



S.A.Nos.790 and 791 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.Nos.790 and 791 of 2016

S.Thamaraiselvan
S/o R.Singaravelu

...Plaintiff/Respondent/Appellant
in S.A.No.790 of 2016

S.Ashokan
S/o R.Singaravelu

...Plaintiff/Respondent/Appellant
in S.A.No.791 of 2016

Vs

S.Janakiraman

...Defendant/Appellant/Respondent
in both the appeals

Common Prayer :- Second Appeals filed under Section 100 of CPC against the Judgment and Decree dated 27.04.2016 in A.S.Nos.10 and 11 of 2015 on the file of the Principal Subordinate Judge's Court, Chengalpattu, reversing the Judgment and Decree dated 30.01.2015 in O.S.Nos.65 and 66 of 2008 on the file of the District Munsif Court, Chengalpattu.



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In both the appeals:-

For Appellants : Mr.R.Subramanian

For Respondent : Mr.M.Balasubramanian

COMMON JUDGMENT

The present Second Appeals have been filed against the Judgment and decree dated 27.04.2016 in A.S.Nos.10 and 11 of 2015 on the file of the Principal Subordinate Judge, Chengalpattu, whereby the Judgment and decree dated 30.01.2015 passed in O.S.Nos.65 and 66 of 2008 on the file of the District Munsif Court, Chengalpattu, has been reversed.

2.The appellants herein are the plaintiffs, who filed the suits in O.S.Nos.65 and 66 of 2008 on the file of the District Munsif Court, Chengalpattu, against the respondent/defendant herein for the relief of specific performance, directing the defendant to execute the sale deeds as per the sale agreements, in respect of the Plot nos.61 and 62 in Anna University Nagar, Thirupporur Taluk, Chengalpattu District, measuring to an extent of 1800 sq.ft., each.



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3.The contention of the appellants/plaintiffs is that the respondent/defendant is working as Driver in Anna University, Chennai, and the staff of the said University formed the housing society, viz., Anna University Staff Co-operative House Building Society and the defendant being the member of the society, on 06.04.1988, he has been allotted with the house Plot nos.61 and 62 for a total sale consideration of Rs.8,000/- each. Thereafter, the defendant approached the plaintiffs and offered for sale of the said plot Nos.61 and 62 measuring 1800 sq.ft., each, by showing the allotment order, notice and circulars of the society. Believing his words, the plaintiffs agreed to pay a sum of Rs.30,000/- each as total sale consideration and the same was paid on the date of agreement, i.e., 04.12.2003. Possession of the said Plot Nos.61 and 62 was handed over to the plaintiffs and the defendant agreed to execute the sale deeds in favour of the plaintiffs, after getting the same in his favour from the society. From the date of agreement, i.e., 04.12.2003 onwards, the plaintiffs are in possession of the property. On 17.12.2007, the said society executed the sale in favour of the defendant. But, he suppressed and refused to execute the sale deeds as he agreed, hence the suit.



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4.The defendant admits that he is working as a Driver in Anna University and also admits that he is the member of the Anna University Staff Co-operative House Building Society and the house Plot Nos.61 and 62 were allotted to him. But he denied other allegations about the execution of sale agreements.

5.The contention of the defendant is that for family urgency, he borrowed the loan amount of Rs.60,000/- (each Rs.30,000/-) from the plaintiffs and as a security for the said loan, plaintiffs obtained signature from the defendant, as well as his wife and son in blank papers. Further, as a security, they demanded original allotment order and the same was handed over by the defendant. The learned counsel for the defendant further contended that neither himself nor his wife and son executed any sale agreements in favour of the plaintiffs.

6.Before the Trial Court, issues were framed, on the side of the plaintiffs, witnesses P.W.1 to 14 were examined and exhibits A1 to A14 were marked. On the side of the defendant, D.W.1 was examined and no documents were marked.

7.Considering the oral and documentary evidence, the learned Trial Judge without assigning any reasons in detailed manner, has held that the Ex.A.2 –



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Sale agreements were executed by the defendant and the same was attested by his wife and his son, thereby the agreements are valid and granted a decree in favour of the plaintiffs.

8. Aggrieved by the said finding, the defendant preferred appeals A.S.Nos.10 and 11 of 2015. The Lower Appellate Judge, independently analyzed the facts and evidences on record and finally held that execution of the documents at Tiruvarur and obtained signatures from the defendant at Chennai and there is no independent attesting witnesses in the document, thereby held that Ex.A.2–Sale agreements are not a valid documents. Furthermore, on the date of alleged agreements, the defendant was not an owner of the house plots and all the circumstances probablized the defense made by the defendant. The main contention of the defendant is that the alleged agreements were created by the plaintiffs, manipulating the signatures obtained in the blank stamp papers, which were given by the defendant as a security for the loan transactions, thereby the appeals were allowed by setting aside the finding made by the Trial Court.

9. Challenging the said finding, the plaintiffs preferred these appeals,



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contending that the Lower Appellate Court failed to appreciate the fact that the defendant already handed over the original allotment order of plots, at the time of execution of the sale agreements, thereby the defendant purported the title, but, it was not properly appreciated by the lower appellate Court. Further, there is no prohibition to transfer the house plots to other persons. Besides, the Lower Appellate Court failed to appreciate the fact that the son and wife of the defendant stood as witnesses for the said sale agreements, who are the necessary witnesses, to speak about the execution of the sale agreements between the parties. Instead of appreciating all these facts, the lower appellate court, erroneously allowed the appeals, hence, the same is liable to be set aside.

10.The Second Appeals are admitted on the following question of law:-

a) *Whether in law is not the finding of the Lower Appellate Court that no sale deed was executed in favour of the defendant by the Society perverse since the execution of the sale deed is not disputed by the defendant and on the other hand, the same has been admitted ?*

b) *Has not the Lower Appellate Court erred in holding that the agreement is hit by Sec.17 of Specific Relief Act when pursuant to the allotment, sale deed had been executed in favour of the defendant and as per Sec 43 of Transfer of Property Act, the defendant is estopped from*



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contending contra.

c) Has not the Lower Appellate Court failed to consider the findings of the Trial Court on the oral and documentary evidence as mandated under Sec.96 of CPC.

d) Whether in law is the Lower Appellate Court is correct in holding that the transaction is loan transaction when the defendant has not proved the same by producing any documentary evidence or examining any independent witness.

11.The learned counsel for the plaintiffs/appellants submits that the defendant voluntarily offered to sell the house plots allotted to him by the Anna University Staff Co-operative House Building Society and the plaintiffs purchased the same after verifying the allotment order by paying entire sale consideration of Rs.30,000/- each and possession also handed over to them. Subsequently, due to hike in land rates, the defendant refused to execute the sale deeds, after completion of the sale given by the society. Marking the sale agreements as Ex.A.2 and the execution of the said documents were proved, by examining the scribe as well as the witnesses, defendant's wife and son, thereby discharged their burden of proof as required under law, but the same was rightly appreciated by the learned Trial Judge. However the Lower Appellate Judge erroneously dismissed the suits holding that execution of the agreement are



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surrounded with suspicious circumstances, thereby Ex.A2 -Sale agreements are not true and valid documents.

12.By way of reply, the learned counsel for the defendant argues that the Ex.A.2 – Sale agreements were fabricated and fraudulently created by the plaintiffs for unlawful gain, with the help of their friend (document writer) at Tiruvarur, by utilising the blank stamp papers containing the signatures of the respondent/defendant and his wife and son.

13.Heard the learned counsel appearing for the plaintiffs and the learned counsel appearing for the respondent and also perused the materials available on record.

14.On perusal of records, it reveal that the alleged Ex.A.2 – Sale agreements are not signed by the plaintiffs, signature of the defendant alone affixed. Furthermore, the defendant's wife and son signed the said documents but no independent witnesses attested the said agreements. There is no reason offered by the plaintiffs for not affixing their signatures in the said agreements, in the plaint pleadings. But, the learned counsel for the plaintiffs relied the



following authority:-

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Aloka Bose Vs. Parmatma Devi and Others reported in (2009) 2

Supreme Court Cases 582, wherein, it has been held as follows:-

“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.

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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 signature of vendor only – Thus, in view of the aforesaid, the agreement of sale signed only by vendor, 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.

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17.Section 10 of the Act provides that all agreements are contracts if they are made by the free consent by the parties



competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to Section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar 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.

18. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognised communication). 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 purchaser alone signing an agreement of sale.”

15. Relying the ratio laid down in the above said case, the learned counsel



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for the plaintiffs further argues that the agreements of sale may be signed by both the parties or vendor alone and it does not require signatures of both parties in the agreement. But the learned counsel for the defendant pointed out the suspicious circumstances about the execution of the agreements, that the stamp papers were purchased at Tiruvarur and drafted at Tiruvarur by the document writer – P.W.3, who is the close friend of the plaintiffs.

16.As rightly pointed out by the learned counsel for the defendant, the evidence of P.W.3 – document writer reveals that he is a close friend of the plaintiffs and the alleged agreements were typed at Tiruvarur, as per the instructions of the plaintiffs but the said documents were not signed by the plaintiffs. So the evidence of P.W.3 clearly proves that at the time of drafting and typing the said agreements, the defendant was not present there. Strangely, without obtaining the signatures from the parties concerned, the document writer affixed his signature, itself proves that at the instigation of the plaintiffs, the said agreements were typed at Tiruvarur, without the knowledge of the defendant. P.W.1 also admits that during the trial, the documents were prepared at Tiruvarur and obtained the signatures at Chennai from the defendant. If really, the property was offered for sale by the defendant, both of them should be



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present at the time of drafting the sale agreements, but the facts of the case proves that the plaintiffs alone created the agreements also probalilize the defence of the defendant that the said agreement was fabricated by utilising the blank signed papers of the defendant. So that only, the defendant's wife and son were said to be signed in the agreements, but not as attesting witnesses. The Lower Appellate Judge has rightly analysed all those facts and circumstances and held that Ex.A2 – Sale agreements are not a true and valid agreements, which needs no interference by this Court. Therefore, the above authority relied on by the plaintiffs not applied to the facts of this case. Apart from that, the execution of the documents reveals that the plaintiffs fabricated the said agreements by manipulating the blank signed papers of the defendant. But, on considering the finding of the Trial Court, the learned Trial Judge, without analysing all those evidence and facts simply wrote a cryptic Judgment and the same is liable to be set aside as observed by the learned Lower Appellate Judge. However, on the other hand, the Lower Appellate Judge has rightly analysed all the available materials on record, which needs no interference. Accordingly, question of law “c” is answered.

17.The learned counsel for the plaintiffs further submit that the defendant



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has not proved the alleged loan transaction with the plaintiffs, through material evidence, without which, the Lower Appellate Court presumed certain facts and erroneously held that the sale agreements were manipulated by the plaintiffs by misusing the blank signed stamp papers given by the defendant at the time of alleged loan transaction. But on seeing the evidence, the definite case of the defendant is that he along with his wife and son borrowed the loan amount from the plaintiffs and as a security for the said loan, they handed over the original allotment order as well as blank signed stamp papers.

18.As discussed above, the agreements were manipulated by the plaintiffs is established by their own evidence. In such circumstances, the conduct of the plaintiffs itself probabalized the defence taken by the defendant. Hence, there is no necessity for the defendant to prove the alleged loan transaction independently. Accordingly, the question of law “d” is answered.

19.As per the bye-laws of the society, the defendant also not empowered to convey the property for a stipulated period. Mere attendance of the plaintiffs during the society meeting is not sufficient to conclude that there were valid agreements between the parties to sell the house plots, because, the plaintiffs are



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working as a temporary Driver in Anna University Campus and there is lot of possibility to sail with other workers. P.W.2 also supporting the plaintiffs case, but not proved the execution of the agreements between the parties. Therefore, even assuming that the agreements are true and valid one, there is no specific averment with regard to readiness and willingness on the part of the plaintiffs to perform their part of the agreements to that effect. The following authorities relied by the defendant is squarely applicable to the facts of the case.

(i)U.N.Krishnamurthy (deceased) thr. Lrs Vs. A.M.Krishnamurthy

reported in **2022 LiveLaw (SC) 588** and the relevant head note is extracted hereunder:-

“Specific Relief Act, 1963; Section 16 (c)-In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:- (i)Whether there is a valid agreement of sale binding on both the vendor and the vendee and (ii) Whether the Plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16 (c) of the Specific Relief act, 1963. Even in a first appeal, the first Appellate Court is duty bound to examine whether there was continuous readiness and willingness on the part of the Plaintiff to perform the contract.”



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(ii) ***Rajammal and others Vs. M.Senbagam*** reported in **2016 (6) CTC**

225, wherein it has been held as follows:-

“Readiness and willingness – Relevant factors – suit for Specific Performance of Agreement of Sale – Execution of Agreement admitted by parties.

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Suit filed within limitation does not entitle Plaintiff to relief of Specific Performance even in case of admitted Agreement, Plaintiff ought to prove that he was ready and willing to perform his part of Contract in manner known to law – No explanation offered from Plaintiff for not paying balance sale consideration and seeking execution of Agreement of Sale – Plaintiff, held, not willing and ready to perform his part of Agreement – Decree of Specific Performance granted by Courts below, set aside – Appeal allowed.”

20. When the agreements themselves are not true and valid, other questions of law “a” and “b” need not be discussed. Even, if the agreements are valid, then there is a possibility of directing the defendant to execute the sale deeds, but as discussed above, Ex.A2 – sale agreements are not true and valid documents and hence the issues “a” & “b” need not be discussed.



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21. Accordingly, the findings rendered by the Lower Appellate Judge in A.S.Nos.10 and 11 of 2015 dated 27.04.2016 is sustainable and the same is confirmed. Consequently, the suit in O.S.Nos.65 and 66 of 2008 stand dismissed. In the result, the Second Appeals are dismissed as no merits.

22. However, the defendant admits that he borrowed the loan amount of Rs.60,000/-, (each Rs.30,000/- from the plaintiffs), hence, he is directed to return the same to the plaintiffs, with interest at the rate of 12% from the date of agreement, i.e., from 04.12.2003, till the date of realisation. No costs.

26.10.2022

Index : Yes / No
Internet : Yes/No
Speaking/Non-Speaking
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To

1. The Principal Subordinate Judge, Chengalpattu.
2. The District Munsif, Chengalpattu.
3. The Section Officer, V.R. Section, High Court, Madras.



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T.V.THAMILSELVI, J.

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