



A.S.No.342 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

A.S.No.342 of 2016

G. Sakthikumar

...Appellant

Vs

A.S. Selvaraj

... Respondent

Prayer: This First Appeal is filed under Section 96 of C.P.C against the Judgment and Decree of the learned fourth Additional District and Sessions Judge of Coimbatore in O.S.No.5 of 2011 dated 19.12.2012.

For Appellant

:Mr.N.Ramesh

For Respondent

: Mr.S.S.Swaminathan



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JUDGEMENT

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This First appeal has been filed to set aside the Judgment and Decree of the learned Fourth Additional District and Sessions Judge, of Coimbatore in O.S.No.5 of 2011 dated 19.12.2012. This Court disposed of the First Appeal as per the instructions of My Lord the Hon'ble Chief Justice vide administrative order dated 21.11.2023.

2. The Appellant herein is the defendant and the respondent herein is the plaintiff before the Trial Court.

3. For the sake of convenience, the parties will be referred according to their litigative status in the suit.

4. The plaint averments in brief are as follows:-

(i) According to the plaintiff, the defendant is the absolute owner of the suit property by virtue of the decree for partition suit in O.S.No.2575 of 1999 on the file of the District Munsif Court, Coimbatore. On 08.07.2002, the defendant received a sum of Rs.1,70,000/- from one S.Sasireka, wife of



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A.S.Selvaraj, and handed over possession of a portion of the property, and executed a bogiya agreement(usufructuary mortgage) in her favour. As per the recitals of the bogiya agreement, the said Mrs.S.Sasireka had been in possession and enjoyment of the suit property. Subsequently, for urgent need, the defendant received another sum of Rs.2,50,000/- from the plaintiff on 20.08.2004 and executed another bogiya agreement in respect of the upstairs portion in Door No.190 which also belongs to the defendant. As such, the plaintiff and his family members are in possession and enjoyment of the mortgaged property by virtue of the usufructuary mortgage deeds.

(ii) Since the defendant is not in a position to repay the said amounts, the defendant agreed to sell the suit property to the plaintiff and a sale agreement was entered into on 13.10.2009. The sale Price was fixed at Rs.15,00,000/-, and the time for performance was determined as 11 months. According to the plaintiff, on the date of the said sale agreement, a sum of Rs.10,30,000/- was paid to the defendant. The amount which have been paid as a mortgage amount of Rs.4,20,000/- paid on 08.07.2002 and 20.08.2004 were also adjusted towards part of the sale consideration.



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(iii) Hence, the plaintiff totally has paid a sum of Rs.14,50,000/- as an advance amount against the total sale consideration of Rs.15,00,000/-. The plaintiff is ready and willing to perform his part of the agreement. The defendant received the advance amount from the plaintiff under the promise to settle the mortgage debt due to one Mrs.M.Chitra Mani which was registered at Joint I Sub Registrar Office, Coimbatore vide Document No.492 of 2006.

(iv) The plaintiff sent a legal notice on 04.09.2010 requesting the defendant to execute the sale deed after receiving the balance sale consideration of Rs.50,000/-. The defendant received the said notice on 06.09.2010 and sent a reply notice on 10.09.2010 to the plaintiff with untenable pleas.

(v) At the time of execution of the sale agreement, the defendant handed over all the original documents pertaining to the suit property and



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those documents have been filed along with the plaint. Hence, the plaintiff has come forward with the suit for specific performance and for a permanent injunction.

5. Brief averments in the written statements are as follows:-

(i) The defendant mortgaged the suit property with the City Co-operative Bank for a sum of Rs.1,75,000/- on 05.03.2002. To repay the loan installments, the defendant was in need of money, hence he let out the property in favour of the plaintiff's wife and received a sum of Rs.1,75,000/- in the year 2002. The plaintiff and his wife continued their possession in the ground floor of the suit property. Subsequently, in the year 2004, when the said bank was pressurizing the defendant for repayment of the loan, the defendant approached the plaintiff, who is a financier, for the loan of Rs.2,50,000/-. While advancing the loan, the plaintiff prepared two deeds styled as bhogiyam agreements in four Ten Rupees Stamp papers and got signatures of the defendant, wherein the plaintiff's wife was an attestor.

(ii) The plaintiff acquired the possession of the first floor of the suit property only on 03.07.2004. After repeated demands made by the



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defendant, the plaintiff paid a sum of Rs.2,50,000/- to City Co-operative Bank on 10.10.2005 and got the original title deeds of the suit property directly from the bank. This defendant disputed the sale agreement and also disputed the receipt of the sum of Rs.10,30,000/- from the plaintiff. But, he accepted the receipt of the sum of Rs.1,70,000/- and 2,50,000/-. The suit property would fetch more than Rs.20,00,000/-. Hence, there was no reason for him to execute the sale agreement in favour of the plaintiff for a lesser amount. Ultimately, he prayed to dismiss the suit with costs.

6. The Trial Court, after taking into consideration of the pleadings on either side and the materials on record, framed the following issues:

“1. Whether the plaintiff is entitled for specific performance as prayed for?

2. Whether the plaintiff is entitled for permanent injunction as prayed for?

3. To what other relief?”



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7. Before the Trial Court, the plaintiff examined himself as P.W.1 and one Mr.Senthil Kumar as P.W.2, and 16 documents were marked as Ex.A1 to Ex.A16. On behalf of the defendant, no documents was marked. But, the defendant himself was examined as D.W.1. After considering either side submissions and the materials on record, the Trial Court decreed the suit as prayed for. Aggrieved by that, the defendant filed the instant appeal.

8(a). Mr.N.Ramesh, the learned counsel for the defendant/appellant, would vehemently contend that the Trial Court failed to consider the defence put forth by the defendant, that he had not executed any sale agreement and has not received the advance amount. It is his further submission that there was no evidence for *consensus ad idem* between the plaintiff and the defendant. The learned counsel would also contend that the mere admission of signature found in the sale agreement would not suffice to prove the due execution of the agreement. Therefore, it was ultimately contended that when the due execution of sale agreement is not proved, the question of granting a decree for specific performance does not arise.



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8(b).The learned counsel for the appellant/defendant would also submit that the Trial Court failed to take into consideration of the admission made by the plaintiff that he is a financier and has been doing money lending business. It is also his submission hat even the stamp papers used for writing the usufructuary mortgage deeds would create a suspicion. Hence, he prays to allow this appeal.

9. Per contra, the learned counsel for the plaintiff/respondent would vehemently contend that the very execution of the sale agreement has been proved by examining the attesor of the documents. Therefore, once the execution of the sale agreement Ex.A4 is proved, by implication of Section 92 of the Indian Evidence Act, there cannot be any contra oral evidence against the recitals of the sale agreement. Therefore, he would contend that the very execution of the sale agreement has been proved in a manner known to law. It is the further submission of the plaintiff that the handing over of the original document to him would further vindicate the *consensus ad idem*



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between the plaintiff and the defendant. Therefore, he would submit that the decree passed by the Court below is liable to be confirmed.

10. After considering the either side submissions and taking into consideration of the pleadings on either side, this Court formulates the following points for determination:

- “1. Whether the execution of Ex.A4/Sale Agreement is true, valid and binding?*
- 2. Whether the plaintiff is entitled to a decree for Specific performance as prayed for ?*
- 3. Whether the plaintiff is entitled for an injunction as prayed for?*
- 4. To what other relief?. “*

11. Now, the entire case revolves around Ex.A4/Sale Agreement. It is pertinent to mention here that the defendant did not dispute the readiness and willingness of the plaintiff. However, he disputes the very existence of



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the sale agreement. Therefore, if the execution of the sale agreement is proved and established, then only the plaintiff is entitled to have a decree for specific performance.

12. On coming to the proof of the sale agreement, it is the specific objection of the defendant that he did not execute any sale agreement. In fact, as per his written statement, the very signature found in Ex.A4/Sale Agreement was a forged one.

13. However, if we look at the reply notice issued by the defendant, in pursuance of the notice issued by the plaintiff, the defendant stated that during 2005, when the plaintiff re-paid the loan of Rs.2,50,000/- in the Co-operative Bank more particularly on 10.10.2005, this defendant was asked to sign in several blank stamp papers and 3 promissory notes. Therefore, as per Ex.A8/reply notice, the signature found in Ex.A4/Sale Agreement was admitted. However, he disputed only the due execution.



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14. Before proceeding further, this Court deems it appropriate to discuss about the Judgments in respect of due execution. In this regard, it would be relevant to refer to the Judgement of this Court *in the case of S.Ramamurthy Vs. Jayalakshmi Ammal* [reported in *1990 SCC Online Madras 501*] wherein while interpreting Section 35 of the Registration Act it has been Observed as follows:

“ 11. Let us first examine the meaning of “admission of the execution of a document” for the purpose of Section 35 of the Registration Act, “The execution of a document is not mere signing of it. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put his signature in a document after knowing fully its contents. The executant of a document must, after fully understanding the contents and the tenor of the document, put his signature or affix his thumb-impression. In other words, the execution of a document does not mean merely



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signing but signing by way of assent to the terms of the contract of alienation embodied in the document.

15.It is also relevant to refer the Judgement rendered by the Division Bench of the Kerala High Court reported *in the case of Kuttadan Velayudan [reported in 2001 SCC online Kerala 14]*, wherein the relevant portion is extracted hereunder:

“9. To sign means to affix the signature. But when it comes to the signing of a written instrument, it implies more than the act of affixing a signature. It implies more than the clerical act of writing the name. The intention of the person signing is important. The person should have affixed the signature to the instrument in token of an intention to be bound by its conditions. It has been said that for a signing consists of both the act of writing a person's name and the intention in doing this to execute, authenticate or to sign as a



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witness. The execution of a deed or other instrument includes the performance of all acts which may be necessary to render it complete as a deed or an instrument importing the intended obligation of every act required to give the instrument validity, or to carry it into effect or to give, it the forms required to render it valid. Thus, the signature is an acknowledgement that the person signing has agreed to the terms of the document. This can be achieved only if a person signs after the document is prepared and the terms are known to the person signing. In that view of the matter, mere putting of signature cannot be said to be execution of the document.”

16. Therefore, the term “due execution” does not mean mere signing of the documents, but he must know the contents therein after understanding the nature and contents in the said document and thereby binding himself to the terms and conditions of the agreement. Here, the defendant in his reply has stated that he was pressurized to sign in blank stamp papers during 2005. But, in the written statement, he took a defence that Ex.A4 was the



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outcome of forgery committed by the plaintiff.

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17. Therefore, the defence is on two folds. One is denying the execution. The other one is total denial of signature qua forgery. Let us consider the above defence one after another. While carefully perusing Ex.8/Reply Notice, it is the contention of the defendant that the defendant's signature was obtained in blank stamp papers during 2005, whereas the sale agreement/Ex.A4 was engrossed in a stamp paper, purchased on 20.07.2009. Further, in the reply notice, the defendant stated that he might be able to give a fitting reply only after seeing the alleged sale agreement dated 13.10.2009. But, in the written statement, he outrightly denied even the very signature found in Ex.A4/Sale Agreement.

18. Further, the plaintiff, in order to prove the execution of the sale agreement, examined the attester of the sale agreement as P.W.2 and while perusing the evidence of P.W.2, he narrated as to the execution of the sale Agreement/ Ex.A4. But, while cross examining P.W.2, the defendant was



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not in a position to get any favourable admission from P.W.2. In fact there was not even a suggestion to dispute the presence of P.W.2 at the time of execution of Ex.A4/sale agreement. When the defendant has gone to the extent of saying that the very sale agreement was forged, his silence for not taking any steps to prove the alleged forgery would only vindicate that the case put fourth by the defendant is a false one. It is pertinent to mention here that, a fact is said to be proved, when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists, then the said factum will be construed as proved.

19. Here in this case, if really the defendant was strong enough in his case of forgery, even at the time of sending his reply, he would have taken such a defence of forgery at the initial point of time. But, while sending Ex.A8/reply notice on 10.09.2010, he took a defence of signing in a blank paper. To put it in other words, he admitted the signature in the alleged sale



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21. Here, the defendant did not dispute the readiness and willingness of the plaintiff to perform his part of the agreement. Once the sale agreement is proved and the defence of the defendant's disbelieved, as a natural concomitant the plaintiff is entitled to a decree for specific performance.

22. In the result this first appeal is dismissed by confirming the Judgment and decree dated 19.12.2012 passed by the learned Fourth Additional District and Sessions Judge Coimbatore in O.S.No.5 of 2011. No order as to Costs.

30.11.2023

smn
Index : Yes/No
Speaking order/non-speaking order

To.

The Second Additional District and Sessions Judge of Coimbatore

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C.KUMARAPPAN, J.,

smn

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