



A.S.No.593 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.No.593 of 2011

P.R.Aruchamy

... Appellant

Vs.

N.R.Chinnasamy (died)

2.N.C.Palaniammal

3.S.Arulmozhi

4.N.C.Sivakumar

5.N.C.Rajasekaran

6.N.C.Karthikeyan

... Respondents

[R2 to R6 brought on record as legal heirs of the deceased 1st respondent viz., N.R.Chinnasamy, vide Court order dated 21.11.2022 made in C.M.P.Nos.19955, 19957, 19959 of 2022 in A.S.No.593 of 2011]

Prayer : Appeal Suit filed under Section 96 and Order 41 Rule 1 and 2 of Code of Civil Procedure against the judgment and decree dated 05.10.2010 in O.S.No.764 of 2009 on the file of the I Additional District Court, Coimbatore.

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For Appellants : Mrs.Hema Sampath
Senior Counsel
for Mr.S.Kasirajan

For Respondents : Mr.V.Ashok Kumar
(Vakalat Returned)
R1 - Died

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The appeal is directed against the judgment and decree, dated 05.10.2010, in O.S.No.764 of 2009 on the file of the I Additional District Court, Coimbatore. The plaintiff in the suit is the appellant in the above appeal.

2.The appellant filed the suit for granting a decree directing the defendant to execute a sale deed in respect of the suit property in favour of the appellant, after receiving the balance sale consideration, failing which, requesting the Court to execute the sale deed. There was an alternative prayer also to direct the defendant to pay the plaintiff a sum of Rs.6,22,603/-



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with future interest @ 18% p.a. from the date of suit till realisation.

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3. Brief facts set out in the plaint are as follows :

The defendant is the absolute owner of the suit property measuring an extent of 7.23 Acres in S.Nos.95, 96 and 102/1 in Vellimalaipattinam Village, Coimbatore Taluk. On 19.11.2006, the defendant agreed to sell the suit property, viz., an extent of 7.23 Acres excluding the 4m wide common pathway and an extent of 5 cents where the telephone tower is located, for a price of Rs.6,90,000/- per Acre. On 19.11.2006, the plaintiff received a token advance of Rs.10,005/- and executed a token receipt, dated 19.11.2006, in favour of the plaintiff. As per the agreement, the defendant agreed to sell the suit property to the plaintiff. The plaintiff paid a sum of Rs.2,00,000/- on 01.01.2007 by way of further consideration and again, on the same day, in the evening of 01.01.2007, a further sum of Rs.2,00,000/- was also paid by plaintiff. The defendant acknowledged receipt of the amounts by making endorsements on the original token receipt. Since the defendant did not come forward to execute the sale deed, the plaintiff sent a notice on 16.02.2007, calling upon the defendant to execute the sale deed as



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per the agreement. The plaintiff, thereafter, sent a telegram to the defendant on 17.02.2007. Though the defendant sent a reply in response to the notice, it is stated that the contents of the reply notice are false and unsustainable. Since the defendant did not come forward to execute the sale deed, the plaintiff stated that he was constrained to file the suit for specific performance.

4.The defendant filed a detailed written statement repudiating each and every averment made in the plaint as regards alleged sale agreement and the payment of a sum of Rs.4,00,000/- and odd as part of sale consideration. It is the case of the defendant that he was in urgent need of a sum of Rs.5,000/- and approached the plaintiff for getting a loan. The plaintiff, who obtained the signature of defendant in several blank stamp and plain papers as security for repayment of the amount, has fabricated the token receipt mentioned in the plaint. The defendant, therefore, has specifically denied the execution of the unregistered receipt referred to in the plaint. The endorsements regarding receipt of a sum of Rs.2,00,000/- and a further sum of Rs.2,00,000/- on 01.01.2007 were also denied by the defendant. Even in



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the written statement, it is specifically pleaded that the plaintiff has filed the suit based on a forged document. In the written statement, several irregularities in the unregistered receipt were also pointed out by the defendant. The contradictions as seen from the token advance receipt, notice and paper publication made by the plaintiff were pointed out by the defendant in the written statement. From the entire written statement, it can be seen that the defendant has not only denied the agreement, but also the signature as well as the contents of the token receipt and the endorsements which are also found in the receipt.

5.The trial Court, having regard to the specific pleadings, framed the following issues :

- i. *"Whether the plaintiff is entitled for specific performance as prayed for ?*
- ii. *Whether the plaintiff is always ready and willing ?*
- iii. *Whether the plaintiff is entitled to alternate relief as prayed for ?*
- iv. *Whether the agreement was not created ?*
- v. *Whether relief ?"*

6.Having regard to the fact that the signature of defendant is not found



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in the first page of the token receipt and there are several variations in the signatures found in the token receipt and the endorsements, the trial Court accepted the case of the defendant that the token receipt marked as Ex.A1 is forged. Though the plaintiff contended that signature of the defendant in the document Ex.A1 is admitted orally, the trial Court found on examination of entire evidence that defendant has not admitted his signature in Ex.A1. Having regard to the contents of Ex.A1 and the case pleaded by the plaintiff and defendant, the trial Court held that the document Ex.A1 is a fabricated document. Based on the findings on the issue as regards the genuineness of the document under Ex.A1, the trial Court did not go into other issues. Ultimately, the suit was dismissed by the trial Court.

7. Aggrieved by the judgment and decree of the trial Court, the above appeal is filed by the plaintiff.

8. Learned Senior Counsel appearing for the appellant/plaintiff submitted that the receipt of advance and the terms of Ex.A1 were not considered by the trial Court with reference to the admitted facts and



evidence. Learned Senior Counsel then submitted that the trial Court ought to have held that the document Ex.A1 shows that there is a *bona fide* sale agreement between the parties and that the trial Court, without even looking into the evidence, has rendered a finding against the plaintiff as regards the genuineness of the agreement.

9.Having regard to the pleadings, grounds raised in the appeal and the arguments of the learned Senior Counsel for the appellant, the following points arise for consideration in this appeal :

- i. Whether Ex.A1 is a genuine document which could be accepted as a sale agreement between the parties, capable of being enforced in the Court of Law ?*
- ii. Whether the plaintiff was ready and willing to perform his part of the contract in terms of the agreement pleaded in the plaint ?*
- iii. Whether the plaintiff is entitled to the relief of specific performance by directing the defendant to execute the sale deed ?*
- iv. Whether the plaintiff is entitled to the alternative relief as prayed for ?*



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WEB COPY **Point No. (i) :**

10.This Court is unable to accept any of the submissions or arguments of the learned Senior Counsel for the appellant for the following reasons :

(a) Ex.A1 is an unregistered receipt and it is not a regular agreement.

Therefore, the document Ex.A1 is not admissible in evidence to prove the agreement. Though the plaintiff has produced the document Ex.A1 to prove the existence of an agreement, he failed before the trial Court even to satisfy the Court so as to accept the document as a receipt for payment of money as alleged in the plaint.

(b) We perused the original of Ex.A1. The document Ex.A1 does not contain the signature of defendant in the first page. The signature found in the second page of Ex.A1 does not tally with the signature found on the reverse side of second page of Ex.A1. The description of the property has been given in the first page as well as in the second page of Ex.A1.

(c) There are five signatures found on the backside of second page of Ex.A1. Below the first endorsement dated 01.01.2007, there is a



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signature. Below the second endorsement, on the right hand side, the Revenue Stamp which was affixed had been removed and another Revenue Stamp has been affixed on the left hand side. Below the Revenue Stamp, there is another signature. Below the second endorsement, there are two signatures.

11.This Court is able to see several differences and variations in the five signatures on the reverse side of second page of Ex.A1. The document reveals an imperfect forgery. The recitals of the document Ex.A1 show that plaintiff and defendant had entered into an agreement of sale in respect of an immovable property. Such an agreement cannot be by way of signing in a token receipt with a revenue stamp of Rupee One. Since the agreement is for a sum of more than Rs.48 Lakhs, it should be written only in a Stamp Paper. Therefore, this Court cannot accept Ex.A1 as an agreement of sale between the parties. Except Ex.A1, no other independent evidence is let in to prove the oral agreement between the parties. The evidence of P.W.2 shows that there was no concluded agreement, as the parties have not decided as to the extent of land as well as the total price agreed for the entire



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property, in cross-examination. The first endorsement regarding payment of Rs.2,00,000/- is not by affixing any Revenue Stamp. Therefore, the endorsement cannot be accepted as an acknowledgment of receipt of any money. The trial Court has appreciated the evidence of plaintiff as well as defendant to conclude that the document Ex.A1 is forged. This Court is unable to find any irregularity in the conclusion of the trial Court holding that Ex.A1 is not an agreement of sale and that it is forged and fabricated for the purpose of suit. *Point No.(i) is answered in favour of the defendant.*

Point No.(ii) :

12.This Court has found that the document Ex.A1 cannot be considered as an agreement. However, Ex.A1 specifically refers to payment of balance of sale consideration within a period of three months from 19.11.2006. Even in the plaint, it is stated that, in response to the the suit notice dated 16.02.2007 and the telegram dated 17.02.2007, the defendant sent a reply. The receipt of reply is also acknowledged by the plaintiff even in the plaint. Despite there is repudiation of contract by defendant, the suit itself was filed only on 19.11.2009. There is no explanation on the side of



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the plaintiff as to why the suit was filed nearly 2 ½ years after the receipt of reply. The suit is filed just before the expiry of three years from the date of alleged agreement under Ex.A1. The plaintiff has not even pleaded that he was ready with the money to pay the balance in terms of the agreement of sale. Even if a contract is repudiated by the defendant, the plaintiff can seek specific performance only if he satisfies that he is ready and willing to perform his part of the contract in terms of the agreement, in view of the express provisions under Section 16 of Specific Relief Act, 1963. This Court and the Hon'ble Supreme Court have repeatedly held that there is a personal bar under Section 16 of the Specific Relief Act, 1963, without a plea and proof for readiness and willingness. Therefore, this Court has no hesitation to hold that the plaintiff is not ready and willing to perform his part of the contract. *Point No.(ii) is answered in favour of the defendant.*

Point Nos.(iii) and (iv) :

13.From the evidence, the trial Court has categorically held that the suit agreement Ex.A1 is not a genuine transaction and that the plaintiff has come forward with the suit on the basis of a forged document under Ex.A1.



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This Court has also confirmed the findings of the trial Court with regard to the genuineness of the document under Ex.A1. In a suit for specific performance, the plaintiff is expected to approach the Court with clean hands. The trial Court held that the plaintiff has not even proved the payments as stated in Ex.A1. When the suit document itself is forged, the trial Court has rightly held that the plaintiff is not entitled to any relief, even the alternative relief for re-payment of the alleged amounts stated to have been paid under Ex.A1. *Therefore, Point Nos.(iii) and (iv) are answered against the plaintiff.*

14.In view of the conclusions reached above, the judgment and decree of the trial Court, dated 05.10.2010, in O.S.No.764 of 2009, is confirmed. In fine, the appeal is dismissed with costs.

(S.S.S.R., J.) (P.B.B., J.)
27.02.2023

mkn

Internet : Yes

Index : Yes / No



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To

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1. The I Additional District Judge,
Coimbatore.

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

| *with a direction to return*
| *the records to the Court below,*
| *forthwith*

S.S. SUNDAR, J.



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and
P.B. BALAJI, J.

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