property is one crore. However, pointing to the abovesaid version, no material has been projected by the defendant before the Courts below. Now, the defendant has come forward with the additional evidence putting forth that the tenant had laid the case against him for refund of the sum of Rs.20,00,000/- paid as advance and the suit laid by the defendant in O.S.No.1174 of 2000 had been decreed on 26.04.2002 and accordingly, sought for marking of the copy of the judgment rendered in the abovesaid suit as an additional evidence. Thus it is found that the abovesaid suit has culminated even before the judgment was rendered by the trial Court. Though the defendant would proceed to claim that he had endeavoured to mark of the copy of the judgment in the trial Court and the same had been refused to be entertained, however, pointing to the same, there is no material whatsoever, placed on record. Thus it is found that when to the knowledge of the defendant, the judgement had been rendered in O.S.No.1174 of 2001 on 26.04.2002 and if really the abovesaid judgment has any bearing in the defence version projected by him qua the value of the suit property, as a prudent person, the defendant should have endeavoured to produce the copy of the judgment before the trial Court. Even assuming for the sake of arguments that for one reason or the other he has been not able to file the copy of the judgement before the trial Court, as rightly contended by the plaintiff's counsel, the defendant should have endeavoured to produce the same before the first appellate Court. However, the defendant has failed to mark the copy of the judgment before the first appellate Court. On the other hand, the defendant has endeavoured to mark the same in the second appeal proceedings and though the judgment was rendered in 2002 he has endeavoured to file the same in the second appeal proceedings only in 2019 i.e. nearly 17 years after the judgment had been pronounced. Therefore, it is found that despite the availability of the abovesaid evidence during the course of trial, when the defendant has not taken any steps, whatsoever, to produce the same before the trial Court or in the appellate Court and also not endeavoured to produce the same when the appeal had been filed in the year 2008 and on the other hand, when his conduct in coming forward with the reception of the abovesaid document as an additional evidence in 2019, in such view of the matter, when the reasons adduced by the defendant for the reception of the abovesaid document as additional evidence do not concur with any of the parameters envisaged under Order 41 Rule 27 CPC and when the defendant is found to be a willing party to Ex.A1 sale agreement and accordingly, knowing contents of the same had subscribed to the same and under Ex.A1 he had agreed to convey the suit property to the plaintiff for Rs.5,00,000/-and accordingly, unable to sustain his defence version that the suit property is of a higher value before the Courts below with any material whatsoever, in such view of the matter, as



rightly contended by the plaintiff's counsel, the defendant cannot be allowed to produce the abovesaid additional evidence in the second appeal proceedings, both on factual matrix as well as on the point of law and accordingly, the abovesaid request of the defendant is liable to be rejected.

30. As regards the reception of the other two documents, according to the defendant, they are the copies of the complaints lodged by the plaintiff under Section 138 of the Negotiable Instruments Act. By way of the abovesaid documents, according to the defendant, the same would disclose that the plaintiff is only a financier. However, the abovesaid reasonings of the defendant is found to be totally unfounded. As above pointed out, no material has been placed by the defendant to evidence that the plaintiff is a financier. The theory of the loan transaction projected by the defendant has also not been established by the defendant in any manner. Till date, the defendant has not endeavoured to retrieve the signed papers said to have been entrusted by him to the plaintiff as per law as well as not endeavoured to retrieve the document of title alleged to have been entrusted by him to the plaintiff in connection with the loan transaction. The above being the position, the endeavour of the defendant that the copies of the complaints now projected by him would evidence that the plaintiff is only a financier, cannot be accepted in any manner. As rightly contended by the plaintiff's counsel, nothing prevented his entitlement to maintain a complaint under Section 138 of the Negotiable Instruments Act if a cheque handed over to him had been bounced. In such view of the matter, the mere production of the copies of the complaints would not, in any manner, evidence that the plaintiff is a financier and when the defendant had failed to expose as to why he had not endeavoured to produce the copies of the complaints before the courts below and though the defendant would claim that he had been able to secure the copies of the complaints only recently, however, when with reference to the same, the averments contained in the petition are found to be very vague and bereft of particulars, particularly, the defendant having not pleaded as to on what date he came to know about the factum of the abovesaid complaints being lodged by the plaintiff and from whom he had obtained the said information and when he had applied for the copies of the said document, etc, in such view of the matter, the case projected by him that he came to know about the complaints only recently cannot at all be believed and accepted and in such view of the matter, the reception of the abovesaid additional evidence are also not concurring with the parameters envisaged under Order 41 Rule 27 CPC in any manner and when the abovesaid documents are also not required for the adjudication of the merits of the case as such, in all, the petition for the reception of the additional evidence is found to be totally unacceptable both on factual matrix as well as on the point of law and resultantly, the same is dismissed.



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contentions, placed reliance upon the following decisions reported in

- 1) AIR 1963 SC 1526 (K. Venkataramiah vs. A. Seetharama Reddy and others)
- 2) 2005(10) SCC 191 (Harju (since deceased) through his Legal heirs vs. Phulari (Smt) alias Churmarawati and others)
- 3) 2018 (10) SCC 484 (Uttaradi Mutt vs. Raghavendra Swamy Mutt)
- 4) 2009 (4) CTC 440 (K.V. Ramasamy vs. K.V. Raghavan & 3 others)
- 5) 2001-1-LW 196 & 2000 (III) CTC 193 (S.N. Hasan Abubucker vs. Kottikulam Street Mohideen Pallivasal Therkku Mohideen Pallivasal, Nirvagi Muthuru Committee through its Secretary M.S. Buhari and another)
- 6) A.S. No.113 of 1991 dated 09.10.2006 (DB) reported in MANU/TN/2672/2006 (P.R. Aithala @ Ramakrishna Aithala Vs. HPCL)
- 7) AIR 1931 ALL 364 (Ladli Prasad Zutshi vs. Emperor)
- 8) ILR 2017 KAR 1319 (The Bangalore Development Authority vs. Sri Bhagavandas Patel)
- 9) 2011 2 LW 289 (K.Muthusamy and another vs. K.V. Subramaniam)
- 10) 2001 (6) SCC 600 (A.C. Arulappan vs. Ahalya Naik (smt))
- 11) 1987 (Supp) SCC 340 (Parakunnam Veetill Joseph's son Mathew vs. Nedumbara Kuruvila's son and others)
- 12) 2008 (7) SCC 310 (Mohammadia Cooperative Building Society Ltd. vs. Lakshmi Srinivasa Cooperatiive Building Society Ltd., and others)
- 13) 2008 (12) SCC 145 (Bal Krishna and another vs. Bhagwan Das (dead) By Lrs and others)
- 14) 2008 (2) CTC 382 (Sampoornam and others vs. T. Somasundaram and others)
- 15) 1997 (9) SCC 634 (Tejram vs. Patirambhau)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

32. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this Second Appeal are accordingly, as abovestated, answered.

33. In conclusion, the Judgement and Decree dated 29.09.2006 passed in A.S.No.112 of 2005 on the file of the Principal District Court, Coimbatore, confirming the judgment and decree dated 20.11.2004 passed in O.S.No.108 of 2001 on the file of the II Additional Subordinate Court, Coimbatore, are confirmed. Resultantly, the Second Appeal is dismissed with costs. CMP No. 24471 of 2019 is dismissed.



Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

sms

To:

1. The Principal District Judge,
Coimbatore.
2. The II Additional Subordinate Judge,
Coimbatore.

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

+1cc to Mr.J.Ramakrishnan, Advocate SR.No.23710

S.A.No.94 of 2008

CNR (CO)
GMY (09/09/2021)