



AS.No.267/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.03.2023

Delivered on 13.04.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

AS.No.267/2016

P.M.Chandrasekaran

.. Appellant /
Plaintiff

Versus

1.D.Chitra
2.Aroselvan

.. Respondents
/ Defendants

Prayer:- Appeal Suit filed under Section 96 and Order 41 Rules 1 and 2 of CPC against the judgment and decree made in OS.No.78/2011 dated 13.08.2015 on the file of the learned I Additional District Judge, Tirupur, Tirupur District.



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For Appellant	:	Mrs.Hema Sampath Senior counsel for Mr.P.Navaneethakrishnan
For R1	:	Mr.R.Kannan for Mr.V.Regunathan
R2	:	Served. No appearance

JUDGMENT

S.S.SUNDAR, J.,

- (1)The appellant in the above appeal is the plaintiff in the suit in OS.No.78/2011 on the file of the I Additional District Court, Tirupur.
- (2)Brief facts that are necessary for the disposal of this appeal are as follows.
- (3)The appellant filed the suit in OS.No.78/2011 for specific performance of a Sale Agreement dated 29.07.2010 and for consequential reliefs.
- (4)It is the case of the appellant that the suit property comprising of land and buildings belongs to the 1st defendant and that the 1st defendant agreed to sell the suit property for a total sale consideration of Rs.25 lakhs. It is the further case of the appellant that the agreement was reduced to writing and as per the Agreement dated 29.07.2010, the 1st defendant received an advance of Rs.18 lakhs and that the parties



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mutually agreed that the balance of sale consideration shall be paid by the plaintiff on or before 28.03.2011 and that the 1st defendant, upon receipt of the balance amount should execute the Sale Deed in favour of plaintiff. The plaintiff specifically pleaded that he was always ready and willing to pay the balance of sale consideration. Stating that the plaintiff came to know that the 1st defendant was clandestinely attempting to sell the suit property in favour of third parties behind the back of plaintiff, on account of the fact that the value of the property has gone up, the plaintiff after issuing lawyer's notice dated 20.12.2010 and issuing a public notice dated 22.12.2010, has filed the above suit for specific performance.

(5) In the plaint, the plaintiff also admitted that the reply dated 29.12.2010 was sent by the 1st defendant denying the execution of the Agreement of Sale dated 29.07.2010. Even in the reply notice, it is stated by the 1st defendant that the 1st defendant repudiated the Agreement by describing the suit Agreement dated 29.07.2010 as a fabricated document. The 1st defendant admitted borrowal of a sum of Rs.10 lakhs from one Sridhar in the reply notice and execution of blank papers and blank stamp papers



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signed by the 1st defendant at the instance of the said Sridhar. It is contended by the 1st defendant that there is no privity of contract between the plaintiff and 1st defendant and the plaintiff has filed the suit by creating an Agreement as if the 1st defendant had agreed to sell the property for a consideration of Rs.25 lakhs and received a sum of Rs.18 lakhs as advance from the plaintiff. In the plaint itself, the fact that the 1st defendant has entered into a registered Agreement of Sale dated 09.11.2010 with the 2nd defendant is admitted, but it is contended that the suit Agreement is neither valid nor binding on the plaintiff. Stating that the 1st defendant having entered into the Sale Agreement on 29.07.2010, is bound to honour the Agreement by accepting the balance of sale consideration, the plaintiff filed the suit for specific performance.

(6)The suit property is described as two godowns and for convenience, the suit property may be referred to Plot Nos.27 and 28 measuring an extent of 2760 sq.ft., and 2300 sq.ft., respectively along with buildings therein.

(7)The suit was contested by the 1st defendant by filing a written statement



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describing the suit Agreement as a fraudulent creation using the signed blank stamp papers and blank papers in connection with the loan borrowed from one Sridhar. As it was mentioned in the reply notice, the specific case of the 1st defendant is that there was no privity of contract between the plaintiff and 1st defendant and that no amount was paid by plaintiff to 1st defendant as advance as alleged by the plaintiff in the plaint. It is also pleaded that the plaintiff is a total stranger as far as the 1st defendant is concerned and the 1st defendant handed over the signed blank papers and blank stamp papers and blank promissory notes only at the time when the 1st defendant had borrowed a sum of Rs.10 lakhs from one Sridhar for his urgent expenses. It is also stated by the 1st defendant that the said amount from the said Sridhar was repaid and that the said Sridhar was delaying in returning the signed blank papers and blank stamp papers under the pretext that the documents were deposited in Bank Locker for safe custody and hence, he promised to return them later.



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(8) An additional written statement was also filed by the 1st defendant reiterating the contentions raised by her in the original written statement. It is further stated in the additional written statement that the 1st defendant has come forward with certain additional facts regarding purchase of stamp papers in the name of 1st defendant on the same day and creation of another Agreement in the name of Sridhar which prompted the said Sridhar to file another suit in OS.No.87/2011 for specific performance on the basis of a similar Agreement fabricated in the name of the said Sridhar. Referring to the fact that two stamp papers had been purchased from the same Vendor and that the plaintiff has filed the suit only at the instance of the said Sridhar, the 1st defendant, the 1st defendant contended that the suit Agreement is a fraudulent creation. In the additional written statement, the criminal complaint given by 1st defendant as against the plaintiff and the said Sridhar and few others is also referred to. Referring to the conduct of the said Sridhar and his henchmen including the plaintiff in getting documents in connection with financial transactions, the 1st defendant specifically stated that both the Agreements, namely the



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suit Agreement and the other Agreement in favour of Sridhar, were prepared by the same person who is very close to plaintiff and the said Sridhar. In the additional written statement, another suit filed by one Senthil Kumar as against the husband of 1st defendant is also referred to and it is contended that the said Sridhar has created another Sale Agreement using the signature obtained from 1st defendant's husband in blank stamp papers. In the additional written statement, it is specifically contended that the plaintiff has no means or properties to purchase the properties and that the plaintiff was never financially sound either to pay a sum of Rs.18 lakhs as advance or to pay balance. It is also pleaded in the additional written statement that the plaintiff has not even obtained encumbrance certificate or know about the parent documents and that the suit Agreement is fabricated subsequent to the Sale Agreement, 1st defendant had executed in favour of the 2nd defendant.

(9) Before the Trial Court, the plaintiff examined himself as PW1. PWs.2 and 3, the persons who have signed the suit Agreement as witnesses, were also examined. On behalf of plaintiff, Exs.A1 to A8 were marked. On



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the side of defendants, the 1st defendant has examined herself as DW1.

One C.Vigneshwaran was examined as DW2. DW1 also examined one

Sridhar, against whom serious allegations have been made, as DW3.

Ex.B1 to B12 were marked on the side of defendants.

(10)The Trial Court framed the following issues:

(a) Whether the plaintiff and defendant entered sale agreement dated

29.07.2010 with intent to sell the suit properties?

(b) Whether the alleged payment of Rs.18 lakhs to the defendant is true?

(c) Whether the plaintiff is in collusion with Sridhar fabricated the

signed stamp papers and blank papers given during the time of

borrowing was fabricated as sale agreement?

(11)The Trial Court, on the first issue, after elaborately considering the

entire evidence in the light of pleadings, rendered a specific findings that

1st defendant had not entered into a Sale Agreement dated 29.07.2010

with the plaintiff with an intention to sell the suit property. Accepting the

case of the 1st defendant on the question whether a sum of Rs.18 lakhs

was paid to the 1st defendant by the plaintiff, the Trial Court held against



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the plaintiff since the plaintiff has not proved that he had enough funds to pay the sum of Rs.18 lakhs under the Sale Agreement. On the third issue, the Trial Court has held that the plaintiff in collusion with Sridhar, fabricated the suit Agreement. In view of the fact that the Agreement and the receipt of sale consideration is not proved and that the Trial Court specifically held that the suit Agreement is a fabricated document, the Trial Court dismissed the suit. Aggrieved by the judgment and decree of the Trial Court, the above Appeal Suit is preferred by the plaintiff.

(12)Mrs.Hema Sampath, learned Senior counsel appearing for the appellant/plaintiff submitted that the findings of the Trial Court are erroneous, contrary to the weight of evidence and the probabilities of the case. Learned Senior counsel referring to the fact that the 1st defendant has not disputed her signature found in Ex.A1-Agreement dated 29.07.2010, submitted that the burden lies on the 1st defendant to prove her contention. Stating that the 1st defendant has not produced any evidence to discharge the burden cast upon her, it is submitted that the Trial Court misdirected itself resulting in miscarriage of justice.



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Referring to some of the portions in the pleading where the 1st defendant has stated that she borrowed money from one Sridhar several years before the suit Agreement, learned Senior counsel submitted that the findings of the Trial Court ignoring the specific case pleaded as borne out from evidence, has not been properly appreciated by the Trial Court. Pointing out that two witnesses to the suit Agreement were examined by plaintiff, learned Senior counsel submitted that there is no infirmity or inconsistency in the evidence of the two witnesses and that the Trial Court went wrong in discarding the evidence of PWs.2 and 3 merely on the ground that they are interested witnesses. Learned Senior counsel further submitted that the plaintiff has proved that he had sold one of his properties for a sum of Rs.11,25,000/- before the Agreement of Sale. Therefore, it is submitted that the finding of the Trial Court that the plaintiff did not have means to pay the advance amount is perverse. Learned Senior counsel also submitted that the stamp papers were purchased by the 1st defendant herself and therefore, the Trial Court ought to have doubted the genuineness of the Sale Agreement. It is submitted



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that existence of another Agreement in favour of Sridhar has no relevance and since the 1st defendant did not dispute the case of plaintiff that the stamp papers were purchased by the 1st defendant herself and the Agreement itself was prepared by her. Learned Senior Counsel for the appellant in this context submitted that the findings of the Trial Court are contrary to the facts admitted and evidence.

(13) ***Per contra***, learned counsel for the respondents / defendants pointed out the similarities between the two Agreements, one alleged to have been executed by the 1st defendant in favour of the plaintiff and the other executed in favour of the said Sridhar marked as Ex.B3 dated 29.07.2010 and submitted that the Agreements, both under Exs.A1 and B3 are concocted by using the signature of the 1st defendant in blank papers and blank stamp papers. Referring to the dismissal of the suit filed by the said Sridhar against the 1st defendant, on the basis of Ex.B3 for specific performance, learned counsel for the respondents contended that the findings of the Trial Court are unassailable. Referring to the complaint in CC.No.262/2011 and the two suits in OS.Nos.87/2011 and 260/2011



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learned counsel for the respondents submitted that the plaintiff has not established the genuineness of the suit Agreement marked as Ex.A1 and the Trial Court has rightly rendered a finding that the suit Agreement is a concocted one, fabricated by the plaintiff by using signatures of 1st defendant obtained in blank stamp papers at the time when the 1st defendant was forced to give them to one Sridhar who had advanced a sum of Rs.10 lakhs as loan to 1st defendant.

(14)Considering the pleadings, evidence and the submissions of the learned counsels appearing on either side, this Court has to determine the following points:-

- A) Whether the plaintiff and 1st defendant entered into the Sale Agreement under Ex.A1 dated 29.07.2010 with an intention to sell the property?***
- B) Whether the plaintiff has fabricated the suit Agreement under Ex.A1 in collusion with one Sridhar by utilising the signature of 1st defendant obtained in blank stamp papers and blank papers at the time when the 1st defendant borrowed money from one Sridhar?***
- C) Whether the plaintiff is entitled to the equitable relief of specific performance?***



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POINTS [A] & [B]:-

(15)The Trial Court has considered almost every document and the oral evidence of the witnesses and rendered a specific finding that the suit Agreement under Ex.A1 is a fabricated document utilising the signatures of 1st defendant obtained in blank papers and blank stamp papers which were given by her at the time of borrowing loan from Sridhar. Interestingly, the said Sridhar is also examined as a witness after issuing summons to him by the 1st defendant. The said Sridhar admitted that he has also filed a suit in OS.No.87/2011 in the same Court for specific performance of an Agreement dated 29.07.2010. The said Sridhar also admitted that he is known to plaintiff and that, he is aware of the document writer. He also admitted that he has prepared several documents through the document writer by name Meenakshi. It is very relevant to mention that the plaintiff who had ample opportunity to elucidate from the said witness several facts, failed to cross examine even with regard to certain statement of facts which are relevant. The only suggestion that was put to the witness [DW3] by plaintiff is to elucidate that the said Sridhar did not know the details of the suit filed by the



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plaintiff and the Agreement which is the subject matter of suit.

(16)The plaintiff who is in a position to prove the genuineness of the Agreement and the fact that the suit Agreement executed by the 1st defendant is independent, did not even bother to cross examine the witness on the specific admission of DW3 that he is known to plaintiff and that, he had prepared several documents through the Document Writer who prepared the Agreements under Exs.A1 and B3. The suit Agreement under Ex.A1 dated 29.07.2010 and the Agreement allegedly executed by 1st defendant in favour of Sridhar marked as Ex.B3, were prepared by one R.Meenakshi, a document writer. The stamp papers bear numbers to indicate that they were sold successively and both the stamp papers were purchased by a third party in the name of 1st defendant. It is to be noted that both the Agreements are prepared on the same day by the same document writer. The terms of the documents are identical. Except the name of Agreement holders in the two Agreements, every recitals are identical. Normally, the sale Agreements are prepared by the purchaser after finalisation of terms of Agreement. In the present case, the



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Agreement which is prepared in the stamp papers were purchased in the name of Chitra. Though the plaintiff does not specifically pleaded, during the course of evidence all the three witnesses, have deposed that the Sale Agreement was brought by the 1st defendant for getting the signature of plaintiff and the witnesses. The evidence of plaintiff is that the 1st defendant brought the Agreement to the business premises of the plaintiff and the witnesses, PWs.2 and 3 were present at that time in connection with the business, PWs.2 and 3 had with the plaintiff.

(17)It is the specific case of the 1st defendant that the Agreements are fabricated by using the signature of the 1st defendant obtained in blank stamp papers and blank papers. The plaintiff deposed that he did not know the person who prepared Ex.A1. However, DW3 who is well known to the plaintiff, has admitted that the document writer who prepared the document by name Meenakshi, has prepared several documents for DW3-Sridhar. It is in the said context, one of the documents produced by the 1st defendant under Ex.B10 is relevant. The 1st defendant has applied under the Right to Information Act to get a copy



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of the register maintained by the stamp vendor who supplied the stamp papers utilised for preparing Ex.A1 and Ex.B3 and another sale Agreement. Page No.205 of the Register along with covering letter of the District Registrar who gave the copy in response to the application filed by 1st defendant under RTI Act, is marked as Ex.B10.

(18) On 09.07.2010, two stamp papers for the value of Rs.20/- bearing Sl.No.247873 and 247874 were purchased in the name of Chitra. All these stamp papers purchased in the names of one Chitra, Jothimani, Sridhar, Mayilsamy, were purchased by the same person. This would falsify the case of plaintiff that the document – Ex.A1 was in fact prepared by 1st defendant herself. The plaintiff in this case has admitted that the plaintiff and DW3 knew each other. The plaintiff, during cross examination has stated that DW3 – Sridhar is an employee in his Plant. DW3 also categorically admits that he knew the document writer who prepared Exs.A1 and B3. In the said circumstances, the case of plaintiff that the document – Ex.A1 was prepared by 1st defendant and brought to him for signature, is not only contrary to the general practice but also



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unbelievable in the circumstances above mentioned. The fact that two Agreements were simultaneously prepared, is evident from Ex.A1 and Ex.B3. No prudent vendor will prepare two Agreements of Sale in favour of two different persons on the same day in respect of the same property. The existence of another Agreement with identical terms in favour of Sridhar-DW3 is established and the facts pleaded by 1st defendant is more probable.

(19)The Trial Court considered the evidence of PW2 and PW3 who are close relatives and business associates of plaintiff. PW2 and PW3 have admitted putting their signatures as witnesses in Ex.A1. PW2 and PW3 admitted that they used to give job works to plaintiff's dyeing factory and they know the plaintiff. It is their version that on 29.07.2010, they were present to verify the clothes sent by them to plaintiff's dyeing factory. Both of them have deposed to the effect that 1st defendant came along with the Agreement under Ex.A1. It is their version that the 1st defendant after getting the signature of plaintiff and two witnesses, took the document to get the signature from the scribe and money was paid after



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returning of Ex.A1 with the signature of the scribe. The witnesses have also spoken to the fact that the plaintiff paid a sum of Rs.18 lakhs by way of cash. The question to be decided is whether the Agreement was prepared by the plaintiff or 1st defendant?

(20) This Court has found earlier that the document-Ex.A1 and Ex.B3 could not have been executed by 1st defendant and Sri.Sridhar simultaneously. The 1st defendant cannot honour both and hence, it cannot be with an intention to sell even if Ex.A1 is assumed to be true. PW2 and PW4 categorically admit that they are very close to the plaintiff as they have business dealings with the plaintiff. This Court has already seen that the document-Ex.A1 was not prepared by the plaintiff. The version of plaintiff regarding preparation of document-Ex.A1 is only to avoid any valid explanation for the existence of two Agreements bearing same date with identical recitals. When the stamp papers were purchased by an unknown person in the name of the 1st defendant and several agreements came to be executed in favour of plaintiff, Sridhar and another person simultaneously the case of 1st defendant is more probable. This Court is



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of the view that PW2 and PW3 have come forward to support the false case of plaintiff by fabricating the document-Ex.A1 [Sale Agreement]. The Plaintiff who was examined as PW1 has admitted that he has not seen the parent documents before entering into the Agreement. The plaintiff also admits that he has not seen the Encumbrance Certificate. The plaintiff has never obtained any legal opinion. The plaintiff also says that he was not aware as to who drafted the Sale Agreement and that it was not drafted before him. During evidence, the plaintiff states that eight months time was given for completion of sale transaction only because the 1st defendant was required to evict the tenants from the suit properties. There is no plea or evidence in this case to show that the suit property was in the enjoyment of tenants and that the 1st defendant had agreed to vacate the tenants before completion of Sale Agreement. From the overall circumstances, this Court finds that the plaintiff has come forward with a false case that the Agreement itself was prepared by the 1st defendant purposely and the Agreement under Ex.A1 is fabricated/manipulated by the plaintiff using the signatures of the 1st



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defendant obtained in blank papers and blank stamp papers at the time when the 1st defendant borrowed a sum of Rs.10 lakhs from one Sridhar. DW3 admits that he has also filed a suit for specific performance on the basis of a similar Agreement of Sale dated 29.07.2010 against the 1st defendant. It is now admitted before this Court that the said suit for specific performance was dismissed, though the alternative relief for refund of a sum of Rs.10 lakhs based on admission of 1st defendant in the said suit was given. The fact remained that the case of DW3 in the other suit regarding genuineness of the Agreement is negated by the Court. Therefore, the case of 1st defendant that the 1st defendant gave blank stamp papers and blank papers to the said Sridhar is established beyond doubt. The suit property along with two more plots of same size is the subject matter of Sale Agreement under Ex.B2 dated 09.11.2010. The total sale consideration is Rs.1.50 Crores and receipt of a sum of Rs.25 lakhs as advance is admitted by the 1st defendant. From the evidence the Agreement of Sale under Ex.B2 in favour of one Aroselvan appears to be a genuine transaction. Having regard to the total consideration



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mentioned in Ex.B2, the consideration for the suit property under Ex.A1 is too low and though inadequacy of consideration is not relevant, this Court having regard to the issue whether the Sale Agreement is a genuine Agreement of Sale or not, finds that the plaintiff had no reason to execute the Sale Agreement in favour of plaintiff for a sum of Rs.25 lakhs. The 1st defendant has come forward with the specific plea that the plaintiff has no means to pay a huge amount as advance. Though the plaintiff has produced documents of Sale showing that he sold a property for a sum of Rs.11 lakhs and odd by selling his property, the fact that the plaintiff had sufficient money to advance a huge sum of Rs.18 lakhs is not proved. The income tax returns filed by the plaintiff only shows that the plaintiff did not have funds to pay huge amount of Rs.18 lakhs as advance and except the income which was by way of capital gain, probably by sale of his property, the plaintiff cannot be judged to be as a man of means to mobilise such a huge amount as advance.

(21)Therefore, this Court has no hesitation to hold that there was no



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Agreement between the plaintiff and the 1st defendant on 29.07.2010 as the parties never had dealing in relation to the sale of suit property. The plaintiff has fabricated the suit Agreement under Ex.A1 in collusion with Sridhar by using the signed stamp papers and blank papers given by the 1st defendant to the said Sridhar at the time when she borrowed money from the said Sridhar. The plaintiff has not proved the payment of a sum of Rs.18 lakhs as advance on the date of the alleged Sale Agreement. **Hence, Points [A] and [B] are answered accordingly and against the plaintiff/appellant.**

POINT [C]:-

(22)In view of the findings on the first two points, namely, Points [A] and [B], the plaintiff/appellant who has come forward with a fabricated suit Agreement is not entitled to the relief of specific performance. Since the appellant/plaintiff has come forward with a false case to grab the property of the 1st defendant in collusion with one Sridhar, the plaintiff's suit for specific performance is liable to be dismissed. Having regard to the findings and the conclusions reached above, this Court is of the view that



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the Appeal Suit is also liable to be dismissed.

(23) In the result, the Appeal Suit stands **dismissed with cost** confirming the judgment and decree dated 13.08.2015 made in OS.No.78/2011 by the learned I Additional District Judge, Tirupur, Tirupur District.

[SSSRJ] [PBBJ]
13.04.2023

AP

Internet : Yes

Index : Yes/ No

To

1. The I Additional District Judge
Tirupur, Tirupur District.

2. The Section Officer
VR Section, High Court
Madras.



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