



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2022

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S. (MD) No. 85 of 2019

and

C.M.P. (MD) No. 4610 of 2019

M.Karunamoorthy ... Appellant / Plaintiff

Vs.

1. R.Chandran

2. R.Dhanasekar

3. R.Balakrishnan

... Respondents / Defendants

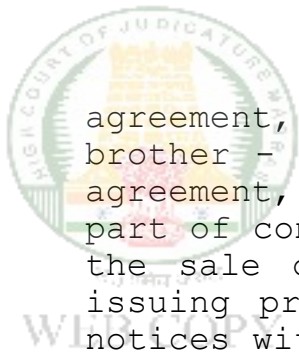
PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908 against the judgment and decree of the learned I Additional District Judge, Madurai, dated 19.04.2018 in O.S. No. 57 of 2011.

For Petitioner : Mr.M.Arjun Varman
for Mr.T.Lajapathy Roy
For Respondents : No appearance

J U D G M E N T

This appeal has been preferred challenging the judgment and decree of the learned I Additional District Judge, Madurai, dated 19.04.2018 made in O.S. 57 of 2011.

2.The appellant is the plaintiff in the suit. The suit has been filed for the relief of specific performance with the alternative relief to refund a sum of Rs.2,00,000/- (Rupees Two Lakhs only) paid as the advance to the first and second defendants. The case of the plaintiff is that he entered into an agreement of sale with the owners of the suit properties, namely, first and second defendants on 11.02.2008 and entered into the sale agreement; on the date of sale agreement itself, he paid an advance amount of Rs.2,00,000/- (Rupees Two Lakhs only); the subject matter of the sale is 1 acre 48 cents out of 2 acres 22 cents; since the price negotiated and accepted was Rs.8,900/- (Rupees Eight Thousand and Nine Hundred only) per cent, the time for performance for contract is fixed as three months; the sale agreement was signed by the first and second defendants alone because the other brother, namely, Balakrishnan (D3), went abroad at that time; at the time of executing the sale



agreement, D1 and D2 promised that they would bring their other brother - D3 also at the time of execution of the sale; as per the agreement, the plaintiff was always ready and willing to perform his part of contract, but the defendants did not come forward to execute the sale deed by receiving the balance sale consideration; after issuing pre-suit notice to the defendants and after getting reply notices with false allegations, the plaintiff has filed the suit for specific performance; the first and third defendants remained exparte; the second defendant alone has filed the written statement by denying the execution of the sale agreement; he came to know about the sale agreement only when he received the legal notice; his signature in the sale agreement must be a forged one and the suit is barred by limitation not maintainable.

3. On the basis of the above pleadings, the learned trial Judge framed the following issues:

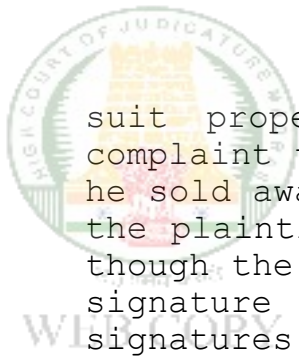
(i) Whether the plaintiff is always ready and willing to perform his part of contract as per the terms of the agreement for sale, dated 11.02.2008?

(ii) Whether the plaintiff is entitled to a specific performance decree as prayed for?

(iii) Whether the plaintiff is entitled, in the alternative, by directing the defendants 1 and 2 to return the sum of Rs.2,00,000/- (Rupees Two Lakhs only) received by them from the plaintiff?

4. During the course of trial, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and Exs.A1 to A11 were marked. On the side of the defendants, the second defendant himself examined as DW1 and the report of the hand writing expert was marked as CW1. On conclusion of the trial, the learned Judge dismissed the suit, aggrieved over the same, the plaintiff has preferred the appeal.

5. The learned counsel for the appellant submitted that the defendants have chosen to send reply notices with three different versions about the impugned sale agreement; when the first defendant has stated that it was executed in connection with money transaction, the second defendant denied his signature and execution; the third defendant stated that he is not a signatory to the document and the sale agreement will not bind him; the learned trial Judge placed reliance on the report of the handwriting expert and concluded that the sale agreement was not true and valid one by overlooking the fact that the report of the handwriting expert is not a conclusive one; the third defendant who is the brother of the first and second defendants has given Ex.A10 - complaint by alleging that the plaintiff has concocted the sale agreement and played fraud; however, he has stated in the very same complaint that without his knowledge, his brothers have received a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as advance for selling the



suit property to the plaintiff; though he has alleged in the complaint that the sale agreement is not a genuine one, subsequently he sold away his undivided share in the suit properties in favour of the plaintiff and that was admitted by the evidence of DW1 himself; though the handwriting expert has given an adverse opinion about the signature found in Ex.A1, it is to be noted that the admitted signatures submitted for comparison were subsequent to the filing of the suit; hence, no reliance can be given to the opinion of the handwriting expert; the plaintiff was all along ready and willing to perform his part of contract, but the learned trial Judge had observed otherwise without properly appreciating the evidence on record; even though one of the brothers, namely, D3 has admitted the execution of the sale agreement by his brothers, the learned trial Judge did not even grant the alternate relief of refund of advance; in support of above contentions, the learned counsel for the appellant submitted the following citations:

(i) **Central Bank of India vs. Antony Hardware Mart** reported in **2006 (3) CTC 39;**

(ii) **Chennadi Jalapathi Reddy vs. Baddam Pratapa Reddy** reported in **(2019) 14 SCC 220;**

(iii) **R.Lakshmikantham vs. Devaraji** reported in **(2019) 8 SCC 62.**

Since the plaintiff has proved his case, he is entitled to get the relief of specific performance and hence, the appeal should be allowed.

6.After service of notice to the respondents, Mr.Vamanan, Advocate filed vakalat for the respondents, but subsequently, he withdrew his vakalat by stating that some other counsel has filed change of vakalat. However, no counsel had entered appearance for the respondents and the respondents also were not present when the matter was posted repeatedly for final hearing.

7.Basing on the submission made by the learned counsel for the appellant and the defence of the respondents raised before the trial Court, I feel that the following points for consideration/relevant for the purpose of this appeal, are essential in this Appeal Suit:

(i) Whether the suit sale agreement, dated 11.02.2008 is true and valid one?

(ii) Whether the judgment of the trial Court in dismissing the suit in entirety, is fair and proper?

8.The fact that the suit properties belonged to the defendants is not in dispute. The defendants are brothers and the suit properties were originally belonged to their father. It is the case of the appellant / plaintiff that the respondents / defendants 1 and 2 entered into a sale agreement with him on 11.02.2008 for selling the suit properties in his favour. The property is an undivided property



owned by three brothers, namely, the defendants herein. Though in Ex.A1, two brothers are said to have affixed their signatures, the signature of the third defendant is not found.

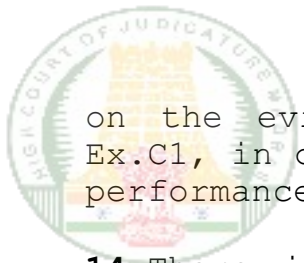
9.It is submitted by the learned counsel for the appellant that the respondents / defendants 1 and 2 have assured at the time of executing the sale agreement that the third defendant was abroad and hence they would make the needful to get the sale deed executed by him also. However, the third defendant denied his consent for the sale agreement and he had even preferred a police complaint against his one brothers and the copy of the complaint is produced as Ex.A10. In Ex.A10 it is stated that when he came to India, the first defendant Chandran prevented him from raising wall in the suit property by stating that he already entered into a sale agreement. He also came to the know that his brothers have got an advance of Rs.2,00,000/- (Rupees Two Lakhs) on the basis of sale agreement.

10.Despite D3 had such serious objection for Ex.A1 - sale agreement; subsequently, he himself had sold away his undivided share in the suit property in favour of the appellant / plaintiff. During the cross-examination of DW1 (D2), he admitted about the sale made by his brother, i.e., third defendant in favour of the plaintiff in respect of his undivided share.

11.Now, the one and only contesting defendant would be the second defendant, who had denied his signature in the sale agreement - Ex.A1. The appellant / plaintiff himself had taken initiative and sent the signature of the second respondent - Dhanasekaran in Ex.A1 along with his admitted signature for getting the opinion of handwriting expert. After examining the disputed signature and the admitted signature, the expert has given his opinion in Ex.C1. The report of handwriting expert is marked as Ex.C1. In his report, the handwriting expert has stated that the signature found in Ex.A1 does not belong to the second defendant. In Ex.C1 - report, the handwriting expert stated about the reasons why he has come to the conclusion that the alleged signature of D2 found in Ex.A1 is not his signature.

12.The handwriting expert was examined as CW1. In his evidence, he has stated that whenever the signature of a person is compared for giving opinion, it is essential to get his admitted signatures made prior to three to five years. It is because of the fact that after litigation, the parties might intentionally change their signature in order to suit their contentions made in the litigation.

13.In the case in hand, the handwriting expert had only examined the disputed signature of the second defendant with his admitted signatures which have been affixed by him subsequent to the suit. On this ground, the learned counsel for the appellant vehemently argued that the learned trial Judge ought not to have placed much reliance



on the evidence of the handwriting expert (CW1) and his report Ex.C1, in order to non-suit the plaintiff for the relief of specific performance.

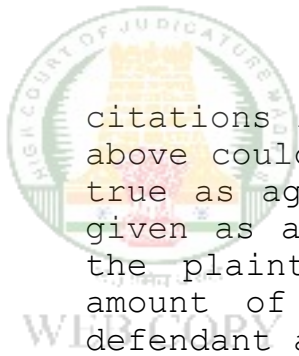
14. There is no disagreement on the point that the report of the handwriting expert is inconclusive and the documents sent for comparison to the experts which should be the document signed by concerned before three to five years. In this case, the signatures affixed by the second defendant subsequent to the suit were sent to the handwriting expert for comparison. But the fact remains that initiative had taken by the appellant / plaintiff himself and nothing would have prevented him to call for the admitted signature of the second defendant and send it for analysing to the handwriting expert. Since the plaintiff has taken steps to get the opinion from the handwriting expert and opted to send the latest signature to the expert and now, the plaintiff cannot come and take a different stand that the comparison of signatures were not in accordance with law.

15. But one thing which has to be seen is that the plaintiff is not a stranger to the defendants and one of the brothers, namely, the third defendant had sold away his undivided share to the plaintiff himself subsequent to the suit. In his earlier complaint Ex.A10 against his the third defendant had spoken about the sale agreement, in which, the first defendant has received Rs.2,00,000/- (Rupees Two Lakhs only) as an advance from the plaintiff. But the first defendant had chosen to remain exparte and avoided the box.

16. Even though the report of the handwriting expert is not a final one and the examination of the signature of the second defendant in the impugned sale agreement could be examined by the Court itself by invoking power under Section 73 of the Evidence Act, no admitted signature of the second defendant relevant to three to four years prior to the suit was produced before the Court. Under such circumstances, even the Court is unable to give findings as to the genuineness of signature of D2 found in Ex.A1 - sale agreement.

17. There is no dispute with regard to the signature of D1, because of his reply notice - Ex.A7, he did not deny the execution of the sale agreement. His contention is that the agreement came into existence only by way of security for the alleged money transaction itself. In such circumstances and also on the strength of the averments made in the Ex.A10 - complaint, the plaintiff has proved the fact that he has given advance amount of Rs.2,00,000/- (Rupees Two Lakhs only) to the first defendant. The learned trial Judge ought to have evaluated the above evidence on record in order to grant the alternative relief of refund of advance amount to the plaintiff as against the first defendant at least.

18. Hence, I feel that the judgment of the trial Court requires modification to that extent. Because of this strange situation, the



citations relied on by the learned counsel for the appellant listed above could be of no avail. Though the sale agreement is found to be true as against the first defendant, no conclusive findings can be given as against the second defendant. In view of the discussion, the plaintiff is entitled to get alternative relief of advance amount of Rs.2,00,000/- (Rupees Two Lakhs only) from the first defendant alone. **Thus Points No.1 and 2 are answered accordingly.**

In the result, this Appeal Suit is partly allowed and the judgment and decree in O.S. No. 57 of 2011 is modified to the extent that the suit is decreed in respect of the refund of the advance amount of Rs.2,00,000/- (Rupees Two Lakhs) by the first defendant along with cost and interest at the rate of 9% per annum, from the date of agreement till the date of realization. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The I Additional District Judge,
Madurai.

COPY TO:-

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

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-14796[F]
dated 28/03/2022)

A.S. (MD) No. 85 of 2019

and

C.M.P. (MD) No. 4610 of 2019

24.03.2022

srr(CO)

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