



A.S.(MD)Nos.145 & 162 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.03.2023

PRONOUNCED ON : 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)Nos.145 and 162 of 2013
and
M.P.(MD)No.1 of 2013

Shahul Hameed

...Appellant / 3rd Defendant in
A.S.(MD)No.145 of 2013

A.K.Hidayathulla

...Appellant/1st Defendant
A.S.(MD)No.162 of 2013

Vs.

1.Mohammed Ziyavudheen

..1st Respondent/Plaintiff

2.A.K.Hidayathulla

..2nd Respondent / 1st Defendant
A.S.(MD)No.145 of 2013

1.Mohammed Ziyavudheen

..1st Respondent/Plaintiff

2.Shahul Hameed

..2nd Respondent / 2nd Defendant
A.S.(MD)No.162 of 2013



A.S.(MD)Nos.145 & 162 of 2013

PRAYER in A.S.(MD)No.145 of 2013: This Appeal Suit is filed under Section 96 of C.P.C., to set aside the judgment and decree with respect to clause B and C of the decree dated 08.10.2013 passed in O.S.No.42 of 2012 by the Additional District Court, Ramanathapuram, thereby allow the appeal with costs against the first respondent.

PRAYER in A.S.(MD)No.162 of 2013: This Appeal Suit is filed under Section 96 of C.P.C., to set aside the judgment and decree dated 08.10.2013 in O.S.No.42 of 2012 on the file of the Additional District Court, Ramanathapuram, thereby allow the appeal with costs against the first respondent.

In A.S.(MD)No.145 of 2013:

For Appellant	: Mr.A.Natarajan Senior Counsel for Mr.C.Christopher
For R1	: Mr.J.Bharathan
For R2	: Mr.R.Thiagarajan Senior Counsel for Mr.D.Senthil

In A.S.(MD)No.162 of 2013:

For Appellant	: Mr.N.Muralikumaran Senior Counsel for Mr.D.Senthil
For R1	: Mr.C.Ramesh Senior Counsel for Mr.N.Damodaran



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COMMON JUDGMENT

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Aggrieved over the decree and judgment of the trial Court decreeing the suit as prayed for by the plaintiff, the present Appeal Suits came to be filed by the defendants 1 and 2 separately. Since the present two appeals are arising out of the same judgment, both the appeals are disposed by way of common judgment.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Appeal Suit, are as follows:-

(i)The land measuring to an extent of 1 acre 20 cents in Survey No. 250/2C and 250/4A was jointly purchased by the plaintiff, first defendant and one Mohamed Raffi on 18.10.1995. Out of the total extent of 1 acre 20 cents, the three joint owners have plotted out 69 cents and divided the same equally among them. The remaining 51 cents was leased out to the Bharat Petroleum Corporation by all the three joint owners in the year 1999 by way of a registered lease deed, dated 26.08.1999. The second defendant with his brother Mohamed Yusuff was carrying



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on business by obtaining dealership from the Bharat Petroleum and dealing with the petroleum products at Parthibanoor. At that time, the brother of the second defendant relieved from the Partnership Firm and in his place the plaintiff was inducted as partner. An agreement of partnership also came into existence between the plaintiff and the second defendant on 22.10.1999. Thereafter, the above business was transferred to the suit property.

(ii) On 11.06.2002, a memorandum of agreement also came into existence between the Bharat Petroleum Corporation on one side and the plaintiff and second defendant on the other side. Thereafter, the second defendant relieved from the Partnership Firm in the year 2006 and the plaintiff alone was doing the petroleum business. But, his relieving had not been effected in the records, as the Rules of Bharat Petroleum Corporation did not permit the same. However, the second defendant had never interfered with the business of the plaintiff. He had also issued a letter to the State Bank of India indicating that he had relieved from the Partnership Firm. The plaintiff was also recognized as key person for the petroleum business.



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(iii)When the matter stood thus, the first defendant kidnapped the plaintiff on 29.12.2011 to the Sub Registrar Office, Manamadurai and obtained his signature in the already prepared document and also registered the same. He also threatened the plaintiff that he will do way the family members of the plaintiff. Even after such execution of document, the plaintiff was managed to run the petrol bunk. The plaintiff has informed the incident to his relatives about his abduction and forcible obtaining of document by the first plaintiff on 30.12.2011 itself. On 31.12.2011, there was a Panchayat, in which the first defendant had agreed to re-convey the property to the plaintiff. However, he left to Singapore and came back to India only on 10.06.2012. At the time, when the plaintiff requested the first defendant for re-conveyance of the property, he did not agree for the same.

(iv)Further, in the sale deed dated 29.12.2011, it was stated that a sum of Rs.5,51,514/- was the sale consideration and out of which Rs.5,00,000/- was given to the plaintiff by way of cheque and the remaining was given to the plaintiff in cash. But the plaintiff had submitted that no consideration was received on the basis of the sale deed, dated 29.12.2011. Therefore, the sale deed is void.



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(v)Based on the above document, on 04.06.2012 the first defendant's brother along with his henchman made an attempt to take over the petrol bunk. Hence, the plaintiff had given a complaint with the police. But, no action had been taken by the Police. On the contrary, a false complaint had been registered against the plaintiff and his sons. Thereafter, the plaintiff gave a complaint to the Revenue Divisional Officer on 15.06.2012. The plaintiff had also issued a legal notice on 12.06.2012 to the first defendant, which was also replied by the first defendant with false allegations. The alleged sale consideration in the sale deed was also denied. It is the contention that the petrol bunk is belonged to the plaintiff and the defendants have no right over the same. Hence, the plaintiff filed a suit seeking declaration to set aside the sale deed, dated 29.12.2011 as null and void and declare that the plaintiff is entitled to run petrol bunk as a key person and for consequential injunction.

(vi) The first defendant filed a written statement denying the entire contention of the plaintiff. Admitting that the suit property was originally purchased by the purchasers and except the land, in which the petrol bunk is situated, the three joint owners divided the lands among themselves. It is the contention of the first defendant that he along with Mohamed Raffi and plaintiff



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had leased out only an extent of 22,561 sq.ft. (51 cent) to the Petrol bunk and the remaining area had been partitioned among them. It is the further case of the first defendant that the plaintiff, the first defendant and one Mohamed Raffi had constituted a registered Partnership Firm known as M/s.Al Ameen and Company and entered into a partnership agreement, dated 01.04.1999. The said Company along with the second defendant had become partners with one M/s.N.S.Mohamed Sulthan Automobiles. The plaintiff signed for M/s.Al Ameen and Company in the deed of partnership with M/s.N.S.Mohamed Sulthan Automobiles, which was registered on 01.04.2000.

(vii) The income tax returns till 2009-2010, were filed by the plaintiff himself on behalf of M/s.N.S.Mohamed Sulthan Automobiles and in the said returns, M/s.Al Ameen and Company and the second defendant were shown as partners of M/S.N.S.Mohamad Sulthan Automobiles and the plaintiff, first defendant and one Mohamed Raffi were also shown as partners of M/s.Al Ameen and Company. Hence, the contention of the plaintiff that he is the key person and managing the Firm and the Petrol bunk was denied. It is the further contention that 1/3 share of the plaintiff in respect of the land leased out to the petrol bunk, had been sold to the first defendant for proper consideration of Rs.20,00,000/- on



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30.12.2011 and a receipt to that effect had also been executed. Similarly, Mohamed Raffi also executed a Will in respect of his 1/3 share in the Partnership Firm in favour of the first defendant. The plaintiff had suppressed the real partners in M/s.Al Ameen and Company. The allegation that the sale deed dated 29.12.2011 was obtained by coercion and force, was also denied.

(viii)The second defendant was impleaded later. He had also filed a written statement denying the contention of the plaintiff that the plaintiff is the key person in the Petrol bunk. It is the contention that he and his brother Mohamed Yusuff were the partners and dealing with the petroleum products in the name and style of M/s.N.S.Mohamed Sulthan Automobiles. Thereafter, the plaintiff, the first defendant and one Mohamed Raffi approached the second defendant and expressed their intention to do the Petroleum business with him. Accordingly, M/s.Al Ameen and Company was also made as a partner along with M/s.N.S.Mohamed Sulthan Automobiles. However, his contention that though documents dated 22.10.1991 and 11.06.2002 had been executed showing the name of the plaintiff only, the same had been executed only for purpose of administrative convenience of M/s.Al Ameen and Company.



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(ix)The allegation that the second defendant relieved from the Partnership Firm established in the name of his grandfather was totally denied. Similarly, the allegation that from the year 2006, the plaintiff alone was managing the petrol bunk was also denied. All the taxes have been paid in the name of the second defendant upto date. The contention that the State Bank of India and the Bharat Petroleum Corporation had appointed the plaintiff as key person was also denied.

4. Based on the above pleadings, the following issues were framed by the trial Court:-

“1. Is it true that the second defendant had retired from the petrol bunk situated in the suit property?

2. Is it true that the defendants are partners in running the petrol bunk situated in the suit property?

3. Is it true that the petrol bunk was running by the plaintiff as a key person?

4. Whether the sale deed the dated 29.12.2011 in favour of the 1st defendant was obtained by coercive?



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5. Whether the plaintiff is entitled for declaration declaring that the sale deed dated 29.12.2011 is null and void.

6. whether the plaintiff is entitled for declaration declaring that the plaintiff is the key person of the petrol bunk?

7. Whether the plaintiff is entitled to declaration?

8. Is it true that the petrol bunk was running by the plaintiff as a key person?

9. Whether the suit is bad for non joinder of necessary party of M/s.N.S.Mohamed Sulthan Automobiles?

5. Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A25 were marked. Though one of the witnesses was examined as P.W.2, his evidence was eschewed by the trial Court, since he had not cooperated for cross examination. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B48 were marked. Besides, the Court witness was examined as C.W.1 and Ex.C1 was also marked.

6. Based on the evidence and materials, the trial Court had decreed the suit holding that the sale deed in respect of 1/3 share in favour of the first defendant is not valid in the eye of law and also granted declaration declaring the



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plaintiff as a key person to run the Petrol bunk. Challenging the said findings, the present two appeals have been filed by both the defendants.

7.During the pendency of the appeals, applications under Order 41 Rule 27 of the Civil Procedure Code were filed in C.M.P.(MD)Nos10460 and 11526 of 2018 in A.S.(MD)No.145 of 2015 and C.M.P.(MD)No.8452 of 2019 in A.S. (MD)No.162 of 2013 for reception of some additional documents. This Court by order dated 21.07.2020 allowed those applications and directed the Additional District Court, Ramanathapram to permit the petitioners therein to mark additional documents and give an opportunity to the other side to adduce rebuttal evidence and send proceedings before this Court.

8.Pursuant to the direction of this Court, the additional evidences were permitted and Ex.A26 to Ex.A28 were marked on the side of the plaintiff. Further, oral evidence was also tendered regarding the said documents. On the side of the defendant Ex.B49 to Ex.B66 were marked and D.W.4 was also examined and his evidence is also before this Court.



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9.Ex.B49 to Ex.B59 are the income tax returns of the plaintiff from 25.09.2007 till 05.06.2016 and Ex.B60 and Ex.B61 are the assessment order for year 2010-11 and 2012-13. Ex.B62, is the sale deed executed by Mohammed Raffi in favour of the first defendant. Ex.B63, is the income tax returns filed by the M/s.N.S.Mohamed Sulthan Automobiles for the year 2012-13. Ex.B64, is the Auditor Certificate. Ex.B65 produced by D.W.4, Officer from the Income Tax Department, is relating to the tax returns of the plaintiff for the period from 2010-11. Ex.B66 is the tax returns for the year 2012-13 of the plaintiff.

10.The learned counsel for the second defendant/appellant in A.S.(MD) No.145 of 2003 mainly submitted that the trial Court had not properly appreciated the evidence in a proper manner. Admittedly, an extent of 1.20 acres was purchased by the plaintiff, the first defendant and one Mohammed Raffi under Ex.A1 dated 18.10.1995. Out of the said extent, 69 cents were developed as plots and divided among the three joint owners and thereafter, the said divided property had been settled in favour of their family members. The remaining 51 cents had been leased out to Bharat Petroleum Corporation under Ex.A2. It is the further contention of the learned counsel for the second defendant that three joint owners,



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who had purchased the immovable property under Ex.A1 have constituted a Partnership Firm in the name and style M/s.Al Ameen and Company on 01.04.1998 to carry on business activities including joint trading of petroleum products. The same was also registered before the Registrar of Firms, Chennai and marked as Ex.B13 and Ex.B34. These facts are not in dispute. Thereafter, Mohammed Raffi another partner of M/s.Al Ameen and Company had executed a sale deed in respect of his 1/3 share in favour of the first defendant under Ex.B62.

11. The share of the partners of M/s.Al Ameen and Company was clearly set out at 45% and the share of the second defendant was set out at 55% as per Ex.B2, the partnership deed dated 01.04.2000 registered on the file of the Registrar of Firms. The plaintiff sold his 1/3 share in the land leased out to the Bharat Petroleum in favour of the first defendant on 29.12.2011 under Ex.A11 and Ex.B4 for a total consideration of Rs.5,51,515/-, besides for relieving from the partnership business and goodwill for exiting from the petrol bunk business including that of retirement from M/s.Al Ameen and Company, he has received another sum of Rs.20 lakhs totally he has received Rs.25,51,515/- under Ex.B19 receipt. Similarly, receipts were also issued by one Mohamed Raffi, who had sold his 1/3 share to the first defendant. The payment of sale consideration under



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Ex.B19 had been clearly established by the first defendant by examining the witness, who had seen the execution of the document and receipt of the consideration. Whereas, the trial Court had simply given undue importance to the evidence of C.W.1, an handwriting expert, who had compared only one document and there was no contemporaneous signature available in the receipt to give an opinion about the signature.

12.Other than above documents, the income tax returns filed clearly shows that the defence had been established and the plaintiff had not come to the Court with clean hands and he had withheld the income tax returns filed at the relevant period for the year 2011-12, for the reasons best known to him. When the evidence of the witnesses was not disproved and when the execution of the sale deed and payment of consideration had been proved, merely on the basis of the evidence of C.W.1, the registered document cannot be undone. According to the learned counsel for the second defendant, the opinion of the handwriting expert is only a weak piece of evidence and it is not based on exact science. Hence, submitted that the trial Court had given undue importance to the expert report and there was no reason to disbelieve the evidence of D.W.2 and D.W.3.



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13.Further, to show that Ex.A11 and Ex.B4 sale deed had been obtained by force, no pleadings whatsoever are available in the plaint as required under Order 6 Rule 4 of the Civil Procedure Code. Therefore, in the absence of any pleadings as to the nature of coercion or undue influence or fraud, the document cannot be assailed merely on the basis of the alleged oral evidence. That apart, the conduct of the plaintiff in remaining silent for more than 6 months, even not showing his protest for registering the said document, assumes significance and it goes against the plaintiff's case. All the income tax returns filed later clearly prove the amount received towards sale consideration and also goodwill for relieving from the partnership as shown in the accounts.

14.Therefore, in view of these public documents and evidence of D.W.2 and D.W.3 and also in view of the plaintiff's case, it is clear that the plaintiff had not come to the Court with clean hands. It is the contention of the learned counsel for the second defendant that in the evidence of P.W.1, it was admitted by himself about the execution of Ex.A11 and Ex.B4. Besides, he had also admitted the income tax returns filed by him. Hence, he submitted that the finding of the trial Court in decreeing the suit is without proper appreciation of the entire evidence.



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15. Whereas, the learned counsel appearing for the plaintiff/first respondent in both appeals submitted that after plotting out 63 cents in total extent of 1 acre 20 cents, remaining 51 cents were being enjoyed jointly by the three joint owners. All of them have executed a lease deed in favour of the Bharat Petroleum Corporation for a period of 30 years on 22.08.1999. They had also entered into a partnership deed to carry on petroleum business under the Partnership Firm of M/s.Al Ameen and Company. The second defendant along with his brother Mohamed Yusuff was already running the petrol bunk as licensee of Bharat Petroleum Corporation in the same village in the name and style of M/s.N.S.Mohammed Sulthan Automobiles, with whom M/s.Al Ameen and Company had become partners. After the execution of partnership deed with M/s.Al Ameen and company, the brother of the second defendant had relieved himself from the Partnership Firm.

16. Thereafter, the partnership was constituted between the plaintiff, first defendant and Mohamed Raffi, who also became a partner with M/s.N.S.Mohamed Sulthan Automobiles, which was run by the second defendant and he was entitled to 55% of share in the said business. Though the three joint



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owners are being entitled to 45% of share under Ex.A3, dated 22.10.1999, the plaintiff and the second defendant entered into a new Partnership Firm for the purpose of running the petrol bunk. They also executed an agreement with Bharat Petroleum Corporation Limited under Ex.A4. Thereafter, in the year 2007, the second defendant relieved from the Partnership Firm and the plaintiff had become a key person in the Petrol bunk as per Ex.A9, letter dated 03.10.2011.

17. When the matter stood thus, the first defendant kidnapped the plaintiff to the sub Register Office in Madurai and obtained Ex.A11 and Ex.B4, sale deed. The alleged consideration shown in the document had not been paid and the sale was not supported by any consideration. Pursuant to the above document, an attempt had also been made to capture the business of the plaintiff on 04.06.2012, in respect of which a complaint was also given. However, no case had been registered against the first defendant. On the other hand, the complaint was registered against the plaintiff and his sons. Therefore, the plaintiff had also filed a complaint before the Revenue Divisional Officer and the Superintendent of Police seeking protection to the plaintiff. Thereafter, the suit had been filed.



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18.It is the contention of the learned counsel for the plaintiff that the alleged payment of consideration paid under the document Ex.B19 itself had not been established. The expert, examined in this regard had clearly given evidence to the effect that the signature found in Ex.B19 and admitted signature found in Ex.A11 and Ex.B4 was not written by the same person. Hence, it is the contention of the learned senior counsel for the plaintiff /first respondent in both appeals that the very contention of the first defendant that sale consideration was paid under the document itself had not been established and hence, the sale deed itself was not valid in the eye of law. Further, the receipt was also not stamped and hence, the receipt cannot be used in evidence. The evidence of D.W.2 and D.W.3 are highly contradictory with each other and not sufficient to prove the consideration and the same could not be relied to prove the consideration. The trial Court had rightly appreciated the evidence and non-suited the first defendant's contention.

19.Further, the application for reception of additional evidence had been filed mainly on the ground that the income tax returns filed from the year 2006-2007 till 2016-2017 were filed by the plaintiff in a civil suit in C.S.No.608



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of 2016. But the tax returns for the assessment year 2011-12 had not been filed in the said suit. Ex.B50 to Ex.B55 are the disputed documents and are created by the second defendant. Therefore it is the contention that the documents cannot be relied upon as the same are filed to fill up the lacuna in the defence case.

20. According to the learned counsel for the plaintiff/first respondent in both appeals, no returns for the year 2011-12 was filed by the plaintiff. However, no income tax returns have been filed and it is nothing but a fraudulent act and therefore, the fraud committed before the Court is nothing but an abuse of process of law and the evidence has to be thrown out from the Court. In respect of his submissions he relied upon the following judgments:

1. Vidhyadhar vs. Manikrao and another [(1999) 3 SCC 573]

2. Ram Chandra Singh vs. Savitri Devei and others [(2003) 8 SCC 319]

3. Bellachi (Dead) by LR vs. Pakeeran [AIR 2009 SC 3293]

4. Shanti Budhiya Vesta Patel and others vs. Nirmala Jayprakash Tiwari and others [(2010) 5 SCC 104]



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21.In the light of the above submissions, now, the points arise for consideration in these appeals are:-

(i)Whether the sale deed dated 29.12.2011, namely Ex.A11 and Ex.B4 are obtained by force or undue influence or fraud etc.,

(ii)Whether the sale deed is not valid for the alleged want of consideration?

(iii)Whether the second defendant was relieved from the partnership and the plaintiff alone is the key person to run the Petrol bunk.

(iv)To what other reliefs the parties are entitled to?

22.The admitted facts of the parties are that an extent of 1 acre 20 cents in Survey No.250/14 and 250/2C was purchased jointly by the plaintiff, first defendant and one Mohamed Raffi under Ex.A1. It is also not disputed that the said three joint owners have constituted a Partnership Firm in the name and style of M/s.Al Ameen and Company on 01.04.1999 and the same was also registered on the file of the Registrar of Firms, Chennai. It is also marked as Ex.B13 and Ex.B34. Out of the said extent of 1.20 acres, 69 cents have been plotted out and



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all the three of them have equally divided the said land and the said plots have been settled in favour of their family members. The remaining land of 51 cents was leased out to the Bharat Petroleum Corporation under Ex.A2, dated 26.08.1999. These facts are also not disputed.

23.The second defendant along with his brother had constituted a Partnership Firm in the name and style of M/s.N.S.Mohamed Sulthan Automobiles to deal with petroleum products. Thereafter, it appears that his brother had relieved from the Partnership Firm and the second defendant entered into a partnership deed with M/s.Al Ameen and Company and it was represented by its one of the partners namely, the plaintiff herein. The very constitution of the partnership under Ex.B1 clearly shows that the second party namely, M/s.Al Ameen and Company had agreed to join with the second defendant as a partner not only as working partner entitled to look after and engage themselves active for the proper and efficient management of the business, but also to contribute a sizable sum of capital contribution by them.

24. It is specifically agreed in Ex.B1 that M/s.Al Ameen and Company had agreed to invest Rs.15,00,000/-. Ex.B1 makes it very clear that only M/s.Al



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Ameen and Company had become partner with the second defendant. Though Ex.B1 shows that the deed of partnership had been entered between the plaintiff and the second defendant, the fact remains that under Ex.B2, letter dated the plaintiff had entered into the partnership on behalf of the M/s.A1 Ameen and Company, in which the plaintiff was one of the partners along with the first defendant and one Mohamed Raffi, who have jointly purchased the property. The plaintiff relied upon Ex.A6, letter addressed to the State Bank of India by the second defendant, dated 13.12.2006, which indicates that the second defendant had relieved from M/s.N.S.Mohamed Sulthan Automobiles. Therefore, merely on the basis of the the letter said to have been executed by the second defendant to the Bank, will not have any effect, since other members are very much present.

25. Further, the genuineness of Ex.A5 was also not established. It is also an admitted fact that one Mohamed Raffi, who is also a joint owner along with the plaintiff and the first defendant, sold his 1/3 share to the first defendant under Ex.B62 dated 28.02.2011. The plaintiff also not disputed those documents, whereas he had just shown ignorance about the same, when he was confronted over the above documents in the cross examination. Now, the question remains is whether Ex.A11 and Ex.B4, sale deed dated 29.12.2011 was obtained by coercion



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or undue influence etc. It is relevant to note that the document had been registered on 29.12.2011. In the entire pleadings in the plaint, there was no specific plea as to the nature of coercion or force. Except evasive allegation that he had been kidnapped to Sub Registrar Office and document had been obtained, no material facts have been pleaded in the plaint. It is relevant to note that under Order VI Rule 4 of the Civil Procedure Code, any party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

26.Except general pleadings in the plaint, there are no material facts to constitute the alleged force and kidnap pleaded in the entire plaint. It is relevant to note that the plaintiff was not a stranger to the defendants. They are all joint owners. They had constituted a Partnership Firm known as M/s.Al Ameen and Company Besides an extent of 69 cents out of 1.20 acres purchased by the three joint owners had already been developed as plots and divided among themselves and settled in favour of their children.



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27. Now these facts are not at all disputed. However, such being the position, if the person was kidnapped and documents had been obtained in the Sub Registrar Office, the normal conduct of the person would be to show his resistance, while executing the documents in the presence of the Sub Registrar. But the entire pleadings of the plaintiff show that no such resistance was shown by him. His evidence also clearly indicates that witnesses were also very much present and documents had been prepared by the document writer, who had prepared their earlier documents, particularly gift deed and other documents.

28. These facts clearly indicate that the parties, at clear intention, had prepared the documents through their common document writer. If really the person had been kidnapped, the document had been obtained forcibly, the normal human conduct would be at least to lodge a police complaint immediately. But, no complaint whatsoever had been filed immediately or on the next day. It is only contention of the plaintiff that he had informed the forcible kidnap and obtaining of document in the registrar Office to his relatives and they had also compromised the matter and at that time, the first defendant agreed to reconvey the property, but he left to Singapore and came back after 6 months.



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29.It is relevant to note that in order to show some semblance of truth in his allegations, no attempts whatsoever had been made to examine any one of the so called persons, before whom he made a complaint about the forcible registration in respect of the suit property. Therefore, in the absence of any pleadings and evidence available about the forcible registration, the contention of the plaintiff cannot be countenanced.

30.It is the specific case of the first defendant that in order to relieve from the partnership business, the plaintiff had received a sum of Rs.20 lakhs as goodwill, besides the sale consideration of Rs.5,51,515/-. It is relevant to note that it is the specific contention of the first defendant that the said amount had been totally paid and receipt was also issued by the plaintiff under Ex.B19. It has been spoken by D.W.2 and D.W.3.

31. D.W.2, one Mohamed Kasim, a retired Officer of the Co-operative Societies, in his evidence had spoken about the execution of Ex.B19, receipt of consideration by the plaintiff. It is relevant to note that D.W.2, in his evidence clearly stated that he had attested Ex.B19 and also the sale deed executed by one Mohamed Raffi in favour of the first defendant and he also stood as witness. His



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evidence clearly shows that the first defendant had given the sale consideration and the said amount had been received by the plaintiff.

32.D.W.3 also in his evidence had spoken about passing of consideration. It is relevant to note that the trial Court had given undue importance to the insignificant contradiction in the evidence of D.W.2. D.W.2 in his evidence had clearly stated that apart from him, one Kadhar Batsha and Mohammed Raffi were also stood as witness in the document. The trial Court giving undue importance had disbelieved the evidence merely on the basis that D.W.2 being a retired cooperative Officer ought not to have been signed the documents, since it is not stamped. It is relevant to note that the question of stamp duty has no relevance to the parties stood as witness. The above documents were already marked as exhibits before the trial Court. Under Section 36 of the Indian Stamp Act, 1899, once the document had been admitted in evidence, such admission shall not, except as provided under Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.



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33. Section 61 of the Indian Stamp Act deals with the revision of certain decisions of Courts regarding the sufficiency of stamps and the Appellate Court may on its own motion or on the application of the Collector take such decision whether the document requires proper stamp or not?. There is no objection whatsoever had been raised with regard to the payment of one Rupee stamp on the receipt. Therefore, when the document had been admitted and testified, this Court is of the view that merely because it has not been stamped of one rupee, the same cannot be thrown out, at the most it can be set right by directing first defendant pay the stamp duty with penalty. Accordingly, the first defendant was directed to pay the stamp duty with penalty of ten times more of the original stamp duty. In pursuance to the above direction stamp duty penalty had been collected by this Court.

34. D.W.2, is a respectable person as a retired Officer of the Co-operative Societies. There was no motive whatsoever established against him by the plaintiff for false deposition. Unless any materials are brought by way of cross examination to establish the motive for false evidence against the plaintiff, the substantive evidence of D.W.2 cannot be ignored altogether. The trial Court had given much importance to the evidence of C.W.1, who is said to have compared



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the signature found under Ex.P19 with the signature found in Ex.A11 and Ex.B4, the sale deed, dated 29.12.2011. It is relevant to note that to compare the signature contemporaneous nature of various signature must be available on the record with the disputed signature. Whereas in this case only one signature had been compared with the admitted signature. There may be some differences from one signature to other. Hence, the evidence of handwriting expert, who had admittedly compared only one signature and admittedly not based on exact science, cannot be given much importance. It is repeatedly held by the Courts that evidence of handwriting expert is a weak piece of evidence and it is not a conclusive proof. When there is a substantial evidence available on record, it has not been shattered by any other materials, the substantial evidence shall prevail over handwriting expert evidence. The Hon'ble Supreme Court in ***Shashikumar Banerjee vs. Subodh Kumar Banerjee*** [AIR 1964 SC 529], had held as follows:

“21. This conclusion is in our opinion borne out by the various signatures on the Will and the various writings therein which were made to fill in the blanks after the main body of the Will had been written in January to March 1943. The full signature at the foot of the Will does show some tremor but there are a number of signatures on the margin of the will which are not full and some of them do not show much tremor though some do.



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Further according to the evidence of the attesting witnesses, the plan attached to the Will was also signed at the same time as the Will and the expert admitted in his evidence that the signature of the testator on the plan showed superior control and was not like the signature at the bottom of the Will which according to the expert showed failing pen control. If both these signatures were made on the same day-and there is no reason why they should not have been, whether in 1943 or late in 1946-, it is remarkable that the one on the Will, according to the expert, shows failing pen control while the one on the plan does not disclose any tremor. The evidence of the expert therefore in these circumstances is not conclusive and can not prove that the signature at the bottom of the Will could not possibly have been made on August 29, 1943 on which date it purports to have been made. Besides it must not be forgotten that the Will was executed in August 1943 soon after the testator had recovered from a serious illness and if there is some tremor here and there in his writing on that day, his illness may partly explain it. In this connection however our attention was drawn to some signatures made on September 1, 1943 only three days later which do not show much tremor : (see Ex. C/15). As we see the signature of September 1, 1943, we find that it is not quite so firm as some other signatures made later in the month of September. On the whole therefore we are not prepared to accept that the signature at the bottom of the Will could not possibly have been made in August 1943 and must have been made late in 1946. We do not consider in the circumstances of this case that the evidence of the expert is conclusive and can falsify the evidence of the attesting witnesses and also the circumstances which go to show that this Will must have been signed in 1943 as it purports to be. Besides it is necessary to observe that expert's evidence



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as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. In the present case all the probabilities are against the expert's opinion and the direct testimony of the two attesting witnesses which we accept is wholly in consistent with it."

35. In view of the above dictum, when the evidence of the expert is perused, he had also not spoken about the manner and the procedure of examining and analyzing the signature. It is also to be noted that normally, there must be atleast more contemporaneous signatures available for comparison, without requisite numbers of signature, the expert had simply compared with only one signature. Therefore, substantive evidence of the witness, namely D.W.2, which was also not shaken, would prevail over the expert evidence. Further, it is relevant to note that Ex.B49, income tax returns for the year 2006-07 was filed by the plaintiff himself. The signature of the plaintiff found in Ex.B49 to Ex.P54 were not denied by P.W.1 in his additional cross examination, dated 16.09.2020. Further the plaintiff himself admitted in the returns that he had only 1/3 share out of 45% of the share of M/s.Al Ameen and Company with M/s.N.S.Mohammed Sulthan Automobiles.



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36. Similarly, in Ex.B50, tax returns for the assessment year 2007-2008, in which the plaintiff had clearly admitted that he was a partner in M/s.Al Ameen and Company, which is a partner with M/s.N.S.Mohammed Sulthan Automobiles and he is entitled to only 1/3 share out of 45% of his registered Partnership Firm. Ex.B51, tax assessment for the year 2008-2009, it is also signed by the plaintiff, wherein also it has been stated about the share pattern. Ex.B52, is the income tax returns for the assessment year 2009-10 and Ex.B-53 is the income tax returns for the assessment year 2010-11, in which also similar entries have been shown. In Ex.B54, income tax returns filed by the plaintiff on 01.03.2014 similar entries had also been found.

37.Ex.B55 is the income tax returns filed on 10.12.2013 by the plaintiff. A specific statement has been made therein, under the head 'capital gain' that the assessee, who is the co-owner of the property situated at NH-49 bypass road, Parthibanoor, Ramanathapuram had relinquished his 1/3 share in favour of the other co-owner, namely first defendant, who had got right pre-emption right over the property. Accordingly, the assessee executed a sale deed, dated 29.12.2011 in registered document No.6219/2011 and have received consideration of Rs.5,51,515/- towards his 1/3 share in the above said property.



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38.Having shown the capital gain that he had received the consideration after selling the property under Ex.A11 and Ex.B4, the plaintiff had denied the payment received as capital gain. It is relevant to note that Ex.B55, income tax returns for the period 2011-12 alone was withheld by the plaintiff for the reasons best known to him. In the cross examination of P.W.1, he admitted that he used to give details to the auditor and all the details about the income tax for the petrol bunk had been managed by the Auditor. He also admitted that now, the petrol bunk license and bank accounts are in the name of the second defendant. Further, in the cross examination, he had taken a stand that he had sent a legal notice to the Auditor for filing returns for the year 2011-12. However, his original account for the year 2011-12 was with him and he had not produced the same before the Court.

39.In the cross examination, he had categorically admitted that the Auditor only used to file all the returns and he used to give all the details to the Auditor. When the plaintiff had admitted all the documents namely, Ex.B49 to Ex.B54 and Ex.B56 to Ex.B59 had conveniently denied Ex.B55, since entries relating to the capital gain are very much found, wherein he had also admitted the receipt of the sale consideration. The very conduct of the plaintiff denying the



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particular returns for the year 2011-12 itself assumes some significance. The same clearly indicates that he has withheld the material document only for the purpose of suppressing the material facts before the Court. The plaintiff from the very inception, somehow or other tried to withhold the vital documents, namely written statements before the public authorities. The documents relating to income tax and the entries in the public records are relevant.

40.Be that as it may, the very contention of the plaintiff that he had not filed any returns for the year 2011-12 cannot be countenanced for the simple reason that the assessment order had been passed by the authorities under Ex.B60 relating to the assessment year 2010-11, Ex.B61 relating to the assessment year 2012-2013. The assessment order for the assessment year 2010-11 indicates that the assessment for the annual year 2010-11 was reopened for the reason for high value cash transaction in individual account. In the assessment order, it had been held as follows:

“M/s.N.S.Mohamed Sultan Automobiles was a partnership Firm running a Petrol Bunk in Parthibanur, Ramnad. This Partnership Firm was consisting fo only two partners viz., Shri A.Shahul Ameen and M/s.Al Ameen



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& Co., Shri Shahul Ameen is the original allottee of the petrol bunk license and holding 55% share in the Partnership Firm. M/s.Al Ameen & Co (another Partnership Firm) is the other partner, holding remaining 45% share in the Firm.

8.2 M/s.Al Ameen & Co itself is a Partnership Firm consisting of three partners. Viz., 1.Shri Mohammed Rafi, 2.Shri.Mohammed Ziauddin and Shri.A.K.Hidayathullah, each holding 15% share each in M/s.Al Ameen & Co.

8.3. During the financial year 2011-12 relevant to the A.Y: 2012-13, it was submitted that the Partnership Firm M/s.N.S.Mohamed Sultan Automobiles was dissolved technically on 08.12.2011 and the dissolution was registered with Registrar of Firms, Chennai-Central on 01.01.2012. As per the dissolution registration M.s,Al Ameen & Co, which was holding 45% share was relieved and Shri A.K.Hidayathullah was joined in that place (i.e., effectively the other two partners Shri.Mohammed Rafi and Shri Mohammed Ziauddin were relieved). Accordingly, the accounts for the dissolution were also finalized.”

41. The very submission made before the Income Tax Officer on behalf of the plaintiff/assessee for the assessment the year 2010-11 makes it very clear that it is the specific case of the plaintiff that even when the assessment order was passed in the year 2017, the plaintiff relieved from M/s.Al Ameen and Company and he was no longer partner and accounts for dissolution was also finalized. In



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Ex.61, assessment order for the assessment year 2012-13, makes it clear that one Vijay and Kumaraguru, Chartered Accountants of M/s.K.V.V. and Company appeared and represented the case on behalf of the plaintiff and it is the clear case of the plaintiff that he was relieved from the Partnership Firm namely, M/s.Al Ameen and Company. Further, he had also admitted in para 3.2 in the said assessment order as reads as follows:

“The assessee further submitted that the assessee has arrived at the compensation of goodwill etc., on the basis of the finalization of accounts on the dissolution of the Firm as considered in the statement of total income.”

42.Further assessment order has been passed on the basis of the decree and judgment of the trial Court holding that the entire income in respect of 45% share of M/s.Al Ameen Company needs to be assessed in the hands. It is relevant to note that when the plaintiff himself had admitted before the Income Tax Officers that he relieved from the Partnership Firm of M/s.Al Ameen and Company and arrived at the compensation of good will etc., on the basis of the finalization of the accounts on the dissolution of the firm, he is estopped from taking different stand in the suit.



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43.In the proceedings before the Income Tax Officer, the plaintiff's own auditors represented him. Therefore, in an additional evidence, the contention that he had sent legal notice to the auditor under Ex.A26, to show as if the income tax returns have been filed only by the auditors themselves, cannot be believed at all for the simple reason that if the returns have been filed against the Will of the plaintiff for the assessment year 2012-13, no prudent man will permit the same auditor to defend him in the assessment proceedings.

44.From this document, this Court is of the view that in all the public records, the dissolution of M/s.Al Ameen and Company had been clearly admitted. The capital gain and receipt of compensation of good will was also shown after the sale of the property. The expert had examined only one disputed signature under Ex.B19 without any other contemporaneous signature of the same year and he had not established the method of analyzing the signature. No materials were brought against D.W.2. for false evidence. The substantiative evidence of D.W.2 and other documentary evidence produced viz., income tax returns as additional documents will have a precedence over the handwriting expert's evidence.



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45.It is relevant to note that an application has been filed before this Court by the second defendant for receiving additional documents only on the ground that the returns relating to the year 2012-13 was filed in Civil Suit in C.S.No.608 of 2016, however, such returns had not been filed by the plaintiff and hence, the said applications was allowed by this Court by directing the lower Court to accept the additional evidence and give an opportunity to the other side to adduce evidence in rebuttal.

46.It is the contention of the plaintiff/first respondent in both appeals that such direction had been obtained fraudulently before this Court. It is relevant to note that merely stating that those documents have been filed before some other Court, the same will not amount to fraud for the simple reason that the plaintiff himself had withheld those documents and he had maintained that no such returns had been filed even today. On the contrary, the very assessment order itself had been passed by the authorities under Ex.B61 and proceedings have been defended by the same auditor. This itself clearly indicates that only the plaintiff had withheld the vital document before the Court.



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47.Further, in the application under Order 41 Rule 27 of the Civil Procedure Code, no counter whatsoever had been filed. Despite the above, this Court directed the trial Court to give an opportunity to the plaintiff also to produce rebuttal evidence. Therefore, the assessee/plaintiff, who had suppressed the vital document cannot contend that the additional documents were filed by playing fraud on the Court. Therefore the judgments relied upon by the learned counsel for the plaintiff with regard to the alleged fraud are not applicable to the facts of the present case.

48.The conduct of the plaintiff in sending legal notice for the first time on 12.06.2012 after the alleged kidnap on 29.12.2011, is also against normal human conduct. Further, the complaint made before the Revenue Division Officer under Ex.B22 does not whisper about the kidnap and forcible execution of the documents. At the first instance, he has not impleaded the second defendant. The suit had been filed originally against the first defendant. Thereafter, the second defendant had impleaded himself. Therefore, the very conduct of the plaintiff claiming absolute right to run petrol bunk against his own admission in his income tax returns, cannot be countenanced. Yet another conduct of the plaintiff also cannot be ignored altogether. Infact when the income tax Officer, D.W.4 was



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examined, the same was objected by the plaintiff by filing Civil Revision Petition in C.R.P.(MD)No.1081 of 2020 before this Court. However, the same was dismissed.

49. Accordingly, the points are answered and the decree and judgment of the trial Court granting declaration is hereby set aside. The suit filed by the plaintiff is dismissed and the present Appeal Suits are allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1. The Additional District Court,
Ramanathapuram.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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N.SATHISH KUMAR, J.

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Judgment made in
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12.04.2023