



S.A.No.1 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 16.10.2023

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**S.A.No.1 of 2021**

**and**

**C.M.P.No.27 of 2021**

1.Rajendiran  
2.Arul Kumar

... Appellants

**Vs.**

1.Dhanapal  
2.Rajalakshmi  
3.Gowri

... Respondents

*[Respondents 2 and 3 are given up as they remained ex-parte in both the Courts below]*



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**Prayer:-** Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 28.02.2020 in A.S.No.33 of 2016 on the file of the Principal District Court, Cuddalore reversing the judgement and decree dated 06.04.2016 in O.S.No.26 of 2009 before the Sub Court, Panruti.

For Appellants : Mrs.Hema Sampath, Senior counsel

For Respondents : M/s.A.L.Ganthimathi, Senior Counsel,  
for Mr.J.Titus Enock, [R.1]

: R.2 and R.3, given up vide order dated  
07.01.2021



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## **JUDGEMENT**

The respondents 1 and 2 have challenged the Judgement and Decree passed in A.S.No.33 of 2016 on the file of the Principal District Court, Cuddalore in and by which the learned Principal District Judge, Cuddalore reversed the Judgement and Decree passed by the Sub Judge, Panruti in O.S.No.26 of 2009. The facts are briefly set out herein below and for the ease of understanding the parties are referred to in the same array as before the Trial Court.

### **Plaintiff's Case:-**

2. The plaintiff had filed the suit O.S.No.26 of 2009 on the file of the Sub Court, Panruti for specific performance. The prayer in the suit makes interesting reading. The plaintiff would seek for the following reliefs:-

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*"Direct the defendants 1 to 3 to execute the sale deed with the 4th defendant as attestor in the sale deed in favour of the plaintiff by the 1<sup>st</sup> or 2<sup>nd</sup> defendant receiving Rs.2,50,000/- as sale consideration from the plaintiff. On their failure this Hon'ble Court may execute a sale deed; ii) Direct the defendants to deliver possession of the suit property to the plaintiff and on their failure this Hon'ble Court may deliver the possession to the plaintiff"*

3. The plaintiff would submit that the suit property which is part of New Survey No.127/2 and which measures a total extent of 6.81.0 hectares was originally comprised in Survey No.247/4 measuring a total extent of 6.18 acres. Out of this extent, Parasuraman's family was entitled to an extent of 3.09 acres. On 15.02.1986, there was a family partition in which this extent of 3.09 acres was allotted to the shares of

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the six daughters born to Parasuraman through his first wife, Gowri. The daughters are Vijaya, Sumathy, Amutha, Vembu, Mangalam and Rajalakshmi. The extent of 3.09 acres has been described as ABCE in the plaint plan. The above said extent of 3.09 acre was orally partitioned between the six daughters. Under the said oral partition, the first five daughters took an extent of 50 cents each and Rajalakshmi, the youngest daughter was allotted 59 cents.

4. One of the daughters, Vijaya, had sold her 50 cents share to one Asalambal ammal on 18.07.1988. The other four daughters of Parasuraman had sold their share of 50 cents each to the plaintiff under the sale deeds dated 22.09.1990, 15.04.1992, 03.11.1994 and 25.03.1998. The properties sold by the first five daughters of Parasuraman were not the subject matter of the suit. The property (an extent of 59 cents) which was retained by Rajalakshmi, the 6th daughter of Parasuraman has been described as MNOPCD in the plaint



5. The plaintiff would further contend that the 1st defendant, Rajendiran had purchased the share of Rajalakshmi on 15.02.2007 but in the sale deed the boundaries were wrongly described and therefore trouble arose in its enjoyment. Consequently, a Panchayat was convened on 26.08.2007 and the plaintiff and the 1st defendant had participated in the said Panchayat which was conducted by the elder and respected members of the village. It was decided in the Panchayat that the 1st defendant along with Rajalakshmi (who has been arrayed as the 3rd defendant) would execute a sale deed in favour of the plaintiff in which Rajalakshmi's mother, Gowri (4th defendant) would also sign as an attesting witness. Both the plaintiff and the 1st defendant had agreed to the above settlement and in pursuance of the same, an agreement of sale came into existence on the very same day i.e., on 26.08.2007.



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6. As per this sale agreement dated 26.08.2007, the sale price that had been fixed was at a sum of Rs.2,50,000/- and as per the terms therein, the 1st defendant was required to execute the sale deed on or before 30.08.2007. Though the plaintiff was ready and willing to proceed with the sale, the defendant was not coming forward to execute the said sale. The plaintiff also came to learn that the 1st defendant had on 18.09.2008 sold the property to the 2nd defendant. The plaintiff would submit that the sale deed had been brought about to deprive the plaintiff of his right under the agreement.

7. Thereafter, the plaintiff had issued a legal notice dated 12.12.2008 to defendants 1 and 2 with a copies marked to some of the Panchayatdars. Barring one Panchayatdar, all the others had received the notice and it was only the 1st defendant who had issued a reply on 22.12.2008 in which he had contended that his signature has been



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obtained forcibly on the blank sheet and the sale agreement is a fabricated one. Therefore, the plaintiff has come forward with the above suit.

**Defendant's Case:**

8. The 1st defendant on entering appearance had filed a written statement inter alia denying all the allegations contained in the plaint. The 1st defendant had denied the factum of the Panchayat being conducted. It is his case that the plaintiff had wanted the 1st defendant's vendor, Rajalakshmi to sell the property to him. However, she had refused to sell the property to the plaintiff and had sold the same to the 1st defendant. Enraged by this, the plaintiff forcibly obtained the signature of the 1st defendant in the blank sheet with the help of his men and the sale agreement is a fabricated and forged document.



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9. It is also the case of the 1st defendant that he had no intention of alienating the property to the plaintiff. The 1st defendant had also pleaded that the suit is barred by limitation and non-joinder of necessary parties. Further, the 1st defendant would submit that he had purchased the suit property for Rs.59 lakhs and therefore there is no necessity to alienate the suit property for a sum of Rs.2,50,000/-.

10. The 2nd defendant had filed a written statement inter alia contending that the suit is a misconceived one and made with malafide intentions. He would further submit that the alleged document is not a valid one and has been fabricated for the purpose of the suit. He would also adopt the defense of the 1st defendant that the agreement dated 26.08.2007 has come into existence only on account of the plaintiff being enraged by the fact that the 1st defendant had purchased the property of the said Rajalakshmi and the signature of the 1st defendant

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has been obtained forcibly on the blank sheet. He would submit that he is a bonafide purchaser for value and therefore the suit should be dismissed.

**Trial Court:-**

11. The Sub Judge, Panruti had framed the following issues on 05.11.2009:-

- 1. Whether the plaintiff is entitled for a decree as prayed for?*
- 2. Whether the sale agreement is true and valid?*
- 3. To what reliefs ?*

12. On the side of the plaintiff, six witnesses were examined with the plaintiff examining himself as P.W.1 and Ex.A.1 to A.12 were marked. The defendants had only examined the 1st defendant as D.W.1 and no documentary evidence had been filed by them.

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13. The learned Trial Court Judge, on considering the evidence, had come to the conclusion that the document filed by the plaintiff as a sale agreement is not a valid one and dismissed the suit. Aggrieved by the said judgement and decree, the plaintiff had filed A.S.No.33 of 2016 on the file of the District Court, Cuddalore. By her judgement and decree dated 28.02.2020, the learned District Judge, Cuddalore was pleased to allow the appeal and set aside the judgement and decree of the Trial Court and also directed the defendants 1 and 2 to execute a sale deed in favour of the plaintiff/appellant in respect of the suit property after receiving the sale consideration of Rs.2,50,000/-, failing which the Court will execute the sale deed. Challenging the judgement and decree of the Lower Appellate Court, the defendants 1 and 2 are before this Court.



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**Substantial Questions of Law:-**

14. The Second Appeal was admitted on the following Substantial questions of law framed by order of this Court dated 07.01.2021:-

*"a) Whether in law the Lower Appellate Court was right in failing to see that Ex.A2 could not be construed to be a sale agreement and that it was inadmissible in evidence?*

*b) Whether in law the Lower Appellate Court was not wrong in overlooking that Ex.A2 had not specifically described the property with boundaries, especially since the specific case of the case of the first respondent was that the property purchased by the first appellant under Ex.A.1 had wrong boundary descriptions?*



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*c) Whether in law the Lower Appellate Court was right in granting a decree for specific performance when the first respondent is not entitled to equity as he was not ready and willing to perform his part before the time for execution expired and as time was the essence of Ex.A2?"*

**Submissions:**

15. M/s.Hema Sampath, learned Senior counsel appearing on behalf of the learned counsel for the appellants/defendants would submit that the suit as framed is not maintainable since the plaintiff has not set out the agreement in respect of which he seeks specific performance. She would draw the attention of this Court to the agreement which has been marked as Ex.A.2. The said agreement talks about the payment of a sum of Rs.2,50,000/- by the plaintiff to the



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defendant to offset the expenses incurred by him in the execution of the sale in his favour. The agreement would further go on to state that thereafter the 1st defendant should execute the sale. The agreement therefore was rather vague and un-enforceable.

16. She would also draw the attention of the Court to the pleadings contained in paragraph nos.3 to 5 of the plaint which do not give any clarity to the plaintiff's case. The 1st defendant in his written statement has clearly and categorically stated that his signature had been obtained in the alleged agreement through force.

17. The learned Senior counsel would submit that the defendants have clearly in their evidence stated that the alleged agreement is a fraudulent one since the signature of the 1st defendant has been forcibly obtained in blank sheet which has now been used to create the agreement. She would further argue that the plaintiff who has come



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forward with a case that the 1st defendant has purchased the property of Rajalakshmi showing incorrect boundaries and that it is the boundaries that were in dispute, has sought for the execution of the sale deed in respect of the very same property that the 1st defendant has purchased. She would also submit that the plaintiff has not examined any of the Panchayatdars despite the fact that the 1st defendant has raised a defense that his signatures have been forcibly obtained. She would therefore submit that the Lower Appellate Court is wrong in reversing the well-considered judgement and decree of the Trial Court and the Second Appeal may be allowed.

18. M/s.A.L.Gandhimathi, learned Senior counsel appearing on behalf of the learned counsel for the plaintiffs/respondents would submit that the only defense put forward is that the 1st defendant had been forcibly made to affix his signature on Ex.A.2, sale agreement and therefore, no right flows to the plaintiff under this agreement.



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However, no detail whatsoever has been provided as to the date on which such signatures have been forcibly obtained by him in blank sheet. That apart she would draw the attention of this Court to the deposition of D.W.1, wherein the defendant would admit that he has not given the details of the persons whose help the plaintiff had taken to make the defendant forcibly sign on the blank sheet. Therefore, the learned Senior counsel would submit that the only defense of the defendant has been proved to be a false statement and therefore, the Lower Appellate Court has rightly reversed the judgement and decree of the Trial Court.

19. She would further submit that the suit is filed for specifically enforcing Ex.A.2 agreement. She would also submit that the agreement had come to be signed only on account of the fact that the boundary description in Ex.A.1, which is the sale deed under which Rajalakshmi had sold the property to the 1st defendant has been wrongly given as a



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result of which the same was cutting across the property of the plaintiff. She would submit that the plaintiff has proved the execution of the document by examining the witnesses on his side. She would submit that the 1st defendant/appellant has not made out any question of law that requires the re-appreciation of the evidence.

20. Heard the counsels on either sides.

**Discussion:-**

21. The plaintiff would rest his case on Ex.A.2, which the plaintiff would call an agreement of sale. A perusal of this agreement would show that the same is stated to have been executed on 26.08.2007, it is seen that the agreement does not specify the property in respect of which the 1st defendant was supposed to execute a sale deed in favour of the plaintiff. That apart, the document would read that in order to resolve the land dispute which had arisen on account of

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the 1st defendant purchasing an extent of 59 cents from Rajalaxmi, the plaintiff had agreed to compensate the 1st defendant to the tune of Rs.2,50,000/- for the loss incurred by him in the purchase. The agreement is absolutely silent about the nature of the loss that the 1st defendant had suffered, whether the plaintiff was repaying the sale consideration paid by the 1st defendant to the said Rajalakshmi or whether it is in respect of any improvements made to the property by the 1st defendant.

22. The agreement would further state that the 1st defendant has to re-convey the land to the plaintiff along with the 3rd defendant his vendor and the 4th defendant, the vendor's mother. Therefore, it has to be inferred that as per this agreement, the property which has to be conveyed by the 1st defendant to the plaintiff is the property that was purchased by him under Ex.A.1, sale deed. The property which has been purchased under Ex.A.1 sale deed is the property comprised in



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New Survey No.127/2 measuring 6.81.0 hectares in Marungoor village corresponding to old Survey Nos.24/14, 15, 19, 21 and 4 bounded East of Veeranam Channel property, West of Dhanapal (plaintiff's land), South of Rajeshwari (3rd defendant, vendor of appellant) and North of Dhanapal, plaintiff's land within this an extent of 0.59 cents. The property that is the subject matter of the suit is described herein below:-

**Schedule of Property**

*Cuddalore Reg. Dt, Kadampuliyur Sub Reg. Dt at Pavaikullam Village Survey No.127/2 out of 6.81.0 Hec. Old Survey No.24/4 out of 6.18 Acre an extent of 0.59 Acre Boundaries : North of the property purchased by plaintiff from Mangalam, West of the Krishnasamy and Arumugam's land, South of property sold by Saroja ammal and property sold by Vijaya to Asalambal, East of Kumbakonam Road and Veeranam Channel property and the property sold by Saroja Ammal. Today Extent 0.059 Acre (fifty nine cents).*

A mere perusal of the descriptions of the above two properties would



show that they are totally different.

23. The defendants' case is that a dispute had arisen between the plaintiff and the defendants since the boundaries given in Ex.A.1 was wrong. There is no explanation as to how under Ex.A.2, the plaintiff would seek to have the very same property comprised in Ex.A.1 conveyed to him and further how there is a change in the description of the property in the schedule to the plaint. The reason for incorporating a recital for compensation in Ex.A.2 has not been explained and Ex.A.2 cannot be termed an agreement of sale as there is no description of the property in the agreement which imposes a condition that the 1st defendant and the 2nd defendant should execute a sale deed in favour of the plaintiff. Further, in the suit prayer, there is no reference as to which agreement the plaintiff seeks to specifically enforce and this is evident from a mere reading of the prayer extracted supra.



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24. Therefore, the Substantial question of law nos. A and B are answered in favour of the defendants. Even assuming without admitting that the document Ex.A.2 is an agreement of sale, there is no document filed on the side of the plaintiff to show that there has been an attempt on his part to pay the sum of Rs.2,50,000/- to the 1<sup>st</sup> defendant. In fact, except for making a statement that the plaintiff was ready and willing, there is absolutely no evidence to prove the same. The Lower Appellate Court while decreeing the suit has not considered the issue of readiness and willingness. Even according to Ex.A.2, the sale deed was to have been executed on or before 30.08.2007. However, it is noticed that the 1<sup>st</sup> defendant has sold the suit property to the 2<sup>nd</sup> defendant on 18.09.2008. The plaintiff has not proved his readiness and willingness and even in the chief examination, there is absolutely no evidence to prove the same. Therefore, the Substantial



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question of law no.3 is also answered against the plaintiff.

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25. In fine, the Second Appeal is allowed, the Judgement and Decree of the Lower Appellate Court is set aside and the judgement and decree of the Trial Court is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

**16.10.2023**

Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To

1. The Principal District Court, Cuddalore.
2. The Sub Court, Panruti.
3. The Section Officer,  
V.R.Section,  
High Court, Madras.



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

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**and**  
**C.M.P.No.27 of 2021**

**16.10.2023**