



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.01.2022
DELIVERED ON : 17.02.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.952 of 2007

1.M.S.Durairaj (Died) ... Appellant/Respondent/Plaintiff
2.D.Fathima Mary
3.D.Daisy
4.D.Jeyaseelan
5.D.Josepin Santhi ... Proposed Appellants

(Appellants 2 to 5 are brought on record as legal heirs of the deceased sole appellant as per order, dated 19.11.2018 in C.M.P (MD)No.7752 of 2018 in S.A(MD)No.952 of 2007)

Vs.

A.Savrimuthu ... Respondent/Appellant/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed in A.S.No.106 of 2004, dated 13.09.2006 on the file of the District Judge, Pudukottai and restore the decree and judgment in O.S.No.188 of 2001 on the file of the Subordinate Judge, Pudukottai, dated 30.09.2004.

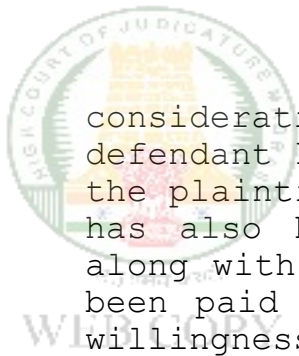
For Appellants : Mr.M.Jahangir Baba
For Respondent : Mrs.J.Maria Roseline

JUDGMENT

The plaintiff is the appellant herein.

2. The plaintiff filed O.S.No.188 of 2001 before the Subordinate Judge, Pudukottai, for specific performance. The suit was decreed by the trial Court. The defendant filed A.S.No.106 of 2004 before the District Court, Pudukottai. The learned District Judge was pleased to allow the appeal and dismissed the Second Appeal. Challenging the same, the plaintiff has filed the above Second Appeal.

3. In the plaint, the plaintiff has contended that the defendant has executed a sale agreement on 20.01.1999 under Exhibit A1 for a sale consideration of Rs.1,50,000/-. The entire sale



consideration was paid on the date of the sale agreement. The defendant had agreed to execute a registered sale deed in favour of the plaintiff as and when called for by the plaintiff. The defendant has also handed over a registration copy of the parent document along with the sale agreement. As the entire sale consideration has been paid on the date of agreement, the question of readiness and willingness on the part of the plaintiff does not arise. He further contended that since the defendant has not complied with the oral requests, he issued a legal notice under Exhibit A2 on 13.07.2001. The defendant sent a reply notice under Exhibit A3 on 20.07.2001, raising untenable conditions. Hence, the present suit for specific performance.

4. The defendant filed a written statement contending that the sale agreement is a fabricated document. The defendant is a rice merchant and he is in the practice of borrowing loan from the plaintiff. The plaintiff used to obtain signatures from the defendant on various blank pro-notes as well as stamped and unstamped blank instruments. The plaintiff has also taken into his custody, the original title deeds pertaining to the suit property as a security. He further contended that even though he has discharged all the debts, the plaintiff is retaining the signed documents, alleging that the balance of Rs.25,000/- is due from the defendant. The defendant further contended that the alleged sale agreement has been fabricated misusing the blank non-judicial stamp papers which were obtained by the plaintiff on 05.12.1998.

5. The trial Court after going through the oral and documentary evidence, arrived at a finding that the defendant has executed the suit sale agreement. The trial Court also arrived at a finding that the plaintiff has admitted his signature in the suit sale agreement. The trial Court found that the plaintiff has proved the suit sale agreement by examining one of the witnesses as P.W.2. Based upon the said findings, the trial Court decreed the suit as prayed for.

6. The First Appellate Court after perusal of Exhibit A1 agreement, arrived at a finding that the said sale agreement has been signed only by the defendant/vendor and not signed by the plaintiff/purchaser. The learned District Judge relied upon **AIR 1998 Madras page 169**, to arrive at a finding that when the agreement has not been signed by both the parties, it is not specifically enforceable. The First Appellate Court also found that the defendant has not signed in blank stamp papers, but only signed after typing on the agreement. The First Appellate Court found that since the plaintiff purchaser has not signed the agreement, the said agreement is inchoate and not enforceable. The First Appellate Court also found that if really, the plaintiff had paid the entire sale consideration on the date of sale agreement, he could have very well entered into a sale deed and need not have waited for a period of 2 ½ years to issue a legal notice to the defendant for execution of



the sale deed. Based upon the said findings, the trial Court referred to Section 20 of the **Specific Relief Act** and refused to exercise its discretion in favour of the plaintiff and allowed the appeal and dismissed the suit. As against the same, the present Second Appeal has been filed by the plaintiff.

WEB COPY

7. The Second Appeal has been admitted on the following substantial questions of law:

"Whether the agreement signed by the vendor alone and not signed by the purchaser shall constitute a full fledged valid agreement in law?"

8. The learned Counsel for the appellants had contended that the First Appellate Court has non-suited the plaintiff mainly on the ground that the suit sale agreement has not been signed by the plaintiff/purchaser. The learned First Appellate Judge has relied upon a judgment of our High Court reported in **AIR 1998 Madras, page 169** to arrive at a finding that a sale agreement signed by the vendor alone is not specifically enforceable. The learned Counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court reported in **2009 (2) MLJ page 733 (SC)** to impress upon the Court that the judgment of our High Court reported in **AIR 1998 Madras, page 169** has been held to be no longer good law. The Hon'ble Supreme Court has held that an agreement of sale signed by the vendor alone is valid and enforceable by the purchaser. He further contended that merely because there was some money transaction between the plaintiff and the defendant, it cannot be considered that the suit sale agreement has been executed for the security of the said transaction. He further contended that the First Appellate Court ought not to have considered the validity of Exhibit A1 agreement, when the plaintiff has admitted the execution of the same in the written statement. Though the defendant has alleged that he has handed over original title deeds to the plaintiff as a security, it has been established by the plaintiff that only a certified copy was handed over along with the sale agreement. Hence, he prayed for allowing the appeal.

9. Per contra, the learned Counsel appearing for the respondents contended that since the plaintiff and the defendant are cousin brothers, the defendant used to borrow money from the plaintiff on various occasions and as a security for the said loan amount, the defendant has executed several pro-notes and signed in blank stamp papers. She further contended that a letters written by the plaintiff under Exhibits B1 and B2 will clearly indicate that there was a loan transaction between the plaintiff and the defendant. She further contended that no purchaser will wait for more than 2 years to file a suit for specific performance after paying the entire sale consideration. This will clearly indicate that the said transaction is only a security for the loan



transaction and was never intended to be a sale agreement to alienate the suit schedule properties. Hence, she contended that the First Appellate Court has rightly reversed the judgment and decree of the trial Court. Hence, she prayed for dismissal of the Second Appeal.

WEB COPY

10 I have carefully considered the submissions on either side.

11. The suit sale agreement has been entered into between the plaintiff and the defendant on 20.01.1999 and marked as Exhibit A1. A perusal of the said agreement shows that the entire sale consideration of Rs.1,50,000/- was paid on the date of the agreement. The plaintiff has issued a legal notice under Exhibit A2 and the defendant has replied under Exhibit A3. The plaintiff has examined himself as P.W.1 and one of the attestors of Exhibit A1 agreement as P.W.2. A combined reading of P.W.1 and P.W.2 will clearly indicate that the plaintiff has proved the execution of Exhibit A1 sale agreement. In fact, the defendant in his reply notice as well as in the written statement has admitted his signature in the suit sale agreement. But only contended that he had signed in blank stamp papers.

12. When the defendant has admitted his signature in the suit sale agreement, the entire burden will be upon the defendant to establish that he had signed in blank stamp papers and the same was only meant for security for the loan transaction. In the cross-examination, the defendant has admitted that he has signed the Exhibit A1 only after understanding that it is the stamp paper. Though the defendant has claimed that he is having accounts for the loan transaction with the plaintiff, the defendant has not chosen to produce any one of the accounts. The defendant, being a rice merchant would be maintaining day to day accounts. However, he has not chosen to produce them. The defendant had claimed that the plaintiff had refused to return the signed papers citing a balance of Rs.25,000/- due from the defendant. Unless the defendant produces his account books, we cannot come to a conclusion that only for this reason, the original documents and the signed papers were retained by the plaintiff. The defendant has miserably failed to prove his case.

13. The Hon'ble Supreme Court in the judgment reported in **2009 (2) MLJ, page 733 (SC)** has held that even if the sale agreement is signed only by the vendor, the same is enforceable by the purchaser. Hence, the finding of the First Appellate Court that Exhibit A1 sale agreement is an inchoate document and it is not enforceable by the plaintiff is not legally sustainable.

14. In view of the above said discussion, the substantial question of law is answered as follows:



"The sale agreement signed by the vendor alone and not signed by the purchaser shall constitute a full-fledged valid agreement in law, in view of the Hon'ble Supreme Court judgment cited above".

15. In view of the above said discussion, the substantial question of law is answered in favour of the appellant. The judgment and decree of the First Appellate Court is set aside, the judgment and decree of the trial Court is restored. Therefore, the Second Appeal stands allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The District Court,
Pudukottai.

2.The Subordinate Judge,
Pudukottai.

3.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.M.JAHANGIR BABA, Advocate (SR-7203[F] dated 18/02/2022)

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-7585[F] dated 21/02/2022)

Judgment made in

S.A(MD)No.952 of 2007

17.02.2022

ss (CO)

TR(08.03.2022) 5P 7C