



SA.No.410 of 1998

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

**SA.No.410 of 1998**

- 1.Devarasu (died)
- 2.Siva @ Nagappan
- 3.D.Ganesh
- 4.Sakthivel
- 5.Loganayaki
- 6.C.Radha
- 7.Muthulakshmi
- 8.R.Usha
- 9.B.Sumathi
- 10.Manjula
- 11.Parameswari

*[Appellants 2 to 11 brought on record as LR's of the deceased sole appellant vide as per the order of the Court dated 14.08.2003 made in C.M.P.No.3057 of 2003]*

... Appellants

Vs.

Narayanasamy

... Respondent



SA.No.410 of 1998

**PRAYER:** Second Appeal filed under Section 100 of the CPC, against the judgement and decree passed in A.S.No.54 of 1990 dated 30.06.1997 on the file of the II Additional District Judge Pondicherry confirming the judgement and decree in OS.No.250 of 1981 on the file of III Additional District Munsif, Pondicherry dated 20.07.1989.

For Appellants : Mr.Rajarajan

For Respondent : Mr.T.R.Rajaraman

### **JUDGEMENT**

The plaintiff is the appellant before this Court challenging the judgment and decree passed by the II Additional District Judge, Pondicherry in A.S.No.54 of 1990 in and by which the learned Judge has confirmed the judgment and decree of the III Additional District Munsif, Pondichery in OS.No.250 of 1981. The facts in brief are as follows and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit OS.No.250 of 1981 on the file of the III Additional District Munsif, Pondichery for specific performance of an agreement dated 14.04.1969. It is the case of the plaintiff that he has been living in the suit property since 1957, thereafter the defendant's father Govindasamy Gounder had executed an agreement of sale dated 14.04.1969



SA.No.410 of 1998

agreeing to sell the suit property to the plaintiff. The total sale consideration was fixed at a sum of Rs.4,000/- and on the date of agreement a sum of Rs.3,500/- was paid as an advance, and the balance sum of Rs.500/- was payable. The said Govindasamy Gounder kept postponing the sale despite several requests of the plaintiff and ultimately in the year 1973 Govindasamy had passed away. Thereafter, the plaintiff had approached the defendant with a request to execute the sale deed. In July 1980, the defendant had agreed but later reneged on the agreement thereby constraining the plaintiff to issue a legal notice dated 23.01.1981 to the defendant. Though the defendant had received the notice he had not care to send a reply, therefore, the suit.

3. The defendant had filed a written statement interalia contending that the agreement was a rank forgery. As an alternate argument the defendant had stated that even assuming that such an agreement had come into existence there is absolutely no explanation as to why the plaintiff had not filed the suit during the lifetime of the said Govindasamy Gounder. The defendant would further submit that he is not the only legal heir of the deceased Govindasamy Gounder and there were others.



SA.No.410 of 1998

4. The defendant further submitted that the plaintiff is in occupation of his land and when he had called upon him to vacate the premises the plaintiff has come forward with this suit. The plaintiff was in fact allowed to stay in the property by the defendant's father on compassionate ground and therefore the leave has now been revoked by the defendant.

5. The learned III Additional District Munsif had framed the following issues:-

*1. Whether the agreement dated 14.04.1969 is a forged one as contended by the defendant?*

*2. Whether the plaintiff is entitled for a decree of specific performance as prayed?*

*3. To what relief is the plaintiff entitled?*

6. The plaintiff had examined himself as P.W.1 and one Jayaraman as P.W.2 and Ex.A.1 to A.4 were marked. The defendant examined himself as D.W.1 and there were no documents marked on the side of the defendant. That apart, the Advocate Commissioner's Report was taken on file along with the two negatives and 2 photographs.



SA.No.410 of 1998

7. The learned Judge on considering the evidence and pleadings came to the conclusion that the delay in filing the suit was enormous and no steps had been taken during the lifetime of Govindasamy. That apart, a mere perusal of Ex.A.3 would show the interpolations and corrections thereon which has been done in the year 1981. The Trial Court also found contradictions in the evidence of P.W.1 and P.W.2 who were examined as the attestors of the document. The Report of the Advocate Commissioner containing the expert's opinion clearly proved that the signature contained in Ex.A.3 when compared with the admitted signature clearly show that it was a ranked forgery. The learned Judge, therefore, dismissed the suit.

8. Aggrieved by the said judgment and decree the plaintiff had filed A.S.No.54 of 1990 on the file of the II Additional District Judge, Pondicherry. The learned Judge also concurred with the findings of the Trial Court. The learned Judge observed that the recitals which have contained in Ex.A.3 which is stated to be of the year 1969 has been corrected in the year 1981. That apart, the payment of the amount as set out in Ex.A.3, sale agreement is totally in contradiction to the evidence of P.W.1 as well as PW.2. The handwriting expert had found that the signatures affixed in



SA.No.410 of 1998

Ex.A.3, agreement and the signature in the admitted document has been made by two different persons. Therefore, the Appellate Court had also confirmed the judgment and decree of the Trial Court.

9. Aggrieved by this concurrent judgment and decree the appellant is before this Court.

10. The above Second Appeal was admitted on the following substantial questions of law:-

*1. Whether the lower appellate Court was justified in dismissing the appeal on the basis of the handwriting expert's opinion alone without examining him as a witness?*

*2. Whether the certificate issued by the handwriting and signature expert is admissible in evidence in the absence of oral examination and rejecting Ex.A.3 agreement on the basis of a written opinion alone is justified?*

11. Heard the counsel on both sides.



12. The sale agreement has been disputed by the plaintiff to be a ranked forgery. In order to prove the same the plaintiff had examined P.W.2 and one Jayaraman who had adduced evidence with reference to the passing of consideration. However, the evidence in this regard runs contrary to the contents of Ex.A.3. He would submit that on the date of execution of Ex.A.3 a sum of Rs.2,000/- was paid. Even prior to that, according to P.W.2 a sum of Rs.1,500/- had been paid. However, P.W.1, the plaintiff in his evidence would submit that a sum of Rs.3,500/- was paid in three installments. In the year 1966, a sum of Rs.2,000/- was paid thereafter, in the year 1969, a sum of Rs.1,000/- was paid and in the year 1970, a sum of Rs.500/- was paid. Therefore, the evidence of PW.2 and P.W.3 with reference to the passing of consideration are contrary to each other and to the recitals in Ex.A.3 wherein it is stated that a sum of Rs.3,500/- was paid on the date of the agreement as an advance.

13. A perusal of Ex.A.3 would show the corrections and interpolations with reference to the month of payment and several other corrections and interpolations. Therefore, the said document cannot be relied upon. In addition, the handwriting expert had filed a report wherein



SA.No.410 of 1998

she had stated that the signature in Ex.A.3 is not the signature of the defendant's father in the admitted document.

14. Therefore, from the evidence of P.W.1 and P.W.2 and the report it is clear that the defendant's father had not executed the agreement of sale Ex.A.3 in favour of the plaintiff and the judgment and decree of both the Courts below is based on these documents. The Courts below have not only considered the handwriting expert's report but have also taken note of the discrepancies in the evidence of P.W.1 and P.W.2 with reference to the execution of the deed as well as passing of consideration. Therefore, the Substantial Question of laws framed are answered against the plaintiff. Consequently, the Second Appeal stands dismissed and the Judgement and decree of the Courts below are confirmed. No costs.

**07.02.2023**

Index : Yes/No  
Internet : Yes/No  
Neutral Citation : Yes/No  
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SA.No.410 of 1998

To

1. The Additional Sub Judge, Pondicherry.

2. The III Additional District Munsif, Pondicherry.



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SA.No.410 of 1998

**P.T. ASHA, J,**

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**SA.No.410 of 1998**

**07.02.2023**

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