



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2022

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD)No.20 of 2016

and

C.M.P. (MD)No.1487 of 2016

K.Pandian

... Appellant/Plaintiff

Vs.

K.Vijaya

... Respondent/Defendant

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 01.11.2007 passed in O.S.No.89 of 2006 on the file of the First Additional District Judge, Trichirappalli.

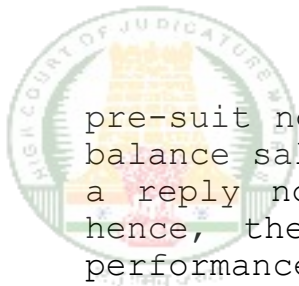
For Appellant : Mr. G.Prabhu Rajadurai

For Respondent : Mrs.J.Maria Roseline

JUDGMENT

This Appeal Suit has been preferred challenging the judgment and decree of the learned I Additional District Judge, Trichirappalli, dated 01.11.2007, made in O.S.No.89 of 2006.

2.The appellant is the plaintiff; the suit has been filed by the plaintiff for the relief of specific performance based on the alleged sale agreement/Ex.A1 dated 26.04.1999; according to the case of the plaintiff, he entered into a sale agreement with the defendant on 26.04.1999 in respect of the suit property for a sale price of Rs.14 Lakhs and on the date of sale agreement, the plaintiff paid a sum of Rs.9 Lakhs as advance; the time for performing the contract was fixed at six months; subsequent to the sale agreement, on 10.11.1999, the defendant demanded a further sum of Rs.4 Lakhs in connection with her son's marriage; the plaintiff paid a further sum of Rs.4 Lakhs and for which, the plaintiff issued a receipt, subsequent to her son's marriage, she did not come forward to execute the sale deed as agreed; the plaintiff issued



pre-suit notice on 09.07.2000 calling upon the defendant to get the balance sale consideration and execute the sale deed and for getting a reply notice; the defendant did not reply to the said notice; hence, the plaintiff filed the suit for the relief of specific performance.

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3.The defendant resisted the suit by stating that the sale agreement is a concocted one; the plaintiff is a financier and the defendant's husband is a film distributor; in view of his financial demand in connection with the movie, he approached the plaintiff and obtained a loan of Rs.5 Lakhs; the loan was repaid with interest to the plaintiff on 15.04.1999 itself, the common friend of the plaintiff and the defendant's husband, namely, Rajaguru persuaded the defendant's husband to file exhibition right for the film 'Mudhalvan' and for which, the defendant's husband got financial assistance of Rs.10 Lakhs from the plaintiff; at that time he executed various documents and handed over to the plaintiff; the plaintiff obtained signatures of the defendant's husband and his family members by way of security in various unfilled promissory note, blank papers, blank stamped papers and non-judicial stamp papers; since the defendant's husband could not get the distribution for the film, Mudhalvan in view of the escalated price, he gave up the project and repaid Rs.10 Lakhs to the plaintiff; but the plaintiff had misused the signed papers obtained from the defendant's husband and his family members and created forged sale agreement/Ex.A1 and receipt/Ex.A2 and filed the suit; in fact, the defendant's husband was missing, when he went to Madurai on 19.02.2000; thereafter, Habeas Corpus Petition was filed and because of the efforts taken by the police, the defendant's husband was produced after six months; during the said period, the plaintiff issued the legal notice dated 09.07.2000, calling the defendant to execute the sale deed; the defendant's husband was kidnapped illegally and detained; since the suit has been filed on the basis of forged documents, the suit should be dismissed.

4.Basing on the above pleadings, the learned trial Judge framed the following issues:

"1.Whether the plaintiff is entitled to the relief of specific performance as prayed for? and

2.To what relief the plaintiff is entitled to?"

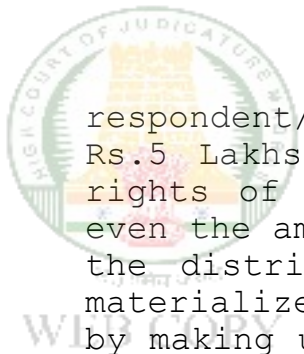
5.During the course of trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to A12 were marked; on the side of the defendant, the defendant and her husband examined themselves as D.W.1 and D.W.2 and Exs.B1 to B4 were marked.



6.At the conclusion of the trial, on considering the evidence available on record, the learned trial Judge dismissed the suit; aggrieved over that, the plaintiff has preferred this Appeal Suit.

7.Mr.G.Prabhu Rajadurai, the learned counsel for the appellant submitted that the signature of the defendant's husband found in Ex.A1/sale agreement and Ex.A2/receipt are true and the learned trial Judge has not properly appreciated the same; in fact, the defendant's husband himself admitted in his cross-examination that the signature found in Ex.A1 is his wife's signature; in the evidence of D.W.1 and D.W.2, contradictory statements have been given about the return of D.W.2/defendant's husband; even the Habeas Corpus Petition filed by the defendant did not disclose whether D.W.2/defendant's husband retrieved from the illegal detention of the plaintiff; the missing story is just a stage management and only in view of that, both the Habeas Corpus Petitions were dismissed as withdrawn. Even subsequent to that, no action has been taken against the plaintiff on the allegation that he kidnapped and illegally detained D.W.2; the original documents of the suit property have been handed to the plaintiff by the defendant and the said fact was not denied; in fact, the plaintiff himself has produced those documents before the trial Court as Exs.A3 to A8; the property stands in the name of the defendant but she had stated in the written statement that though the property stands in her name, it was purchased by her husband; such a calculative defence taken by the defendant itself would show the unscrupulous intention in the mind of the defendant in order to evade from executing the sale deed as agreed; the appellant/plaintiff is not a money lender and he also involved in the film distribution business like the defendant's husband; only by way of abundant caution, the signatures of the family members of defendant were obtained as security and that alone will not cause any doubt about the genuineness of Ex.A1/sale agreement; even according to the defence of the appellant/plaintiff, the signed empty documents were obtained by the appellant/plaintiff in the year 1998, but the date in the stamp papers shows that the transaction was of the year 1999; without appreciating the evidence in a proper perspective, the learned trial Judge had dismissed the suit and hence, it should be reversed.

8.Mrs.J.Maria Roseline, learned counsel for the respondent submitted that by examining signatures found in Ex.A2 and also by invoking the powers of the Court under Section 73 of the Indian Evidence Act, the learned trial Judge had arrived at a correct conclusion on the basis of sound reasoning to record a finding that the signatures in Exs.A1 and A2 are forged ones; the plaintiff omitted to examine the independent witness, by name, Rajaguru to prove the genuineness of Ex.A1/sale agreement; since the defendant denies her signature found in Ex.A1 and its execution, the burden is upon the appellant/plaintiff to prove that Ex.A1 was executed by the



respondent/defendant; the defendant's husband had only borrowed Rs.5 Lakhs from the plaintiff, when he obtained the distribution rights of a film, by name, Kannathal and later repaid the same; even the amount of Rs.10 Lakhs, which was availed in connection with the distribution rights of another movie Mudhalvan was also not materialized and hence the said sum of Rs.10 Lakhs was also repaid; by making use of the signatures obtained from the family members of the defendant, the appellant/plaintiff had created documents and filed the suit; in fact, the defendant's husband was also abducted by the appellant/plaintiff and he was kept under his illegal detention; the respondent/defendant got back her husband only after filing Habeas Corpus Petition before this Court; the learned trial Judge had properly appreciated the merits of the case and dismissed the suit and it does not require any interference.

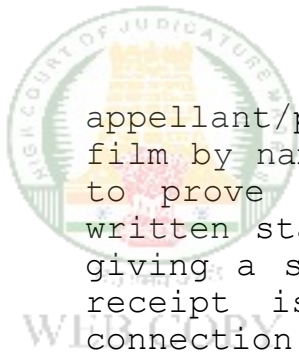
9.On the basis of the rival submissions, the Points for consideration arise in this Appeal Suit are as follows:-

- "1.Whether the sale agreement/Ex.A1 dated 26.04.1999 is true and valid?*
- 2.Whether the respondent/defendant had affixed her signatures in Exs.A1 and A2?*
- 3.Whether the judgment of the learned trial Judge in dismissing the suit is fair and proper?"*

10.Heard the learned counsel for the appellant and the learned counsel for the respondent and also perused the evidence available on record.

11.The fact that the appellant/plaintiff and the respondent/defendant are known to each other is not denied. While the appellant/plaintiff claims that he entered into a sale agreement with the respondent/defendant for purchase of the suit property for a valuable consideration of Rs.14 Lakhs, the respondent/defendant had stated that the said sale agreement is a concocted one. The records would show that both the defendant and her husband were examined as D.W.1 and D.W.2 respectively. During the cross-examination of D.W.2, D.W.2 denied his signature in Ex.A1 but he admitted that the signature of D.W.1 is that of the defendant. The above material evidence of D.W.2 was omitted to be given with due consideration by the learned trial Judge. More stress was given by the court below for obtaining the signatures of more than two witnesses in Ex.A1 and at two pages. When the appellant/plaintiff could prove the signature of the defendant in Ex.A1, the signatures of more than two witnesses is of no relevance.

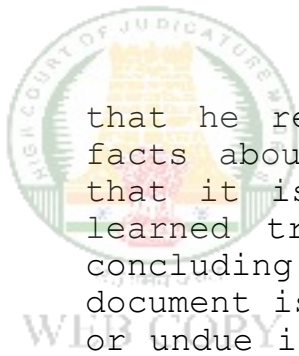
12.Though it is specifically claimed by the respondent/defendant that her husband had availed a loan of Rs.5 Lakhs alone from the



appellant/plaintiff in connection with distribution rights for a film by name Kannathal and repaid the same, no document is produced to prove the same. In fact, it is specifically stated in the written statement that the appellant/plaintiff issued a receipt for giving a sum of Rs.5 Lakhs to the defendant's husband but no such receipt is marked. Even if any such receipt is produced in connection with the loan availed by the defendant's husband from the appellant/plaintiff, that cannot be related to the sale agreement, which was executed by the defendant herself. The title deed of the suit property is said to have been handed over by the defendant's husband in favour of the plaintiff by way of security. However, no steps have been taken to get back the said document even after the alleged repayment of Rs.5 Lakhs as alleged by the defendant. It is rightly pointed out by the learned counsel for the appellant that the above alleged transaction is said to have taken place in the year 1998 and the stamp papers in Ex.A1 is shown to have been purchased in the year 1999. Under such circumstances, no signature in empty stamp papers of the year 1999 would have been obtained in the year 1998 itself. Once the execution of Ex.A1/sale agreement is proved, the appellant/plaintiff is entitled to get the presumption in connection with the terms of transactions. Since the terms of contract had been reduced into writing, namely, Ex.A1, which is also produced before the Court, the appellant/plaintiff had substantially complied with the requirements of Section 91 of Indian Evidence Act.

Hence, the burden is only on the defendant to prove that Ex.A1 was executed for some other reasons other than the terms found therein. But the defence of the defendant would show that she had denied her signatures in Ex.A1. It is admitted by her own husband and witness D.W.2 that the signatures found in Ex.A1 is that of the signatures of the defendant. At the risk of repetition, it is stated that even after the repayment of alleged loan availed by the defendant's husband, no steps was been taken for getting back the title documents in respect of the suit property. With regard to the filing of the Habeas Corpus Petition before this Court for production of the defendant's husband, who was said to be missing for a period of six months from 19.02.2000, no reliable evidence is produced.

13. If D.W.2 was abducted by the plaintiff and he was kept under his illegal custody, a criminal case would have been registered against the plaintiff and investigation would have been initiated against him. But the orders passed in H.C.P.No.826 of 2000/Ex.B1 is the copy of the petition and Ex.B2 is the copy of the order passed to the same. Ex.B2 would reveal that the said H.C.P.No.826 of 2000 was dismissed as withdrawn. It is not known what is the reason for such withdrawal. Even if the Habeas Corpus Petition is dismissed as withdrawn even after the production of the detenu, such statement would have been found in the order. But in Ex.A2 no such statement is found. Further the defendant had stated in her evidence that her husband/D.W.2 was missing nearly six months and he returned home only after six months. However, D.W.2 in his evidence had stated



that he returned home after two months. The above contradictory facts about the alleged missing episode of D.W.2 would also show that it is irrelevant to execution of Ex.A1/sale agreement. The learned trial Judge had not adverted into these aspects before concluding that Ex.A1/sale agreement is not true and valid. No document is produced to show that Ex.A1 was executed due to coercion or undue influence. **Hence, Point No.1 is answered in favour of the appellant.**

14. In fact, the very defence of defendant taken in her statement is that the signatures found in Ex.A1 is not her signature. However, her husband/D.W.2 had identified her signatures in Ex.A1. Hence, the above unfair conduct of the defendant should have also considered as relevant while recording the finding about the genuineness of Ex.A1. Since Ex.A1 is a written document, in pursuance of which the terms of contract agreed between the parties were reduced into writing and no contrary evidence is produced by the defendant to disprove the same, the trial court ought to have concluded that Ex.A1 is true and valid. **Thus, Point No.2 is answered in favour of the appellant.**

15. The respondent/defendant cannot disown her liability after receiving a sale consideration for a sum of Rs.9 Lakhs at the time, when Ex.A1/sale agreement was entered into. However, it is obligatory on the part of the appellant/plaintiff to prove that he had made further payment of Rs.4 Lakhs on 10.11.1999 and Ex.A2/receipt was executed by the defendant in receipt of said amount. The contents of Ex.A2 would speak about both the sale agreement and also the financial necessity of the defendant to meet out her son's marriage. Normally, if part sale consideration is paid, due endorsement would be made on the sale agreement itself. Though it is not unusual to pass receipts in acknowledgement of receiving further payment, the strange way of obtaining the signatures of the defendant in Ex.A2 deserves special notice. In Ex.A2, the signatures have been found on the stamp and below the stamp. The signature below the stamp is agreed to be the signature of the defendant. Though she denied her signature on the stamp of the receipt, the learned trial Judge had taken much pain to compare both the signatures and gave reasons as to why, the signature on the stamp cannot be accepted as the signature affixed by the defendant. Neither of the parties had sought any further examination of the signatures by seeking the help of forensic experts. Under such circumstances, the observation of the learned trial Judge that there is mismatch of signatures in Ex.A2 cannot be taken as baseless.

16. Even in Ex.A2, there is an independent witness, who has affixed his signature. Though the signature in Ex.A2 was denied by the defendant, she did not take any steps to examine the attestor



atleast to prove her genuineness of the terms. And no explanation is also given as to the difference in both her signatures in Ex.A2 on the stamp and below the stamp. Under such circumstances, it is right for the learned trial Judge to disregard the alleged payment made in pursuance of Ex.A2/receipt.

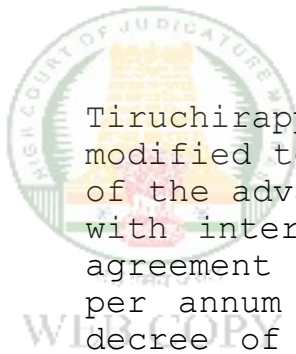
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17. The time of performance of the sale consideration was agreed as six months. The financial capability of the plaintiff was not denied. However, the plaintiff has not sent any legal notice or demand calling upon the defendant to execute the sale deed as and when he was ready to pay the balance sale consideration. The first legal notice was sent on 09.07.2000. Despite, it is alleged by the appellant/plaintiff that he made further payment of Rs.4 Lakhs on 10.11.1999, he seemed to have waited for nearly eight months to pay the remaining sale consideration of Rs.1 Lakh and to call the defendant to perform her part of contract. Though no adverse inference can be taken against the appellant/plaintiff about his readiness, the records would not prove about his willingness. The learned counsel for the appellant/plaintiff submitted that because of Habeas Corpus proceedings and other proceedings, he could not come forward to complete the sale consideration immediately.

18. The appellant/plaintiff has stated that he was in no way proved to be connected for the Habeas Corpus Petition filed by the defendant's family members. And hence there should not have been any hurdle for him to perform the terms of Ex.A1/sale agreement.

So in all probabilities, it can only be presumed that that the appellant was not willing to perform his part of contract, though he was ready. The conduct of the defendant also not in any way better because, the she also did not choose to cancel the sale agreement after the expiry of six months. So the unwillingness seems to be present on both sides. Though there are clauses of forfeiture and penalty in Ex.A1 for the willful failure on the part of either party to the contract, the materials would prove that neither of the parties was fair in their intention to perform the terms of contract. Since it is found that both parties are not willing to perform their contract, the forfeiture and penalty clauses cannot be read to the advantage of either of them. Hence I feel that the interest of justice would be met, if the learned trial Judge decreed the suit for repayment of the advance amount of Rs.9 Lakhs along with some reasonable interest than dismissing the suit in toto. Despite, the appellant/plaintiff has not prayed any relief for refund of the advance amount, in the interest of justice and equity, the Court can grant the relief of refund. **Thus, Point No.3 is answered in favour of the respondent.**

19. In the result, this Appeal Suit is disposed of and the judgment and decree of the learned I Additional District Judge,
<https://hcservices.ecourts.gov.in/hcservices/>



Tiruchirappalli, dated 01.11.2007 made in O.S.No.89 of 2006, is modified to the effect that the suit is decreed in respect of refund of the advance amount of Rs.9 Lakhs to the appellant/plaintiff along with interest at the rate of 9% per annum from the date of sale agreement till the date of filing of the suit, at the rate of 7.5% per annum from the date of filing of the suit till the date of decree of the suit and at the rate of 6% per cent from date of disposal of the suit till the date of receipt of a copy of this judgment. The respondent/defendant is directed to pay the amount of Rs.9 Lakhs along with interest to the appellant/plaintiff within a period of one month from the date of receipt of a copy of the judgment. The judgement and decree of the learned I Additional District Judge, Tiruchirappalli stands confirmed in all other aspects. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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The I Additional District Court,
Trichirappalli.

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+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-16368[F] dated
04/04/2022)

A.S.(MD)No.20 of 2016

31.03.2022

CK(CO)

KB(28.04.2022) 8P 5C