



A.S.No.272 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
29~03~2022	17~06~2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

Appeal Suit No.272 of 2012

M.Samudra Pandi

... Appellant/Plaintiff

Versus

M.Raja

... Respondent/Defendant

Appeal Suit is filed under Section 96 of the Civil Procedure Code against the Judgment and Decree dated 09.09.2011 made in O.S.No.691 of 2004 on the file of the Additional District Judge, Fast Track Court – I, Chinglepet.

For Appellant : Mr.M.S.Subramanian
For Respondent : Mrs.V.Srimathi
Mr.V.Ragavachari

J U D G M E N T

This appeal has been filed against the judgment and decree, dated 09.09.2011, passed by the learned Additional District Judge, Fast Track Court-I, Chinglepet, in O.S.No.691 of 2004, dismissing the suit for specific performance, filed by the plaintiff, the appellant herein.



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2.The plaintiff, who was unsuccessful before the Court below, is the appellant herein.

3.For the sake of convenience, the parties viz., appellant and respondent herein shall hereinafter be referred to as plaintiff and defendant respectively.

4.The brief case of the plaintiff is as follows :

- The suit “A” schedule property was jointly purchased by the plaintiff and defendant, who are none other than brothers, from one Balasaraswathy, vide two registered sale deeds dated 13.07.1994.
- The eastern half of the “A” schedule property was purchased by the plaintiff, while the western half of the “A” schedule property was purchased by the defendant.
- The western half of “A” schedule property is described as “B” schedule property.
- The plaintiff started a soap company on his own, in the name and style “M/s.Udayar soap works” and with the income derived from his business, the plaintiff also purchased some landed properties both in his name as well as his brother's name.
- Due to some misunderstanding that arose between the plaintiff and the



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defendant, a panchayat was conveyed between the parties on 25.06.2001

in the presence of 11 panchayatdars, wherein, the parties arrived at an agreement, by which, the defendant agreed to divide the properties, both ancestral and joint family properties, amongst which, the defendant agreed to sell the western half of the “A” schedule property i.e., “B” schedule property to the plaintiff for a sale consideration of Rs.7,25,000/-.

- Despite agreeing to sell the “B” schedule property to the plaintiff, the defendant objected to the plaintiff raising loan in the Urban Bank, Chengalpattu, by using the “B” schedule property as a security. Further, the defendant demanded for enhancement of sale consideration from Rs.7,25,000/- to Rs.12,50,000/-.
- As a result, again a second panchayat was convened on 09.08.2001 at the house of one Tajuddin Sahib in the presence of 7 panchayatdars, including the said Tajuddin Sahib, wherein, an agreement was entered into between the parties, revising the sale price of “B” schedule property from Rs.7,25,000/- to Rs.12,50,000/-.
- The said agreement was reduced into writing on a stamp paper and the same was signed by both the plaintiff and the defendant and was duly attested by all the panchayatdars.



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- On the date of agreement itself, in the presence of all the panchayatdars, the plaintiff paid Rs.6,00,000/- in cash to the defendant and handed over two post dated cheques, one for Rs.1,00,000/- and other for Rs.5,50,000/- towards the balance consideration.
- After the panchayat was over, the plaintiff paid Rs.1,00,000/- in cash to the defendant through the said Tajuddin Sahib and got back the cheque for Rs.1,00,000/-.
- Despite receiving the payments, the defendant sent an Advocate Notice to the plaintiff on 27.10.2001, stating that the second panchayat was held on 14.08.2001 but the same was not reduced to writing, wherein, the plaintiff agreed to pay Rs.2,00,000/- instead of Rs.7,25,000/- after including the value of the machinery and stocks in the company, and at the instance of the plaintiff, the defendant had to give a letter dated 14.08.2001 acknowledging that the soap company exclusively belongs to the plaintiff, but the said letter was obtained by the plaintiff with sinister motive.
- The plaintiff gave his interim reply on 10.11.2001. After that, there was exchange of notices between the plaintiff and the defendant which prompted the plaintiff to give a letter of “stop payment” to the Bank in respect of the cheque issued by him for Rs.5,50,000/-.



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- Though the plaintiff has been ready and willing to pay the balance sale consideration as per the terms of agreement, the defendant has been evading to comply with the terms of the agreement and has also been trying to alienate the “B” schedule property. Hence, the plaintiff, finding no other alternative, filed the suit.

5.Resisting the suit, the defendant filed a written statement, *inter alia* stating as follows:

- The defendant was doing a maligai business and also fuel business and earned money, while the plaintiff was a student and the defendant used to send money to the plaintiff for his education.
- The defendant purchased various properties including “A” schedule property under two registered sale deeds dated 13.07.1994 from Balasaraswathy one in his name and another in the name of the plaintiff, since he wanted to include his brother, i.e., the plaintiff as a purchaser in order to show his financial status in future.
- The plaintiff had no independent source of income to purchase any property during the relevant period.
- The defendant started the said soap manufacturing company called M/s.Udayar soap works. However, the licence and other records were



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taken in the name of the plaintiff, since he is educated and effectively represented the business.

- The plaintiff did not do any business nor purchased any property. The plaintiff is only a name-lendor.
- There was no panchayat agreement dated 25.06.2001 or 09.08.2001 to convey “B” schedule property to the defendant.
- The two panchayats were convened only to amicably settle the property disputes between the plaintiff and the defendant.
- For raising a loan of Rs.20 Lakhs, being the enhanced sale consideration for “B” schedule property, at the instance of the panchayatdars, the defendant gave a confirmation letter dated 14.08.2001, stating that the soap business exclusively belongs to the plaintiff.
- Even after the receipt of the said letter, the plaintiff did not pay Rs.20 Lakhs, much less, Rs.6 lakhs, as alleged, either to the defendant or to the said Tajuddin Sahib.
- The defendant did not authorise the said Tajuddin Sahib to receive any amount.
- The defendant never executed any agreement to sell “B” schedule property to the plaintiff. The suit agreement is not enforceable or executable and the suit for specific performance is not maintainable. The



alleged readiness and willingness is also false. There is no cause of

WEB COPY action for the suit. The plaintiff is not entitled to the relief sought for.

6. On the above pleadings, the trial Court framed the following issues.

1. *“Whether the plaintiff is entitled to a decree in a suit for specific performance?*
2. *Whether the plaintiff had no independent source to purchase any property during the relevant date i.e., on 13.07.1994 as alleged by the defendant?*
3. *Whether the second panchayat was not reduced to writing on 09.08.2001 itself as alleged by the defendant?*
4. *Whether no amount was paid by the plaintiff in Tajudin muchless Rs.6,00,000/-?*
5. *Whether the post dated cheques dated 13.08.2001 and 19.11.2001 were though drawn, but were not presented for collection as alleged by the defendant?*
6. *Whether the plaintiff is entitled to costs of the suit*
7. *Whether there is no cause of action for the suit as alleged by the defendant?*
8. *To what other reliefs the plaintiff is entitled to?”*



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WEB COPY 7. Later on, the above issues were recast as under:

1. *“Whether the plaintiff is entitled to a decree in a suit for specific performance?*
2. *Whether the plaintiff had got independent source to purchase the suit properties?*
3. *Whether the second panchayat convened on 09.08.2001 was reduced into writing and whether respondent signed the same?*
4. *Whether the plaintiff paid a sum of Rs.6,00,000/- to Tajudeen sahib?*
5. *Whether cheques dated 13.08.2001 and 19.11.2001 though drawn were not presented for collection in the bank?*
6. *Whether there is cause of action for the plaintiff to file the suit?”*

8. In order to prove their respective cases, on behalf of the plaintiff, five witnesses were examined as P.Ws.1 to 5 and 15 documents were marked as Exs.A1 to A15. On the side of the defendant, one witness was examined as D.W.1 and one document was marked as Ex.B1.

9. The trial Court, on considering the oral and documentary evidence

available on record, by judgment and decree dated 09.09.2011, categorically



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came to the conclusion that the plaintiff has not proved his case and therefore, he is not entitled to get the relief of specific performance of the alleged contract (Ex.A2) and thereby, dismissed the suit.

10. Aggrieved by the said judgment and decree, the plaintiff has preferred the present appeal before this Court.

11. The learned counsel appearing for the appellant/plaintiff made the following submissions before this Court :

- Though the defendant denies the second panchayat held on 09.08.2001, he agrees that the second panchayat was held on 14.08.2001 and therefore, the trial Court ought to have proceeded at least on the same and concluded that there was a valid agreement between the parties to sell the “B” schedule property.
- The defendant himself admits the first panchayat held on 25.06.2001 and also the execution of Ex.A1, which mentions about the sale of suit property by the defendant to the plaintiff.
- P.Ws.2 to 5 have categorically admitted in their evidence that the second panchayat was held on 09.08.2001 and the decisions arrived at the panchayat were reduced to writing as Ex.A2, according to which, the



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defendant agreed to sell the “B” schedule property to the plaintiff for a sale consideration of Rs.12,50,000/-.

- P.Ws.2 to 5 have also admitted in their evidence that the original sale agreement Ex.A2 was handed over to one of the Panchayatdars, i.e., Tajuddin Sahib.
- It was the defendant who failed to comply with the terms of the agreement Ex.A1 entered into at the time of the first panchayat. The second panchayat was held only due to the non-compliance on the part of the defendant.
- The defendant himself has admitted in his letter dated 14.08.2001 (Ex.A3) that the soap company exclusively belongs to the plaintiff.
- The defendant has received a sum of Rs.6,00,000/- on the date of the agreement Ex.A2 and also a further sum of Rs.1,00,000/- through the said Tajuddin Sahib, and even though the plaintiff is always ready and willing to pay the balance sale consideration and get the sale deed registered in his favour, the defendant is not coming forward to perform his part of the contract, and therefore, the suit is liable to be decreed.

12.Per contra, the learned counsel appearing for the respondent/defendant, made the following submissions :



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➤ The suit agreement Ex.A2 itself is a false document and the defendant has not signed in the said document.

- The second panchayat was convened only to amicably settle the disputes between the parties, but no decision was arrived at, and moreover, the second panchayat was not reduced to writing.
- The present suit is only based on Ex.A2 and Ex.A1 is no more in existence, and the same is admitted by the plaintiff (P.W.1) in his evidence, therefore, the plaintiff cannot rely on Ex.A1.
- The signature of the defendant in Ex.A2 does not tally with his admitted signature, which itself shows that Ex.A2 is invalid.
- P.Ws.2 to 5 are interested witnesses and hence, their evidence are not worthy to rely upon.
- In any event, Ex.A2 is titled only as a partition deed, and there is no averment or recital with regard to sale in respect of “B” schedule property and hence, Ex.A2 cannot be construed as a sale agreement at all.
- The documents produced by the plaintiff to show his means to pay the sale consideration, viz., Exs.A13 to A15 themselves prove that the plaintiff did not have financial capacity to pay the sale consideration.
- The trial Court has properly appreciated the oral and documentary



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evidence on record and has rightly dismissed the suit and therefore, the

appeal is liable to be dismissed.

13.Heard the learned counsel on either side and perused the entire materials available on record.

14.Based on the rival contentions, the points arising for consideration are as follows :

- i. Whether Ex.A2 is genuine and reliable ?
- ii. Whether Ex.A1 is reliable ?
- iii. Whether the plaintiff has paid a sum of Rs.7,00,000/- to the defendant ?
- iv. Whether the plaintiff is entitled to the relief of specific performance ?
- v. To what other relief, the plaintiff is entitled to ?

15.Admittedly, the plaintiff and the defendant are brothers. It is also admitted that the subject property, i.e., the “B” schedule property, which is the western half of the “A” schedule property was purchased by the defendant on 13.07.1994.



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Point No.2 :

16.Though the plaintiff has marked two documents, one Ex.A1 dated 25.06.2001 and the other, Ex.A2 dated 09.08.2001, which is a photocopy, to support his claim that the defendant has agreed to sell the “B” schedule property to the plaintiff for a valuable sale consideration, it is admitted by the plaintiff (P.W.1) in his cross-examination that the present suit has been filed on the strength of Ex.A2 and Ex.A1 is not enforceable. The relevant portion of the evidence of P.W.1 is as follows :

“இந்த வழக்கை எக்ஸிபிட் எ2-ன் அடிப்படையில் போட்டேன்.

1வது அக்ரிமென்ட் செல்லுபடி ஆகாது என்றால் சரிதான்.”

Further, in Ex.A2 itself, which is said to have been executed subsequent to Ex.A1, it is stated that Ex.A2 is written cancelling Ex.A1. The relevant portion in Ex.A1 is as follows :

“இதன் முன்னிலைக்கு நாம் 25.06.2001 தேதியில் எழுதிக்கொண்ட அக்ரிமெண்டை கேன்சல் செய்து இந்த பாகப்பிரிவினைப் பத்திரம் எழுதிக்கொள்கிறோம்.”

Therefore, from the above, it is clear that Ex.A1 is no more in vogue and therefore, this Court need not place reliance on Ex.A1 or its averments. ***Point No.2 is answered accordingly.***



Point No.1 :

WEB COPY 17. Now, the question is whether Ex.A2, which is a photocopy, which has been marked with objection, is a genuine document and can be relied upon for deciding the grant of relief of specific performance.

18. On a perusal of oral evidence on the side of plaintiff as well as defendant, it can be seen that the parties, who are brothers, have disputes among themselves and they have subjected themselves for settlement talks in the presence of panchayatdars for the purpose of partition of their ancestral and joint family properties, including the suit properties. It is the case of the plaintiff that two such panchayats were held and Ex.A2 is the settlement arrived at during the second panchayat. However, it is the specific case of the defendant that the second panchayat did not reach any finality and it was not reduced to writing and the document Ex.A2 is a fabricated one.

19. On a perusal of Ex.A2, it is seen that Clause Nos.1 to 3 of Ex.A2 state that the defendant agrees to transfer the “B” schedule property to the plaintiff vide a registered deed and the defendant will not claim any ownership rights over the “Uma Soap Company” and the complete ownership would vest with the plaintiff and for these, the plaintiff agrees to pay Rs.12,50,000/- to the



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defendant. Clauses 3 to 10 relate to other properties and Clause 11 states that the defendant has received Rs.6,00,000/- from the plaintiff as advance and towards the balance sale consideration, the plaintiff has given two post dated cheques, one for Rs.1,00,000/- dated 13.08.2001 and another for Rs.5,50,000/- dated 19.11.2001. It is further stated that, on receipt of the entire sale consideration, there shall be registration in respect of the “B” schedule property.

20.It is well settled that a document which is marked with objections is to be tested for its genuineness based on the evidence let in by both the parties. On a perusal of the evidence of plaintiff's side witnesses, it is seen that, all of them have uniformly deposed that the original of Ex.A2 was handed over to Tajuddin Sahib, who was one of the panchayatdars of the second panchayat held on 09.08.2001. The plaintiff (P.W.1), in his cross-examination, has stated that two original documents of Ex.A2 were written and both were handed over to the said Tajuddin Sahib. However, it is worthy to note that the plaintiff has not pleaded the same in his plaint. P.Ws.1 to 5 have deposed that the plaintiff has handed over Rs.6,00,000/- in cash to the defendant on the date of second panchayat itself and later on, a sum of Rs.1,00,000/- was handed over to the said Tajuddin Sahib and received back his cheque for Rs.1,00,000/-. They



have also deposed that they made a complaint against the said Tajuddin Sahib for return of the original document of Ex.A2 as well as the cheque for Rs.5,50,000/-. However, the said Tajuddin Sahib has attended the police enquiry and given his reply on 25.01.2002 vide Ex.A9, stating that he did not receive any cheque or document. The plaintiff has not produced any proof to show that he has handed over the original document of Ex.A2 or any cheque to the said Tajuddin Sahib. Though the entire plaintiff's case revolves around the said Tajuddin Sahib, for the reasons best known to him, he has not chosen to examine him as a witness or cause production of the original documents or cheque, before the Court, which itself raises suspicion on the case of the plaintiff. Though the plaintiff claims that the Tajuddin Sahib has given a false reply before the Police, there is no proof on record to show that the plaintiff has initiated any further action against the said Tajuddin Sahib. Further, the defendant (D.W.1) has categorically deposed in his evidence that he has not authorized the said Tajuddin Sahib to receive any money on his behalf. While so, the case of the plaintiff that he paid Rs.1,00,000/- to the said Tajuddin Sahib and got back his cheque, sounds unnatural. As far as Ex.A3, which is relied upon by the plaintiff to support Ex.A2, is concerned, it is only a letter which shows that the defendant has given up his rights over the “Uma Soap @ Udaiyar Soap Works” and its building, which cannot be construed as a proof of



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agreement of sale of the said property. Moreover, on comparison of the admitted signature of the defendant in Exs.A3, A4 and A6 with that in Ex.A2, it can be observed that the signatures do not tally, which further leaves room for doubt regarding the genuineness of Ex.A2. As rightly pointed out by the trial Court, number of witnesses would not carry any weight unless the genuineness of the sale agreement is proved. The affidavits filed by the plaintiff's side witnesses (Ex.A11 and Ex.A12) and the police complaint (Ex.A10) are self serving documents and they do not satisfactorily prove the genuineness of Ex.A2. The reasoning given by the trial Court for not believing Ex.A2 are completely justified and the same does not warrant any interference by this Court.

21.For all the reasons stated above, this Court finds that the plaintiff has not proved the genuineness of Ex.A2 and therefore, it is not reliable. ***Point No.1 is answered accordingly.***

Point No.4 :

22.When this Court has found that the very contract Ex.A2, based on which the present suit has been laid, is not genuine or reliable, the primary criterion for grant of relief of specific performance itself fails, and therefore,



this Court need not labour much to test the other criteria like readiness, willingness of the plaintiff, etc. Even assuming for the sake of arguments that Ex.A2 is valid and genuine, on a perusal of Exs.A13 to A15, which the plaintiff has produced to show his financial capacity/readiness to pay the sale consideration, it can be noticed that the plaintiff did not have any sufficient means to pay the sale consideration at the relevant point of time, nor has the plaintiff produced any proof to show his willingness to perform his part of the contract, whatsoever. In any event, the plaintiff, who seeks for a relief of specific performance, is bound to prove that there exists a valid, genuine, definite and enforceable contract between the parties, whereas, in the instant case, as found earlier, the plaintiff has failed to do so. Therefore, the plaintiff is not entitled to the relief of specific performance. ***Point No.4 is answered accordingly.***

Point Nos.3 and 5 :

23.The plaintiff relies only upon Ex.A2 to show that he has paid Rs.6,00,000/- on the date of second panchayat on 09.08.2001 and thereafter, a sum of Rs.1,00,000/- to the defendant. The plaintiff has not placed any other proof on record to prove his payment of Rs.7,00,000/- to the defendant. When this Court has found that the plaintiff has not proved the genuineness and



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reliability of Ex.A2 while answering Point No.1, this Court cannot grant any relief based on Ex.A2. Therefore, the plaintiff is not entitled to any other relief.

Point Nos.3 and 5 are answered accordingly.

24.In fine, this Court does not find any ground to interfere with the judgment and decree of the trial Court. Therefore, the appeal stands dismissed. The judgment and decree of the trial Court are confirmed. No costs.

17.06.2022

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Internet :Yes
Index :Yes / No

To

1.The Additional District Judge,
Fast Track Court – I,
Chinglepet.

2.The Section Officer		with a direction to send back the
(V.R. Section),		original records to the Court below,
High Court, Madras.		immediately

S. KANNAMMAL, J.



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Judgment in
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