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AS.No.106 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE **R.SUBRAMANIAN**
AND

THE HONOURABLE Mrs.JUSTICE **R.KALAIMATHI**

A.S.No.106 of 2014
and
CMP.Nos.9150 & 9151 of 2023

Saraswathi

... Appellant/Defendant

-Vs-

P.A.Rajendran

... Respondent/Plaintiff

PRAYER: First Appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and decree dated 30.08.2013 made in O.S.No.43 of 2010 on the file of the II Additional District Court, Salem.

For Appellant : Mr.T.Murugamanickam
Senior Advocate
for Ms.Zeenath Begum

For Respondent : Dr.P.Jagadeesan
for Mr.K.Selvaraj



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J U D G M E N T

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[Judgment of the Court was delivered by **R.SUBRAMANIAN, J**]

The instant appeal is filed by the defendant in OS.No.43 of 2010 on the file of the II Additional District Court, Salem for a suit for Specific Performance.

2. The plaintiff sought for specific performance of the Agreement dated 30.07.2007 contending that the defendant had agreed to sell the suit property for a consideration of Rs.32,65,100/-. It was also further contended that the defendant had received a sum of Rs.25,001/- under the receipt-Ex.A1 dated 19.12.2006, Rs.50,000/- under the receipt-Ex.A2 dated 29.01.2007. Thereafter, the suit Agreement came to be entered on 30.07.2007 on which date the plaintiff claimed to have paid an advance of Rs.20,00,000/-. Contending that he has been ready and willing to perform his contract and the defendant is evading the execution of sale deed, the plaintiff came up with the present suit.



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3. The Trial Court framed the following issues:-

1. Whether the defendant entered into an agreement with the plaintiff for sale of the suit properties and received a sum of Rs.25,001/- as advance on 19.12.2006?
2. Whether the defendant received a sum of Rs.50,000/- as further advance?
3. Whether a regular sale agreement was executed between the plaintiff and the defendant on 30.07.2007 and the defendant has received a sum of Rs.20,00,000/-?
4. Whether the receipts and sale agreement are forged and created by the plaintiff?
5. Whether the plaintiff is entitled for the relief of specific performance as prayed for?
6. Whether the plaintiff is entitled for the alternative relief of return of advance amount with a creation of charge over the suit properties?
7. Whether the description of the suit property is correct?
8. To what relief, the plaintiff is entitled?
9. Whether the plaintiff is always ready and willing to perform his part of contract?

4. The case of the defendant was one of total demand. She claimed that the Agreement itself has been created. The Trial Court disbelieved the



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defence and on the conclusion that the plaintiff has been ready and willing to perform his part of contract, decreed the suit.

5. At trial, PW1 to PW5 were examined and Exs.A1 to A13 (Exs.A11 to A13 were marked in cross examination of DW1) were marked on the side of the plaintiff. DW1 was examined and Exs.B1 to B4 were marked on the side of the defendant. Exhibits X1 to X3 were also marked.

6. The Trial Court found that the plaintiff has proved the Agreement and that he is ready and willing to perform his part of the contract. On such finding, the Trial Court decreed the suit, leading to this appeal. Pending this appeal, the original document namely the Sale Agreement was disputed by the appellant. A Division Bench of this Court thought it fit to refer the matter for opinion of a Finger Print Expert. Originally the thumb impressions found in the records of the Trial Court viz., in the deposition of the defendant were directed to be compared and the Finger Print Expert gave an opinion that those thumb impressions were smudged and are unfit for comparison. Therefore, the defendant was asked to appear before the Finger Print Expert and the Finger Print Expert was permitted to take the thumb impressions in the



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presence of the counsel for the parties and the Advocate Commissioner appointed for the purpose and Mr.T.A.Shagul Hameed, Advocate Commissioner appointed for that purpose. After taking such thumb impressions, the Finger Print Expert had written an opinion stating that the disputed thumb impression found in the second page of the Original Sale Agreement-Ex.A3 is smudged and is incapable of being compared. As regards the disputed thumb impression found in the first page of Sale Agreement-Ex.A3, the Expert had opined that it does not match with the admitted thumb impression marked as “S”. The characteristics of differences have also been pointed out by the Finger Print Expert. They read as follows:-

“OPINION II: *The Disputed Left Thumb impression marked as “DI” found against the name of Saraswathi on the Original Un-Registered Sale Agreement Deed is **“NOT IDENTICAL”** with the Specimen Left Thumb impression marked as “S” found on the Original Specimen Left Thumb impressions sheet of Saraswathi.*

REASON: *The ridge characteristics that are found in the Disputed Left Thumb impression marked as “DI” are not found in their same relative positions in the Specimen Left Thumb impression marked as “S” of Saraswathi.*

For the purpose of demonstration in the Court, the



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Photo enlargements marked as “D1” and “S” were got prepared, affixed in white sheets and have marked five not identical ridge characteristics in red lines in photo enlargement “D1” and its descriptive particulars are enumerated below for easy reference.

Point No.1 *Is a bifurcation of a ridge.*

Point No.2 *Is a bifurcation of a ridge above and to the left of Point No.1 with three ridges intervening.*

Point No.3 *Is a termination of a ridge below and to the left of Point No.2 with one ridge intervening.*

Point No.4 *Is a termination of a ridge to the left of Point No.3 with one ridge intervening.*

Point No.5 *Is a bifurcation of a ridge below and to the left of Point No.4 with no ridge intervening.*

All the above ridge characteristics available in the Disputed Left Thumb impression marked as “D1” are not found in their same relative positions in the Specimen Left Thumb impression marked as “S” of Saraswathi.

CONCLUSION: *Hence, the Left Thumb impressions marked as “D1” and “S” are “NOT IDENTICAL” with each other and are not made by one and the same finger of the same person (i.e) the Left Thumb impression said to be of Saraswathi.”*



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7. In view of the above, it becomes unnecessary for us to enter upon any other issues. Once it is found that the thumb impression found in the suit Agreement is not that of the defendant, that suit has to necessarily fail. We are therefore not going into any other questions. We accepted the report of the Finger Print Expert and the same shall form part of the records. The Advocate Commissioner has returned all the documents along with the warrants. Hence, the appellant shall pay a further sum of Rs.30,000/- to the Advocate Commissioner, within a period of two(2) weeks from the date of receipt of a copy of this judgment.

8. In view of the above, this appeal stands allowed and the suit in OS.No.43 of 2010 will stand dismissed. We however make no orders as to costs. Consequently, connected CMPs are also closed.

[R.S.M., J] [R.K.M., J]
13.07.2023

Index : No
Speaking Order

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To
The II Additional District Court,
Salem.



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