



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.04.2022

Pronounced on : 29.04.2022

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD) No.65 of 2018

and

C.M.P. (MD) No.3882 of 2018

1.T.K.Ravindran

2.T.R.Jayanthi

3.T.S.Chithra

... Appellants/Defendants

Vs.

S.Rajvel Pandi

... Respondent/Plaintiff

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code against the judgment and decree dated 11.12.2017 passed in O.S.No.99 of 2011 by the V Additional District Judge, Madurai.

For Appellants : Mr.M.Rajaraman

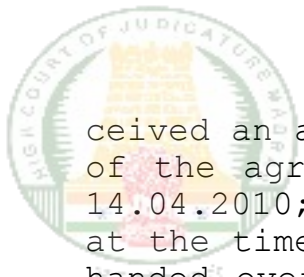
For Respondent : MrD.Saravanan

JUDGMENT

This appeal has been preferred challenging the judgment and decree of the learned V Additional District Judge, Madurai, dated 11.12.2017 made in O.S.No.99 of 2011.

2.The appellants are the defendants; the plaintiff has filed the suit for specific performance, declaration and permanent injunction; the suit property belonged to the first defendant and he agreed to sell the same to the plaintiff for a sum of Rs.10,00,000/- and re-

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ceived an advance amount of Rs.6,50,000/- by way of cash on the date of the agreement itself and entered into an agreement for sale on 14.04.2010; the time for performance of the contract was one year; at the time when the advance money was received, the first defendant handed over the vacant possession of the suit property; the plaintiff was ready and willing to perform his part of contract; he was in possession and enjoyment of the suit property but the first defendant was evading to perform his part of contract, despite the plaintiff called upon him to get the balance sale consideration of Rs.3,50,000/- and execute the sale deed; plaintiff send legal notice on 14.02.2011 to the first defendant; the first defendant received the legal notice and sent a lawyer notice with false and frivolous allegations; in the meanwhile, the plaintiff came to know that the first defendant had created a settlement deed in favour of the second defendant on 27.08.2010 in respect of the suit property and the second defendant also sold the same in favour of the third defendant on 07.10.2010; hence, the plaintiff filed the suit for specific performance along with the relief of declaration to declare the settlement deed dated 27.08.2010 and sale deed dated 07.10.2010 as null and void and for permanent injunction restraining defendants from alienating the suit property.

3.The first and second defendants filed written statement by stating that the alleged sale agreement is not true; the first defendant did not get any sale advance amount of Rs.6,50,000/- as alleged by the plaintiff; even in the reply notice sent by first defendant, the above facts were stated and the first defendant alone was in possession of the suit property; the sale deed of the suit property was found missing and the first defendant was making enquires of that; only at that point of time, the first defendant got the legal notice from the plaintiff; the first defendant came to know that the plaintiff is his brother/T.K.Mohanraj's son-in-law; the first defendant's brother died in the year 2010; when he was alive, he was having many civil and criminal cases against him; in order to furnish security for the bail granted to him, the first defendant had given his property documents to him on various occasions; thereafter, the first defendant had omitted to get back the documents; the first defendant could recall later that the sale deed of the suit property was given to his brother and he was negligent in getting back the same; the said situation was taken advantage by the first defendant's brother's wife and she had instigated her son-in-law to settle her scores with the first defendant by way of filing various litigations against him;

4.The third defendant filed the written statement by stating that she was unaware of the sale agreement dated 14.04.2010 and she is a bonafide purchaser and hence, the suit should be dismissed.

5.Basing of the above pleadings, the learned trial Judge framed the following issues:-

" 1. Whether the title deed which were left with 1st de-

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2. Whether the title deed which were left with 1st de-



plaintiff with the help of 1st defendant brother wife T.M.Chithra?

2.Whether the 3rd defendant is a bonafide purchaser?

3.Whether the plaintiff is entitled for the relief of specific performance?

4.Whether the registered settlement deed dated 27.08.2010 and registered sale deed dated 07.10.2010 is null and void?

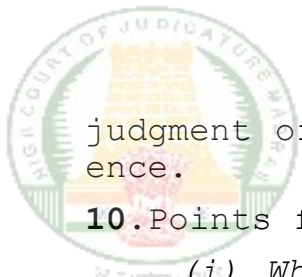
5.Whether the plaintiff is entitled for permanent injunction?"

6.During the course of trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W3 and Exs.A1 to A8 were marked. On the side of the defendants, one witness was examined as D.W.1 and Exs.B1 to B5 were marked. The handwriting expert was examined as C.W.1 and his opinion was marked as Ex.C1.

7.At the conclusion of the trial and on considering the evidence available on record, the learned trial Judge decreed the suit as prayed for. Aggrieved over that, the defendants have preferred this Appeal suit.

8.The learned counsel for the appellants submitted that the learned trial Judge failed to consider the evidence of the handwriting expert, who had stated that the signature found in Ex.A1/sale agreement is not the signature of the first defendant; his report/Ex.C1 is also clear about the same; no reason has been given as to why, the learned trial Court below disbelieved the evidence of the handwriting expert; the learned trial judge had relied on the evidences of the interested witnesses, P.W.2 and P.W3 and came to the wrong conclusion that the execution of the sale agreement was true; when the respondent/plaintiff pleads that he was given possession of the suit property in pursuance of the sale agreement, the same ought to have been registered; since the sale agreement is not registered one, it cannot be received as evidence; the plaintiff has proved his willingness and readiness also, even for the sake of argument, if the sale agreement is admitted as true; the learned trial judge failed to appreciate the evidence in proper perspective and omitted to apply the correct provision of law and hence, the appeal should be allowed.

9.The learned counsel respondent submitted that the learned trial Judge has rightly observed that the opinion of the handwriting expert is not a conclusive proof and on that basis only, the relief was granted; since the plaintiff has proved the execution of the sale agreement by examining the attestor, it is right to believe their evidence and granted the reliefs as prayed for; the petition filed for examining the disputed signatures by the handwriting expert before the trial Court; since the sale agreement is proved to be true, the first appellant cannot deny his contentions; hence, the



judgment of the learned trial Judge does not call for any interference.

10.Points for consideration:

(i) Whether Ex.A1/sale agreement dated 14.04.2010 is admissible as evidence?

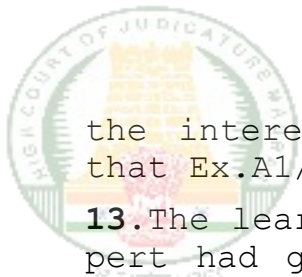
(ii) Whether the trial Court is right in overlooking the opinion of the handwriting expert without any reasons?

(iii) Whether the judgment and decree of the learned trial Judge decreeing the suit as prayed for is fair and proper?

11.The fact that the suit property belonged to the first defendant is not in dispute. The first defendant denied the very execution of the sale agreement. His primary defence before the trial Court is that Ex.A1/sale agreement is a concocted one and the signatures found in Ex.A1 are forged one. In order to prove that the first appellant did not affix his signatures in Ex.A1, he filed a petition seeking permission of the Court to compare his disputed signatures with his admitted signatures by a handwriting expert and get an opinion. For the said petition, the respondent/plaintiff did not file any counter and the petition was allowed. The handwriting expert had given his opinion as under:

"The person who put the signature in Vakalath, written statement and the S.1 to S.20 specimen signatures did not write the Q.1 to Q.3 signatures in Agreement for sale. The Handwriting Expert was examined as C.W.1. During the cross examination, he deposed that he did not compare the disputed signatures with the signatures in contemporaneous document."

12.From the above opinion, it is seen that Q1 to Q3 are the disputed signatures found in Ex.A1/sale agreement. A1 to A10 are the admitted signatures of the first defendant found in the vakalath and written statement filed before the trial Court. S1 to S20 are the specimen signatures of the first appellant signed before the learned trial Judge for the purpose of sending them for comparison. After comparing the above signatures, the handwriting expert had given his above opinion. The handwriting expert was also examined as C.W.1 and the plaintiff had availed the opportunity to cross-examine him. Even in the cross examination, the handwriting expert asserted that the signatures found in the disputed documents are different from that of the admitted signatures sent for comparison. Despite the signatures A1 to A10 are the admitted signatures of the first appellant affixed in the vakalath and the writ statement were not contemporaneous to Ex.A1/sale agreement. The said objection was not made by the respondent at the the time when the application was filed seeking the handwriting expert opinion. The learned trial Judge had overlooked the opinion of the expert and proceeded to believe the evidence of



the interesting witnesses P.W.2 and P.W.3 and recorded a finding that Ex.A1/sale agreement is true and valid.

13.The learned counsel for the appellant submitted that once the expert had given his opinion by comparing the signatures, the Court should not reject his opinion by invoking its power under Section 73 of the Indian Evidence Act. The learned counsel attacked the attention of this Court to the decision of the this Court reported in **MANU/TN/0495/2022 (J.Lakshmanan Vs. S.Jawahar)**. In the said judgment, this Court had held as under:-

"16.Secondly, it has to be analysed as to whether the Court under Section 73 of the Evidence Act is competent to compare the disputed signature with the admitted signature. It is the contention of the learned counsel for the appellant that the disputed signature was compared with the signatures found in the xerox copies marked as Exs.A4 to A14. But the materials reveal that Ex.X1 to X3 are the attendance registers produced from school by the competent authority, the Headmaster of the school, where the appellant worked during relevant period. It is not disputed by the appellant / defendant and no contrary evidence was adduced that the signatures cannot be compared. It is not true to state that the signatures were not admitted by the defendant, but it was received, admitted and proved in evidence by the plaintiff-s side through the competent witness. There is no legal bar for the Court to compare the signatures with proved documents. It is also pertinent to note that apart from Exs.X1 to X3, the other admitted documents are the vakalat, written statement and summons. Normally, comparison with these documents could be opposed by the plaintiff as the defendant has an opportunity to disguise his signatures in order to defeat the plaintiff-s right. Here the situation is different, where the plaintiff insisted the signatures be compared. Obviously, the defendant cannot allege prejudice against such comparison as the signatures are admitted signatures. Therefore, as contended by the appellant, the comparison of signatures by the First Appellate Court were not with the signatures found on the xerox copies of the documents marked as Exs.A4 to A14, but the admitted signatures found on vakalat, summons, written statement and Exs.X1 to X3. The Court is competent to compare the signatures.

17.This Court in CHELLADURAI VS. VELMURUGAN [S.A.NO.653 OF 2006 DECIDED ON 01.04.2014] relied on by the learned counsel for the respondent would lay down the following propositions:

"i) In case, a party, whose signature is disputed, wants his own signature found in the documents that

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after the dispute has arisen and the same is opposed by the party relying on the document containing the disputed signature, it shall be prudent for the court not to make such a comparison.

ii) On the other hand, if the person, who relies on the disputed signature, does have no objection for comparing it with, or seeks comparison of the same with, the admitted signature contained in a document even though the same came into existence after the dispute has arisen as he believes that the signatures are not disguised and they are good for comparison, then, the person disputing his signature in the document in question cannot have any valid objection for making such comparison.

iii) Only when the party who relies on the disputed document expresses an apprehension that the document of recent origin or the farthest document shall not be suitable for making comparison, the admitted or proved contemporary signatures alone should be used for such comparison."

14.In the said case, the proposition laid down in the case of **Chel-ladurai and Velmurugan** has been followed. Admittedly, the respondent/plaintiff did not insist before the Court that permission to compare the disputed signatures by expert should be granted only if the first appellant could produce his admitted contemporaneous signatures.

15.In yet another case of this Court reported in **2019 (3) MWN (Civil) 297 (M.Abdul Wahab and Others v. V.Jeyaram)** rendered by R.Hemalatha, J. has held as under:-

"17.A comparison of the signature of the defendant found on Ex.A1 to Ex.A5 with that of his admitted signatures on written statement and vakalat would clearly go to show that the signature found on Ex.A5 is not the signature of the defendant. Merely based on the evidence of P.W.2 and P.W.3 it cannot be held that Ex.A5 is a genuine document especially when P.W.2 and P.W.3 are admittedly closely related to the plaintiff. Though the close relationship of P.W. 1 and P.W2 with the plaintiff alone may not be the sole ground to discard their evidence, the facts and circumstances of the present case are such that their evidence cannot be considered to be a gospel truth to hold that Ex.A5 is true and valid."

16.In the case in hand, the learned trial Judge had rejected the opinion of the handwriting expert even though the expert was subjected to examination before the Court. The reason given by the learned trial Judge is that the handwriting expert opinion is not a conclusive proof of evidence. It is also observed that the expert



did not compare the disputed signatures with the signatures in the contemporaneous documents. It is seen from the records of the trial Court that a petition was filed by the first appellant for permission to send the disputed signatures for comparison by the handwriting expert in I.A.No.56 of 2013. Even though the petition was filed on 31.01.2013 and an opportunity was given to the respondent/plaintiff to file his counter, counter was not filed. In fact on 07.01.2014, an endorsement was made by the learned counsel for the respondent/plaintiff that "No counter, may be allowed". Curiously, the Court had not passed orders till 09.06.2014 and the petition was kept pending for nearly 6 months even after the learned counsel for the respondent/plaintiff had endorsed "no counter, may be allowed". The certified xerox copy of the petition and order in I.A.No.56 of 2013 is marked as Ex.B3.

17. Subsequent to that, the respondent/plaintiff has filed another petition in I.A.No.1098 of 2015 in O.S.No.99 of 2011 to strike off the expert opinion dated 14.04.2010 (Ex.C1). In the said petition, an order has been passed on 21.12.2015 and the order is marked as Ex.B4. In the said order, the learned trial Judge had observed that the plaintiff did not file any counter in the earlier petition filed in I.A.No.56 of 2013 for comparing the signatures and the plaintiff has also not challenged the order passed in I.A.No.56 of 2013 by which permission was granted for comparing the signatures. However, in the said order liberty was given to the plaintiff to summon the handwriting expert and examine him. The relevant portion of the Court order is extracted as under:

"The remedy is left open to the petitioner to summon the expert for examination challenging the authenticity and correctness of the report as per law. Without examining or without hearing the maker of the report this court cannot come to the conclusion whether the report is correct or not."

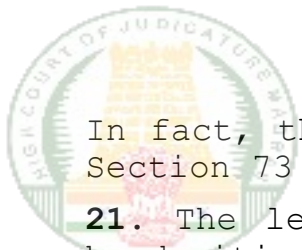
18. It is presumably understood that the expert was called before the Court just for enabling the plaintiff to examine him. The plaintiff cross-examined C.W.1/handwriting expert and his cross-examination neither demolished his examination in chief nor brought out anything in favour of the plaintiff. The handwriting expert given his concrete opinion about the disputed signatures by stating that they were not the signatures of the person who signed the admitted signatures. It is strange to find that the learned trial Judge after having observed that the respondent/plaintiff did not object and file his counter in the petition filed for comparing the disputed signatures with the admitted signatures of the first appellant found in vakalat and written statement filed before the Court, had considered the same reason as a ground to overlook the expert's opinion. Neither the trial Court had adverted to compare the signatures by invoking its powers under Section 73 of the Indian Evidence Act.



19.At this juncture, it is submitted by the learned counsel for the appellants that once handwriting expert has given his opinion, that cannot be substituted with the opinion of the Court by exercising its powers under Section 73 of the Indian Evidence Act. In the judgment of the Supreme Court reported in **(2013) 4 Supreme Court Cases 546 (Garre Mallikharjuna Roa (Dead) by Lrs. and others Vs. Nalabothu Punnia)**, it has been held as under:-

In Ajay Kumar Parmar v. State of Rajasthan, AIR 2013 SC 633, while dealing with the provisions of Section 73 of the Indian Evidence Act, 1872, this Court observed that courts, should be slow to base its findings solely on comparison made by it. The Court further held: "The opinion or a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision."

20.The rationale of the above judgment was followed in various judgments including the judgment of this Bench in the case of **Divakaran Moorkath Vs. D.Manuel and Others** reported in **MANU/TN/0271/2022**. Though as a rule of caution it is safe to rely on the opinion of the expert, the power of the Court under Section 73 of the Evidence Act is not out of reach. But if the Court ventures to do its examination of the disputed signatures with the admitted signatures and render an opinion, sound reasons should be given as to why the opinion of the Court is more reliable than the opinion of the expert. In this case, such special reasons are not given by the learned trial Judge.

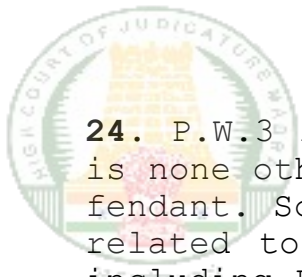


In fact, the learned trial Judge has not exercised the powers under Section 73 of the Indian Evidence Act also.

21. The learned trial Judge simply overlooked the evidence of the handwriting expert by believing the evidence of the attestors, who were examined as P.W.2 and P.W.3. It is correct that the evidence of the handwriting expert cannot be conclusive. But at the same time, the Court has to assign reasons as to why the opinion of the handwriting expert in a given case is not accepted. If the Court has pre-determined that it will not consider the opinion of the expert, it is unnecessary to allow the petition filed to send the disputed signatures for comparison by an expert. Though it is not obligatory on the part of the learned trial Judge to accept the opinion of the handwriting expert, reason should be assigned as to why the opinion of the handwriting expert should not be accepted. The report of the handwriting expert is marked as Ex.C1. The opinion of the handwriting expert is in favour of the first defendant. C.W.1/handwriting expert has given his report by stating that the disputed signatures were not affixed by the first defendant.

22. Though the plaintiff has not precluded from attempting to prove the genuineness of the sale agreement even in spite of getting an adverse opinion from the handwriting expert as to the signatures in Ex.A1, the learned trial Court should be cautious in appreciating the evidence so given by the plaintiff. One of the attesting witnesses who was examined as P.W.2 has stated in his cross examination that he is the son-in-law one T.K.Mohanraj, who is the brother of the first defendant. So there is every possibility that he can be an interested witness. Even in his evidence, he has stated that he had never been in the house of the first defendant, though he was the son-in-law of the brother of the first defendant. When P.W.2 was confronted about the criminal cases pending against his father-in-law/ T.K.Mohanraj, he expressed his ignorance about the same. The contention of the first appellant is that only in order to take his brother T.K.Mohanraj on bail, he handed over some of his property documents to P.W.2 for offering bail security bond and thereafter he omitted to get back the same.

23. During the cross examination of P.W.3, he admitted about the criminal case registered against T.K.Mohanraj by the Economic Offence Wing, Madurai in connection with certain economic offences. In fact, P.W.3 and the wife of T.K.Mohanraj were also co-accused along with T.K.Mohanraj in the said case. P.W.3 also admitted that it was the first defendant who had taken T.K.Mohanraj on bail. He has further asserted that the wife of T.K.Mohanraj was not arrested until T.K.Mohanraj was released on bail. So there is a possibility that the first appellant could have used his title document for the purpose of getting necessary solvency paper for taking his brother on bail and in that course, it is also possible that he could have handed over the documents to the son-in-law of T.K.Mohanraj for making necessary arrangements.



24. P.W.3 is the sister's son-in-law of P.W.2. His sister's husband is none other than T.K.Mohanraj, who is the brother of the first defendant. So the plaintiff had examined the witnesses who are closely related to him. While P.W.3 had stated that the attesting witness including P.W.3 was present when Ex.A.1/sale agreement was prepared, the attesting witness P.W.2 has stated that he was not present when the agreement was prepared but his father-in-law had prepared the same and made it ready before he came. The above evidence of P.W.2 and P.W.3 would prove the involvement of the brother of the first appellant in creating Ex.A1/sale agreement. These doubtful circumstances and contraction in the evidence of plaintiff's side witnesses were omitted to be appreciated by the learned trial Judge.

25.It is difficult to believe that a purchaser who is said to have handed over the possession of the property had agreed to wait for one year to receive the balance sale consideration and then execute the sale deed. The above unnatural circumstance was not properly appreciated by the learned trial Judge. At the risk of repetition, it is emphasized that the plaintiff is not bound by the report of the handwriting expert alone and he has liberty to let in any other positive evidence to prove the genuineness of the sale agreement. When such evidence produced by the plaintiff is seen to be lacking the merit and credibility, then the opinion of the handwriting expert should be read in favour of the first appellant. **Thus, Point No.1 is answered accordingly.**

26.It is further submitted by the learned counsel for the appellants that the sale agreement/Ex.A1 ought not to have been received as evidence, since it is not registered as per Section 49 of the Registration Act. Admittedly, the respondent pleaded that part of the contract was performed and he was put in possession of the suit property on the date of executing the sale agreement and on receiving the sale advance by the first appellant. Section 49 of the Registration Act r/w. Section 53 of the Transfer of Property Act would make it compulsory for such documents to be registered. However as per the proviso to Section 49(2) of the Registration Act, the unregistered sale agreement can be received as evidence of contract in a suit for specific performance. Only because of that, the respondent/plaintiff had intelligently avoided to seek a relief of permanent injunction to safeguard his alleged possession in pursuance of Ex.A1, though he sought all other reliefs.

27.Since the respondent has limited his relief of specific performance in pursuance of Ex.A.1/sale agreement, the trial Court has chosen to receive the same as evidence. However, the genuineness and validity of Ex.A1 was not successfully proved by the respondent to get the relief of specific performance. Had the learned trial Judge considered and analyzed the evidence in proper perspective, the respondent would not have got any relief. Since the learned trial Judge had omitted to consider the vital aspects of the evidence on record and decreed the suit, it calls for interference. **Thus, Point Nos 2 and 3 is answered accordingly.**



In the result the Appeal Suit is allowed and the judgment and decree of the learned V additional District Judge, Madurai, dated 11.12.2017 made in O.S.No.99 of 2011 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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08/06/2022

Sub Assistant Registrar(CS)

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A.S. (MD)No.65 of 2018

29. 04.2022

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