



A.S.(MD)No.40 of 2013

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 26.07.2022**

**DELIVERED ON : 10.08.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**A.S.(MD)No.40 of 2013**

K.Rajendran

... Appellant / Defendant

-Vs-

K.Seenivasan

... Respondent / Plaintiff

**PRAYER:** Appeal Suit is filed under Order XLI, Rule 1 and Sections 96 and 151 of the Code of Civil Procedure to set aside the decree and Judgment dated 23.02.2012 made in O.S.No.55 of 2010, on the file of the learned Additional District Judge, Fast Track Court, Dindigul.

For Appellant : Mr.S.Ramesh

For Respondent : Mr.T.Arul for Mr.R.Nandakumar

### **JUDGMENT**

The respondent / plaintiff has filed O.S.No.55 of 2010 on the file of the learned Additional District Judge, Fast Track Court, Dindigul for specific performance and permanent injunction, wherein the appellant is the defendant.



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2.The brief facts of the plaint are as follows:-

The suit property belongs to the defendant. The defendant had entered into a sale agreement with the plaintiff on 05.02.2010 for total sale consideration of Rs.20,20,000/- (Rupees Twenty Lakhs and Twenty Thousand Only). Out of which, the plaintiff has paid a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) as advance on the same day itself. It was agreed that after receipt of balance sale consideration of Rs.20,000/- (Rupees Twenty Thousand Only) from the plaintiff within a period of three months, the sale deed should be executed and registered. The plaintiff is always ready and willing to perform his part of the contract. Though the plaintiff has approached the defendant, the defendant has delayed to execute the sale deed. Therefore, the plaintiff has sent a notice on 27.03.2010. However, the said notice was unserved. Therefore, the plaintiff sent another notice on 15.04.2010. Though the same was acknowledged by the wife of the defendant on 16.04.2010, the defendant did not respond the same. Later, the plaintiff came to know that the defendant is trying to sell the property to third party. Hence, the plaintiff has filed the suit for specific performance and permanent injunction.



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3.The brief facts of the written statement filed by the defendant are as follows:-

The defendant has denied the execution of the sale agreement. The suit property belonged to the defendant and the defendant has borrowed a sum of Rs.9,75,000/- (Rupees Nine Lakhs and Seventy Five Thousand Only) from the plaintiff through cheques on various occasions. As security for the said loan, the plaintiff has obtained the signature of the defendant in plain white sheet and plain unfilled stamp papers. The defendant has been paying interest for the said loan at Rs.1/- per month for Rs.100/-. Since the defendant could not repay the loan amount, the plaintiff has filed the suit using the blank stamp papers. Further, there is no need for the defendant to sell the suit property and he has not received a sum of Rs.20,00,000/- from the plaintiff. Hence, he prayed for dismissal of the suit.

4.Based on the above said pleadings, the trial Court framed the following issues:-

*“1.Whether the sale agreement Ex.A.1 is true?;*



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*2. Whether the plaintiff is entitled to the relief of specific performance?;*

*3. Whether the plaintiff is entitled to the relief of permanent injunction? and*

*4. To what relief the plaintiff is entitled?.*

5. In order to substantiate the case, during the trial on the side of the plaintiff, he examined himself as P.W.1 and two witnesses were examined as P.W.2 and P.W.3 and 10 documents were marked as Exs.A.1 to A.10. On the side of the defendant, he examined himself as D.W.1 and 5 documents were marked as Exs.B.1 to B.5.

6. On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court has decreed the suit, by its judgment and decree dated 23.02.2012.

7. Challenging the said judgment and decree dated 23.02.2012, the defendant has filed the present Appeal Suit before this Court.



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8.The learned counsel for the appellant would submit that the appellant has never entered into the sale agreement with the respondent for selling the suit property. There is no privity of contract between the appellant and the respondent in respect of selling the property. The appellant borrowed a sum of Rs.9,75,000/- on various dates through cheques from the respondent and he repaid interest. At the time of borrowing money, the respondent has obtained the signature of the appellant in unfilled blank papers. When the respondent demanded the appellant to repay entire loan amount of Rs.9,75,000/- at once, since the appellant expressed his inability to repay entire loan amount, the respondent made use of the signed stamp papers and created Ex.A.1 sale agreement, as if the appellant executed a sale agreement for total sale consideration of Rs.20,20,000/- on 05.02.2010, on that date, the respondent paid a sum of Rs.20,00,000/- as advance and balance sale consideration of Rs.20,000/- is to be paid within a period of three months from the date of agreement. The respondent has filed the suit, as if the respondent is ready and willing to perform his part of the contract, however, the appellant has intended to delay the same, hence, he sent notice. The respondent has never sent any notice to the appellant to the correct address and the appellant has never received any notice. Further, the appellant has no interest



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to sell his property to the respondent and Ex.A.1 agreement is not a genuine one and there was no consensus ad-item to sell his property to the respondent. Since the property is worth about Rs.50,00,000/- (Rupees Fifty Lakhs Only), no prudent man will sell his property for a sum of Rs.20,00,000/-. It shows that the respondent has not approached the Court with clean hands. Without sending notice, he has stated as if he sent the notice and the appellant has received the same and did not respond to it. The said statement is utterly false.

9.He would further submit that the respondent is not a man of means to advance such huge amount and he has not produced any document to show that on the date of the agreement, he had a sum of Rs.20,00,000/- and he paid the same to the appellant. Though he is an income tax assessee, he has not submitted any proof to show that a sum of Rs.20,00,000/- has been shown in his income tax assessment for the relevant assessment year. He has also not shown any document like bank statement and other things. Further, the respondent has not proved that he was in possession of Rs.20,00,000/- on the date of agreement or prior to the agreement and he paid a sum of Rs.20,00,000/- as advance to the appellant. There are material contradictions between the evidence of P.W.1 to



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P.W.3 and further, P.W.2 and P.W.3 are stated to be as witnesses for Ex.A.1 agreement and they are very close relatives to the respondent, who are the paternal uncles of the respondent. Therefore, taking advantage of the blank signed papers, the respondent made use of it and created document with the help of P.W.2 and P.W.3. The trial Court has also failed to appreciate the pleadings, oral and documentary evidence and given an erroneous finding that Ex.A.1 agreement is a genuine one and the respondent was always ready and willing to perform his part of the contract and the appellant was not ready and willing to perform his part of the contract and granted the relief of specific performance, which warrants interference of this Court.

10.The learned counsel for the respondent would submit that the suit property belongs to the appellant. The appellant entered into the sale agreement with the respondent on 05.02.2010 and the sale price was fixed at Rs.20,20,000/-. On the date of agreement itself, the respondent paid a sum of Rs.20,00,000/- as an advance and the appellant received the same and agreed to execute the sale deed within a period of three months from the date of the agreement, after getting balance sale consideration of Rs.20,000/-. The respondent sent an Advocate



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notice on 27.03.2010 under Ex.A.2 and the same was returned as unserved. The returned cover was marked as Ex.A.3, dated 30.03.2010. Hence, the respondent sent another notice through his Advocate on 15.04.2010, which has been marked as Ex.A.4. The said notice was acknowledged by the wife of the appellant and the same has been marked as Ex.A.5. After acknowledgment, the appellant did not send any reply to the Advocate notice Ex.A.4. Later, the respondent came to know that the appellant is taking effective steps to sell the suit property to third party. Therefore, the respondent was constrained to file the suit for specific performance.

11.He would further submit that though the appellant has not sent any reply, subsequently, after filing the suit, he has filed written statement, denying the agreement, wherein he has stated that he borrowed a sum of Rs.9,75,000/- on various dates; when the respondent insisted to pay entire amount of Rs.9,75,000/-, since he could not repay at once, the respondent has filed the suit even without sending notice; The appellant need not sell the suit property, which is worth about Rs.50,00,000/- and the respondent has created the agreement Ex.A.1, by using the unfilled stamp papers signed by the appellant at the time of borrowing



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money from the respondent. Since the appellant denied the execution of the sale agreement, he admitted the signature. Therefore, in order to prove the genuineness of the agreement, the respondent has examined himself as P.W.1 and also in order to prove the agreement, he also examined P.W.2 and P.W.3, who are the witnesses to Ex.A.1 sale agreement.

12.He would further submit that though the appellant in his written statement stated that he need not sell the suit property, which is worth about Rs.50,00,000/-, the respondent has produced the document that the appellant has already sold some of the properties to the respondent and also other various persons and further, during the pendency of the suit, the appellant sold some portion of the suit property to third party for a sum of Rs.2,90,000/-. Therefore, the defence of the appellant is falsified from the document Ex.B.3. It shows that the appellant has not approached the Court with clean hands. The learned trial Judge, considering the pleadings and also the conduct of the appellant, has found that Ex.A.1 agreement is genuine and further, the respondent was ready and willing to perform his part of the contract and within the stipulated time, he requested the appellant to execute the sale deed by sending notices Ex.A.2 and



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WEB COPY A.4. Since the appellant received the notice through his wife, he did not respond to it. Therefore, the respondent proved his readiness and willingness within the stipulated time and also he was ready and willing to pay balance sale consideration of Rs.20,000/-. Therefore, the suit was rightly decreed by the trial Court. Accordingly, there is no merit in this appeal and the appeal is liable to be dismissed.

13.Heard both sides and perused the materials available on record carefully.

14.The specific case of the appellant is that he has never intended to sell the property and never executed the sale agreement Ex.A.1 and the same is not genuine. Actually, he borrowed a sum of Rs.9,75,000/- from the respondent on various dates and at the time of borrowing money, he signed unfilled stamp papers and subsequently, he repaid the said money. However, the respondent misused that unfilled signed stamp papers and created document. Further, there is no privity of contract, since the appellant has not entered into the sale agreement. Therefore, he need not execute the sale deed based on Ex.A.1.



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15.The specific case of the respondent is that the appellant agreed to sell the property, for which he also entered into the agreement on 05.02.2010 for total sale consideration of Rs.20,20,000/- and on the date of agreement itself, the respondent paid major portion of the sale consideration ie., Rs.20,00,000/- as advance and within a period of three months, the appellant has to measure the property and also after receiving balance sale consideration, execute the sale deed. Within the stipulated time when the respondent approached the appellant, the appellant refused to execute the same and also tried to make encumbrance in the suit property. Therefore, he sent notice Ex.A.2 and the same was returned as unserved and again, sent notice Ex.A.4, which was acknowledged by the wife of the appellant. Subsequently, since the appellant did not come forward to execute the sale deed, the respondent has filed the suit and also proved the agreement.

16.Admittedly, the appellant and the respondent are the close relatives and known each other. Further, a perusal of Ex.A.8 shows that previously, on 27.09.2006, the appellant sold one of his properties to the respondent. Therefore, earlier they have transaction and they have known each other. The appellant has



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stated that he has not entered into the sale agreement Ex.A.1 and he has only borrowed a sum of Rs.9,75,000/-. Though in his written statement he has stated that the respondent insisted to repay the said amount of Rs.9,75,000/- at once and since he could not repay, the respondent has filed this suit, in his deposition as D.W.1, he has stated that he has borrowed a sum of Rs.9,75,000/- and he had been regularly paying interest till the filing of the suit. Further, no notice was sent to the appellant. Therefore, there is a contradiction between the written statement and deposition. Further, though the appellant has stated that he has no need to sell the property and also the suit property is worth about Rs.50,00,000/-, during the pendency of the suit, even after filing of the written statement in the suit, the appellant sold the property to third party through Ex.B.3 on 24.09.2010 for sale consideration of Rs.2,90,000/-. Therefore, the defences taken by the appellant that he has no intention to sell the property and the property is worth about Rs.50,00,000/-, are falsified from his own evidence and documents.

17.Further, the respondent denied that the appellant borrowed money and signed unfilled stamp papers and he has stated that since the appellant is not ready and willing to execute the sale deed, he has filed the suit. In order to



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substantiate that the respondent was always ready and willing to perform his part of the contract, he examined himself and also marked documentary evidences i.e., sale agreement, notice sent by him, returned cover, another notice sent by him, acknowledgment by the wife of the appellant, the sale deed in respect of property previously purchased from the appellant and also information from the Registration Department, regarding the stamp papers purchased for the agreement. Further in order to substantiate the case and also prove Ex.A.1 agreement, he examined P.W.2 and P.W.3, who are the witnesses to the sale agreement Ex.A.1. They have also stated about the transaction between the appellant and the respondent and also stated that the appellant agreed to sell the property for a sum of Rs.20,20,000/- and on 05.02.2010 they entered into the sale agreement and the appellant received a sum of Rs.20,00,000/- on the same date as advance and agreed to sell the property within a period of three months. Though the appellant put a suggestion that both witnesses are relatives to the respondent, P.W.2 and P.W.3 stated that they are maternal uncle of the appellant and paternal uncle of the respondent. Therefore, both are close relatives equally to the appellant and the respondent. Hence, the contention of the appellant that with the help of the close relatives, the respondent created the document, is also falsified



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from the evidence of P.W.2 and P.W.3. Further, since the first notice was returned, second notice was received by the wife of the appellant and the respondent filed the acknowledgment of the wife of the appellant. Though the appellant has denied the acknowledgment, he has not disproved that the signature in Ex.A.5 is not that of his wife. He has not examined his wife to prove that she has not acknowledged the notice. He has not denied that the address mentioned in the notice is not that of him, however, in the written statement and the evidence, simply he denied that no notice was sent.

18.Further, the appellant though questioned the financial capacity of hte respondent, he himself admitted that he borrowed a sum of Rs.9,75,000/- from the respondent. If the respondent has no financial capacity, as to how the appellant had borrowed a sum of Rs.9,75,000/- from the respondent. The appellant has not explained the same. Further, Ex.A.8 itself clearly shows that the appellant has already sold some of the properties to the respondent and further, the appellant has also admitted that he sold other properties to third parties. Therefore, the appellant has not proved that the respondent has no financial capacity. Mere non-filing of the bank statement and income tax assessment may not be a sole ground



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to disbelieve the case of the respondent. It is settled principles of law that if the purchaser is able to prove that he is having financial capacity to raise or mobilise fund for sale consideration, that is enough. Therefore, readiness need not be shown by the availability of the ready cash or any bank accounts. Though the appellant put a suggestion that the respondent is doing financial business, from the evidences and witnesses, it is clearly proved that the respondent is doing textile business and textile shop. Therefore, under these circumstances, the financial capacity of the respondent cannot be questioned and the appellant has also not disproved the financial capacity of the respondent that he is not a man of means to pay such huge amount of Rs.20,00,000/- as sale consideration.

19.As already stated, there is an inconsistency in the written statement and in the depositions. The respondent has proved that through oral and documentary evidence, the sale agreement Ex.A.1 is genuine and also proved that he was ready and willing to perform his part of contract. However, the appellant was not able to prove that the agreement is not genuine. He failed to prove that he signed only in the blank unfilled stamp papers at the time of borrowing money from the respondent and the respondent made use of the same and created



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document. Once the agreement is proved as genuine, the respondent has proved his readiness and willingness to perform his part of the contract. However, the appellant has not substantiated his defence by oral and documentary evidence. Once the appellant admitted the signature and also borrowed some money from the respondent, then it is for him to prove that there is no agreement between the appellant and the respondent for selling the suit property. Therefore, once admitted the signature, onus of proof has been shifted to the appellant. Hence, it is for the appellant to discharge his onus.

20.As this Court is the First Appellate Court as a fact finding Court, it has to re-appreciate the entire evidence independently and arrive at an independent conclusion that the respondent has proved his case that the agreement is genuine and he was always ready and willing to perform his part of contract and therefore, the respondent is entitled for the decree for specific performance. The trial Court has rightly appreciated the evidence and decreed the suit. On re-appreciation of the entire materials and also the conduct of the appellant, this Court finds that the appellant has not taken consistent stand and he has not proved his defence. The appellant has not come to the Court with clean hands. The conduct of the appellant from the oral and documentary evidence is



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not genuine one and there is no merits in the appeal and the same is liable to be dismissed.

21.In the result, this Court finds that there is no valid ground to interfere with the Judgment and decree of the trial court, hence, the same is confirmed. Accordingly, this Appeal Suit is dismissed with costs.

**10.08.2022**

Index : Yes / No

Internet : Yes / No

*Myr*

To

1.The Additional District Judge,  
Fast Track Court, Dindigul.

2.The Record Keeper,  
V.R.Section,  
Madeira Bench of Madras High Court,  
Madurai.

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**P.VELMURUGAN, J.**

*Myr*

**Judgment made in**  
**A.S.(MD)No.40 of 2013**

**10.08.2022**