



WEB COPY

Appeal Suit No.343 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

Coram

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

Appeal Suit No.343 of 2022

M.Kanagavel
S/o.Muthu Udaiyar

... Appellant

Vs.

R.Raghuraman
S/o.Ramadass

... Respondent

First Appeal filed under Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree passed by learned I Additional District Judge, Salem, in O.S.No.114 of 2020, dated 22.01.2022.

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.A.E.Ravichandran

JUDGMENT

[Delivered by **R.SUBRAMANIAN, J**]

The plaintiff in O.S.No.114 of 2020 on the file of I Additional District Court, Salem, is on appeal aggrieved by the dismissal of his suit for refund of advance amount.



WEB COPY



2. According to the plaintiff, the defendant, who is the owner of the suit property under a sale deed dated 26.05.2004 agreed to sell the property for development of his business. The sale price was fixed at Rs.1,000/- per sq.ft. and an agreement was entered into on 15.01.2020. On the date of agreement, the plaintiff paid an advance of Rs.25,00,000/- and a period of three months i.e. upto 15.04.2020 was fixed for performance of the agreement. Claiming that the defendant did not come forward to execute the sale deed, the plaintiff had requested the defendant to repay the advance amount on 01.03.2020. Though the defendant had agreed to do so, he had not come forward to refund the advance amount. Claiming that the defendant is attempting to sell the property to third parties, the plaintiff sought for refund of advance amount.

3. The suit was resisted by the defendant contending that the suit itself is an abuse of process of Court. The defendant would submit that the plaintiff, who is his maternal uncle had helped him during his student days and the defendant used to get advice from the plaintiff regarding investment and financial transactions. The defendant was in United States of America and had made several investments in India including starting of two



WEB COPY

companies viz., Reveille Technologies Private Limited and Reveille Steel Private Limited, for which he had appointed the plaintiff as the Managing Director. Both the defendant and his wife had executed Powers of Attorney in favour of the plaintiff in order to enable him to manage the assets and their business interests in India.

4. The defendant would contend that the plaintiff had, in fact, purchased various properties in the name of defendant and his wife as their Power Agent. According to the defendant, he learnt that the plaintiff has been mismanaging the assets and enriching himself at the cost of defendant and hence, he had returned to India and took over the conduct of the business. This annoyed the plaintiff, who was longing for an opportunity to wreck vengeance. The present suit is the result of the said plan. The plaintiff made use of the stamp papers, purchased in the year 2008 and left with him, to prepare a sale agreement utilizing the signed blank papers in his possession, which were given when he was acting on behalf of the defendant. A specific plea was taken that the signature of the second attesting witness viz., Sunitha Parvathi, wife of defendant, was not hers and the same is a forged one. The financial ability of the plaintiff to advance an



WEB COPY

amount of Rs.25,00,000/- was also questioned by the defendant. It was also contended that the description of property in the agreement itself is incorrect. On the above pleadings, learned trial Judge framed the following issues for consideration:

- (i) whether the plaintiff is entitled to refund of advance amount as claimed by him ?
- (ii) whether the agreement dated 15.01.2020 has been prepared utilizing the old stamp papers and signed blank papers ?
- (iii) whether the suit agreement is false and it has been created for the purposes of the suit ?
- (iv) whether the plaintiff has utilized the signature of the defendant obtained in the year 2008 to fabricate the suit agreement ?
- (v) whether the signature of Sunitha Parvathi found in the agreement is forged ?
- (vi) whether the plaintiff has filed the suit with malafide intention of deceiving the defendant ?
- (vii) to what all the relief, the plaintiff is entitled ?



WEB COPY



5. At trial, the plaintiff himself was examined as PW-1 and Exs.P1 to P3 were marked. The defendant was examined as DW-1 and Exs.D1 to D29 were marked. The opinion of the expert regarding the signature of the second attesting witness Sunitha Parvathi (wife of the defendant) was marked as Ex.C1.

6. Upon consideration of the evidence on record, the trial Judge concluded that the signature of Mrs.Sunitha Parvathi, the attesting witness, which was referred to the expert is not that of her relying on the expert opinion to the effect that the disputed signature i.e., the signature found in the suit agreement does not tally with the admitted signature of Mrs.Sunitha Parvathi. Based on the said report and the other evidence that was available, the learned trial Judge came to the conclusion that the agreement has been prepared in a presigned stamp paper, which was purchased in the year 2008 for some other purpose. Learned trial Judge also took note of the fact that the defendant had returned from United States of America and made publication to the effect that he had taken over the business and there were meetings regarding the management of the business between the plaintiff and the defendant and a Chartered Accountant by name Elangovan, which



WEB COPY

prima facie established that the relationship between the parties was strained even during July 2019. Learned trial Judge also took note of the fact that the defendant had lodged a complaint against the plaintiff on 14.02.2020 and the suit came to be filed thereafter in March 2020 seeking refund of advance amount even before the time fixed for performance had lapsed. Learned trial Judge has also doubted the means of the plaintiff to advance a sum of Rs.25,00,000/- in cash on 15.01.2020, *viz.*, the date of the agreement. Learned trial Judge had also adverted to the description of the property in the sale deed under which the property was purchased by the defendant and the sale agreement as well as the plaint. On the above findings, learned trial Judge concluded that the plaintiff is not entitled to a decree for refund of advance amount and hence, dismissed the suit. Aggrieved, the plaintiff is on appeal.

7. Heard Mr.P.Jagadeesan, learned counsel appearing for appellant and Mr.A.E.Ravichandran, learned counsel appearing for respondent.

8. Mr.P.Jagadeesan, learned counsel appearing for appellant would vehemently contend that the trial Court ought not to have disbelieved the



WEB COPY



agreement solely on the ground that the agreement has been written in a stamp paper purchased in the year 2008. He would point out that the stamp paper was purchased by the defendant himself in the year 2008 and therefore, the claim that the old stamp paper was used to prepare the suit agreement ought not to have been sustained. Learned counsel would also point out that once the defendant had admitted his signature in the agreement, the fact that the signature of one of the attesting witnesses was proved to be not that of hers cannot by itself invalidate the agreement. Learned counsel would also submit that once the agreement recites that Rs.25,00,000/- was received, the burden is on the defendant to prove non-receipt and the plaintiff cannot be expected to prove that he had paid a sum of Rs.25,00,000/- on the date of agreement.

9. Contending contra, Mr.A.E.Ravichandran, learned counsel appearing for respondent would submit that the suit itself is an attempt to browbeat the defendant. Pointing out the proximity between the dates, viz., date of agreement, date of lodging of the complaint before the Commissioner of Police at Chennai and the date of filing of the suit, learned counsel would contend that the suit is nothing but a counterblast to the police complaint



and the agreement has been prepared to suit the convenience of the plaintiff.

Learned counsel would also point out that the signature of the second attesting witness was found to be not that of hers and the plaintiff has not proved his wherewithal for having paid Rs.25,00,000/- cash on 15.01.2020. The allegations regarding payment of advance are also disputed on the basis of the timing, particularly, the time that will be taken to travel from Chennai to Salem.

10. We have considered the rival submissions.

11. On the contentions, the following points emerged for discussion:

- (i) whether the suit agreement is true and genuine ?
- (ii) whether the plaintiff has proved that he had parted with a sum of Rs.25,00,000/- on 15.01.2020 as advance under the agreement ?
- (iii) Admittedly, the agreement was written on a stamp paper purchased in the year 2008 in the name of the defendant.
- (iv) The agreement was dated 15.01.2020. There is a huge gap between the date of purchase of the stamp paper and the date of agreement.



WEB COPY



On the points:

12. It is admitted that the plaintiff is the maternal uncle of the defendant and the plaintiff was in charge of the business and properties of the defendant till July'2019 when the defendant came back to India and took over the business. Therefore, the case of the defendant that signed stamp papers were left with the plaintiff is more probable. The very use of 12 years old stamp paper for preparation of sale agreement creates quite a lot of suspicion regarding the validity of the document. More over, the plaintiff was in charge of the affairs of the defendant at the relevant point of time. The fact that the plaintiff was in charge of the affairs of the defendant in India at the relevant point of time is also to be fathomed while pronouncing on the conduct of the parties. We find from Ex.P9 on 10.07.2019 some kind of agreement has been reached between the parties regarding the property of the plaintiff and defendant at the hands of the plaintiff. Thereafter, on 27.07.2019, the defendant and his wife had filed a suit against the plaintiff before the District Court, Namakkal. On 14.02.2020, the defendant and his wife have given a complaint to the Commissioner of Police against the plaintiff for having misappropriated their properties. It is in this background, the suit agreement comes into existence on 15.01.2020. This claim, to our



WEB COPY



mind, is clearly unbelievable. As rightly pointed out by the trial Court, the signature of one of the attesting witnesses is found to be forged or not that of hers. The plaintiff is unable to explain the source from which he got such a huge sum of Rs.25,00,000/- in cash to be paid as advance to the defendant on 15.01.2020, viz., the date of agreement. No doubt, the agreement says that the said amount was paid. However, when it is found that the agreement was written on a 12 years old stamp paper and is *prima facie* unbelievable, it is for the plaintiff to prove, by acceptable evidence, that he had Rs.25,00,000/- with him on 15.01.2020 and he had parted with the said sum in favour of the plaintiff on that date. In the absence of any evidence to that effect, we do not think that we can fault the trial Court for having disbelieved the agreement and for having dismissed the suit. We must also point out that there is a significant flaw in the very description of the property in the agreement, which also makes it unbelievable.

13. The evidence of PW-1 was also not very inspiring. He is unable to say how he got Rs.25,00,000/- except stating that he had given the same for purchase of properties. He has not chosen to produce his bank account or income-tax returns to show that he was possessed of Rs.25,00,000/- on the



WEB COPY

date of agreement and therefore, his claim that he has paid that amount as advance should be believed by the Court. In the absence of any such evidence to that effect, we will have to necessarily confirm the findings of the trial Court on the question of ability/capacity of the plaintiff to advance such a huge sum of Rs.25,00,000/-. We, therefore, answer the points against the appellant/plaintiff.

In view of the above reasoning, this appeal will stand dismissed and the judgment and decree passed by learned I Additional District Judge, Salem, in O.S.No.114 of 2020, dated 22.01.2022, will stand confirmed. In view of the relationship between the parties and the fact that there are several litigations pending between the parties, we direct the parties to bear their own costs.

[R.S.M., J] [N.S., J]
15.11.2023

Index: No
Speaking Order
Neutral Citation: No
gm

R.SUBRAMANIAN, J
and



WEB COPY



Appeal Suit No.343 of 2

N.SENTHILKUMAR, J

gm

To

The I Additional District Judge,
Salem.

Appeal Suit No.343 of 2022

15.11.2023