BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.11.2022

PRONOUNCED ON:06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.48 of 2014
and
M.P.(MD)No.1 of 2014

Nagarathinam : Appellant / 1st Defendant

Vs.

1.T.G.R.Vasanthakumar : Respondent/Plaintiff

2.Padmanathan : Respondent/2nd Defendant

PRAYER:- Appeal Suit filed under Section 96 and Order 41 Rule 1 of the Code of Civil Procedure against the Judgment and Decree, passed in O.S.No.178 of 2004, dated 06.01.2014, on the file of I Additional District Judge, Trichirappalli District.

For Appellant : Mrs.T.Banumathy

For Respondents :Mr.S.Vinayak
for R.1
: R2-dismissed vide order dated
18.08.2015

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.178 of 2004, dated 06.01.2014, on the file of I Additional District Court, Trichirappalli.

2. The suit is for specific performance of the agreement dated 14.02.2002.

3. Admittedly, the first defendant is the wife of the second defendant and the suit property belongs to the first defendant.

4. The case of the plaintiff is that the defendants have executed a sale agreement dated 14.02.2002 in favour of the plaintiff in respect of the suit property, wherein the sale price was agreed at Rs.18,00,000/- and time for performance as four months, that the first defendant prior to the sale agreement, has borrowed a sum of Rs.2,00,000/- from the plaintiff by mortgaging her property, vide mortgage deed dated 02.09.1998, that the said amount of Rs.2,00,000/- and the amounts subsequently borrowed

by the first defendant under promissory notes respectively at Rs.2,00,000/- on 02.04.2001, Rs.5,00,000/- on 02.05.2001 and Rs.4,00,000/- on 02.09.2001 all totalling Rs.13,00,000/- and the interest amount calculated till the date of agreement at Rs.4,30,500/-, all totalling Rs.17,30,500/- was agreed to be the consideration to be adjusted in the sale price, as per the terms of the agreement dated 14.02.2002, that the defendants have also received a sum of Rs.10,000/- as advance on the date of sale agreement itself, that subsequently, the defendants have executed a collateral document on 30.09.1998 as "Swatheena Oppadaippu Pathiram" and whereunder the defendants have acknowledged a room to an extent of 10' x 10' in the first floor of the suit property was given to the plaintiff for his exclusive enjoyment and that the defendants have also specifically agreed that they have to take necessary steps to vacate the persons in occupation of the remaining portion of the suit property. It is the further case of the plaintiff that he has always been ready and willing to perform his part of contract, that the defendants have not taken any steps to vacate the persons in occupation of the remaining portion of the building, that since the defendants have been giving evasive answers, the plaintiff was constrained to issue a legal notice dated 04.06.2002, that the second defendant has received the same, but the first defendant has avoided the receipt of the same, but they have not sent any reply nor come forward to perform their part of the contract and that therefore, the plaintiff with no other option has filed the above suit.

5. The defence of the defendants is that there cannot be a more frivolous suit than the present one, that the first defendant has executed a registered mortgage deed dated 02.09.1998 for a sum of Rs.2,00,000/- and the said mortgage remains undischarged, that the first defendant has never borrowed any other amount from the plaintiff under the promissory notes, that the first defendant has never executed any "Swatheena Oppadaippu Pathiram", nor the suit sale agreement, that the plaintiff at the time of mortgage loan had taken ten blank cheque leaves and also obtained signatures in the blank stamp papers and in the promissory notes, that the first defendant has never parted possession of any portion of the suit property with the plaintiff, that the valuable property of the first defendant is attempted to be knocked down by the dubious method, that the plaintiff has filed so many similar suits against various persons, that the documents filed by the plaintiffs are nothing but fabricated, concocted and forged documents and that therefore, the plaintiff is not

entitled to any relief and as such, the suit is liable to be dismissed with exemplary costs.

6. Upon the pleadings, the trial Court has framed the following issues (recasted issues):

(1) Whether the sale agreement dated 14.02.2002 is genuine one or fabricated and forged one?

(2) Whether the plaintiff is entitled to specific performance decree as prayed for?

(3) Whether the plaintiff is entitled for the alternative relief as prayed for?

(4) What other relief?

7. During trial, the plaintiff examined himself as P.W.1 and two other witnesses viz., Thiru.Karthikeyan and Thiru.Elangovan as P.W.2 and P.W.3 respectively and exhibited 21 documents as Exs.A.1 to A.21. The first defendant examined herself as D.W.1 and examined one Anthonyraj as D.W.2 and exhibited six documents as Exs.B.1 to B.6. During cross examination of D.W.1, the admitted portion of the evidence of D.W.1 recorded in I.A.No.892 of 2007 has been marked as Ex.C.1.

The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned judgment dated 06.01.2014, holding that the plaintiff is entitled to get the relief of specific performance, decreed the suit as prayed for with costs. Aggrieved by the said judgment and decree, the first defendant has come forward with the present Appeal Suit.

8. In the Appeal Suit, the appellant/the first defendant has raised the following main grounds:

(i) The trial Court failed to consider the oral and documentary evidence in proper perspective to find out whether the allegations putforth by the first defendant that she has not executed the sale agreement dated 14.02.2002 and the plaintiff fabricated the alleged agreement cleverly and cunningly utilising the blank promissory notes, blank papers and blank non-judicial stamp papers signed by the first defendant and her husband;

(ii) The trial Court has failed to consider the fact that the stamp papers utilised for the alleged execution of the sale agreement dated 14.02.2002 was purchased by the plaintiff on 07.08.1998;

(iii) The trial Court has also failed to notice the fact that the plaintiff being a scrupulous person would have registered the sale agreement, if he had paid the alleged amount of Rs.17,40,500/- as advance money for the sale agreement and he would not at all get the sale agreement executed in two Rs.10/- stamp papers;

(iv) The trial Court has also failed to consider about the fabrication of the documents as “Swatheena Oppadaippu Pathiram” and that too was allegedly written in Rs.10/- stamp paper purchased on 07.09.1998;

(v) The trial Court has also failed to consider that if the promissory notes were genuine and executed for transfer of consideration, the first defendant and the plaintiff would have jointly cancelled the promissory notes and they would have executed the registered discharge receipt, after the execution of sale agreement;

(vi) The trial Court has also failed to appreciate the evidences in proper perspective to find out that when the mortgage loan of Rs.2,00,000/- was not repaid by the first defendant within twelve months as agreed by her and she had not paid the agreed interest, for the period till 01.09.1999, how the plaintiff would have again granted the loan of Rs.11,00,000/- under promissory notes;

(vii) The trial Court has failed to consider the main fact that the plaintiff is a money lender, as himself filed cases against some persons on promissory notes and sale agreements;

(viii) The trial Court should have dismissed the suit. Hence, the Appeal Suit is liable to be allowed.

9. The points for determination are

(1) Whether the trial Court erred in rendering a finding that the first defendant has failed to prove that the suit sale agreement is forged and concocted one and the plaintiff has proved the same, despite showing that the signature of the first defendant obtained in blank stamp paper at the time of Ex.A.2 - Mortgage deed was utilised for fabricating the suit sale agreement and that the evidence of the plaintiff and his two witnesses are not sufficient enough to prove the suit sale agreement?

(2) Whether the suit sale agreement – Ex.A.1 is genuine one and is proved in accordance with law?

(3) Whether the trial Court erred in granting the relief of specific performance, despite showing that the plaintiff being a money lender, has fabricated and concocted the sale agreement and in order to strengthen

his case, has fabricated Ex.A.4 - “Swatheena Oppadaippu Pathiram” and the promissory notes under Exs.A.5 to A.7?

(4) Whether the plaintiff is entitled to get the relief of specific performance? If not, whether he is entitled to get the alternative relief?

(5) To what other relief, the parties are entitled ?

Points 1 to 5:

10. It is not in dispute that the suit property belongs to the first defendant, as the same was purchased by her under Ex.A.3. It is also not in dispute that the first defendant has borrowed a sum of Rs.2,00,000/- on 02.09.1998 by mortgaging her property under Ex.A.2 dated 02.09.1998. The plaintiff's case is that the defendants have entered into a sale agreement with him, agreeing to sell the suit property for Rs.18,00,000/- and executed the suit sale deed agreement under Ex.A.1, that they have also agreed to adjust the loan amount of Rs.13,00,000/- already borrowed by the first defendant as part of sale consideration and received a sum of Rs.10,000/- as advance on the date of sale agreement, that after executing Ex.A.2 – Mortgage deed, the defendants have also executed “Swatheena Oppadaippu Pathiram” under Ex.A.4 giving possession of one room in

the first floor of the suit property for the exclusive enjoyment of the plaintiff.

11. The main defence of the first defendant is that except the mortgage loan, she has not borrowed any other amount from the plaintiff at any point of time, that she has not executed any other documents including the suit sale agreement under Ex.A.1 nor “Swatheena Oppadaippu Pathiram” under Ex.A.4, nor promissory notes under Exs.A. 5 to A.7, that the plaintiff at the time of mortgage loan, had obtained signatures of the defendants in the blank papers, blank stamp papers, blank promissory notes and cheques and that the same were utilised for fabricating the documents under Ex.A.1 – suit sale agreement and Exs.A. 5 to A.7 – promissory notes and that the first defendant has never given possession of any portion of the suit property to the plaintiff.

12. The main contention of the first defendant is that the plaintiff being a money lender, used to file cases against persons on promissory notes and on sale agreements and that Exs.B.1 to B.4 and Ex.A.21 would go to prove that he is a money lender, but the reply of the plaintiff is of total denial. The first defendant has produced the copies of the

proceedings in C.R.P.(PD)No.234 of 2008 filed by the plaintiff under Exs.B.1 to B.4 and the plaintiff has produced the copy of the order passed in C.R.P.(PD)(MD)No.234 of 2008, under Ex.A.21. It is evident from the said records that the plaintiff's wife Annapurani has filed a money suit in O.S.No.230 of 2000 before I Additional Sub-Court, Trichirappalli against one Chandrasekar, that the plaintiff has filed a suit in O.S.No.536 of 2002 on mortgage before the same Court against the same Chandrasekar, that the plaintiff has filed another suit in O.S.No.129 of 2004, on the file of I Additional District Court, Trichirappalli for specific performance against one Navaneetha Krishnan and his family members and that he filed another suit in O.S.NO.2009 of 2004 for recovery of money against one Mohan, on the file of the Principal District Munsif Court, Trichirappalli and that he filed the present suit in O.S.No.624 of 2002, on the file of the Sub-Court, Trichirappalli, which was subsequently transferred and renumbered as O.S.No.178 of 2004, on the file of I Additional District Court, Trichirappalli.

13. It is further evident that the said Chandrasekar has filed a transfer petition to transfer the cases to I Additional District Court for joint or simultaneous trial and that the learned Principal District Court,

vide order dated 15.06.2007, has allowed the petition and that when the same was challenged by the plaintiff and his wife in C.R.P.(PD)(MD)No. 234 of 2008, this Court vide order dated 02.07.2010, allowed the revision and thereby set aside the transfer order passed by the Principal District Court, Trichirappalli. But the fact remains that the plaintiff and his wife have filed the suits on the basis of the promissory notes, mortgage deeds and the sale agreements. When the plaintiff as P.W.1 was in witness box, he would say that his wife has filed a promissory note suit in O.S.No.230 of 2000 against Chandrasekar and that he does not remember as to whether the said Chandrasekar had taken a defence that the suit was filed by filling up the blank promissory note. P.W.1 would further say that he does not remember the cases filed against Navaneetha Krishnan and others, Mohan and S.C.Arya and Company.

14. P.W.2, who is alleged to be the witness to Exs.A.1, A.4 to A.6, would say in cross-examination that he does not know as to whether the plaintiff was carrying out the money lending business, that he does not remember as to whether he had subscribed his signature as witness in other loan transactions of the plaintiff, apart from the present case and

that he does not remember as to whether he had signed as witness to the transactions involving Chandrasekar, Mohan and Navaneetha Krishnan.

15. P.W.3, who had acquaintance with the plaintiff for more than ten years would say in cross-examination that he does not remember as to whether the plaintiff was doing money lending business and that he had subscribed signatures in the documents for the plaintiff. Considering the above, it is clearly evident that the plaintiff and his wife were involved in money lending business and that they were also in the habit of filing the suits for specific performance.

16. Bearing the above in mind, let us take Ex.A.1-suit sale agreement. The suit sale agreement was written in two 10 Rs. Stamp papers and three concur sheets. Though the agreement was allegedly executed on 14.02.2002, the stamp papers were shown to be purchased on 07.08.1998, in the name of the plaintiff and that too from a stamp vendor of Thiruthuraipoondi. It is not in dispute that the plaintiff and the defendants are the residents of Trichy and the agreement was allegedly executed at Trichy.

17. At this juncture, it is necessary to consider Ex.A.4- "Swatheena Oppadaippu Pathiram", which was allegedly executed by the first defendant on 30.09.1998 in one 10Rs. Stamp paper. It is surprising to notice that the said stamp paper was also purchased on 07.08.1998 in the name of the plaintiff from the very same stamp vendor and most importantly, the number referred in the said stamp paper ie., 7205/7.8.98 is nearer to the stamp papers used for executing the suit sale agreement ie., 7211/7.8.98. As already pointed out, Ex.A.2-Mortgage deed was executed on 02.09.1998, 28 days prior to Ex.A.4, but that the stamp papers were purchased from a vendor at Trichy and the same were dated 21.08.1998; 24.08.1998 and 27.08.1998.

18. As rightly contended by the learned Counsel for the plaintiff, there was absolutely no explanation for using the stamp papers purchased on 07.08.1998 for the execution of Ex.A.1 and the connection between the stamp papers used in Exs.A.1 and A.4. The learned Counsel for the first defendant has pointed out the way in which and the place in which, the second defendant had subscribed his signatures in Ex.A.1. As rightly pointed out by the learned Counsel for the first defendant, though the signatures of the first defendant are, to some extent, nearer to the

contents of the document, there is more space between the signature of the second defendant and the contents and more importantly in the last page, ie., in page No.5, there is more space in between the signature of the second defendant and the contents of that page and moreover, there is no space in between the signature of the second defendant and "சாட்சிகள்" portion. When the same was pointed out to P.W.2 and P.W.3, P.W.2 would say "கடைசிப் பக்கத்தில் பத்மநாபன் கையெழுத்திற்கு மேல்புறம் ஒட்டினாற்போல் தட்டச்சு செய்யப்பட்டுள்ளதா என்றால் இல்லை." But P.W.3 would say "வ.த.ச.1 – ல் சாட்சிகள் என்றும் தட்டச்சு டேத்துக்கு மேலேயே பத்மநாபன் என்று கையெழுத்து உள்ளது என்றால் சரிதான்". On a close perusal of Ex.A.1 along with the oral testimony of witnesses, the contention of the first defendant that the blank stamp papers containing the signatures of the defendants were utilised and the contents were subsequently typed, cannot be ruled out.

19. It is pertinent to mention that P.W.2 in his cross-examination would admit that he does not know as in how many blank papers and promissory notes, the first defendant had subscribed the signatures while getting mortgage loan. He would further say that the stamp paper for Ex.A.1 was brought by the second defendant. P.W.3, in his cross-

examination would say that he does not remember as in how many promissory notes, the blank papers and cheques, signatures were taken at the time of mortgage and the relevant portion is extracted hereunder for better appreciation:

> "சூட்டுக்கடன் அன்று எத்தனை புராூனாட்டுகள் எவ்வளவு வெற்றுத்தாள் மற்றும் காூசாலைகளில் கையெழுத்து பெறப்பட்டது என்ற விவரம் எனக்கு ஞாபகம் லேல்லை. .... வா.தா.ச1ல் உள்ள முத்திரை தாள்கள் யார் ூபரில் வாட்கப்பட்டது என்ற விவரம் எனக்கு தெரியாது. அதை யார் தட்டச்சு செய்தார்கள் என்றும் தெரியாது."

20. As rightly contended by the learned Counsel for the first defendant, it is not the case of P.W.3 that he does not know about the signatures taken in the blank papers and the promissory notes, but it is the specific evidence that he does not remember the same.

21. As already pointed out, in Ex.A.1 – suit sale agreement, P.W.2 and P.W.3 are shown as witnesses. P.W.3, in his chief examination, would say that in the suit sale agreement, himself and Karthikeyan had subscribed their signatures as witnesses. But in cross-examination, he would say that he does not know who is Karthikeyan and that he does not

know Karthi, S/o Venkatachalam. As rightly pointed out by the learned Counsel for the first defendant, P.W.2 Karthikeyan is the son of R.Venkatachalam.

22. As already pointed out, according to the plaintiff, the loan amount already borrowed by the first defendant totalling Rs.13,00,000/- and the interest accrued till the date of agreement at Rs.4,30,500/- all totalling Rs.17,30,500/- was agreed to be adjusted as part of sale price in Ex.A.1 agreement itself. In Ex.A.1 – suit sale agreement, it has been specifically stated that Rs.17,30,500/- was adjusted towards part of the sale consideration. After receiving a sum of Rs.10,000/- as advance on that day itself, the first defendant has agreed to receive the sale price of Rs.59,500/- within four months and then to execute the sale deed. Assuming for arguments sake that Ex.A.1 is a genuine agreement and that the loan amount and interest due by the first defendant to the plaintiff at Rs.17,30,500/- was adjusted towards part of sale price is true, as rightly contended by the learned Counsel for the first defendant, this Court is also at loss to understand as to why the promissory notes under Exs.A.5 to A.7 were not cancelled as discharge and the registered mortgage under Ex.A.2 was not cancelled by registering the discharge

receipt, subsequent to the execution of Ex.A.1. As rightly contended by the learned Counsel for the first defendant, if all the debts were merged with the execution of Ex.A.1- suit sale agreement, then all the documents should have been cancelled by both parties, but admittedly it was not the case of the plaintiff. The plaintiff has not offered any reason or explanation for the same.

23. Admittedly, the plaintiff has produced the original title deed, ie., sale deed standing in favour of the first defendant, dated 31.08.1988 under Ex.A.3. In Ex.A.2 - mortgage deed, there is a specific recital "தேற்கு ஆதரவான ை: 31.08.1988 தேதிய பத்திர எண் 2800/1988 அசல் ஆவணத்தையும் தேர ஆதரவுகளையும் தங்கள் வசம் ஒப்படைக்க ஏற்பாடு செய்துள்ளேன். தாங்கள் ை: ஆதரவுகளைப் பெற்று வைத்து நேக்க வேண்டியது. ை:அசல் கடன் முழுவதும் வட்டி பாக்கியில்லாமல் செலுத்தி தீர்த்து ை: ஆதரவுகளை திரும்ப பெற்றுக் கொள்ள சம்மதிக்கிறேன்."

24. The plaintiff, in his cross-examination would admit the above recital found Ex. A.2, and would further say that the original title deed was given to him on the date of execution of Ex.A.2, but the said factum does not find place in the said document. It is pertinent to mention that

P.W.1 in his plaint as well as in his chief examination affidavit would say in categorical terms that at the time of executing the sale agreement, the defendants have handed over the original sale deed dated 31.08.1988. In subsequent cross-examination, he would say that he does not remember as to whether the above aspect found in his chief examination affidavit is correct and that Ex.A.1 does not contain any recital that the original title deed was handed over at that time. Considering the above, the plaintiff himself is not clear as to when Ex.A.3 – original title deed was handed over to him by the first defendant and his version is totally inconsistent.

25. No doubt, the plaintiff has produced the income-tax return and the statement of profit and loss account for the assessment year from 2002-2003 under Exs.A.17 to A.20 and according to the plaintiff, he has specifically mentioned about the loan advanced at Rs.13,00,000/- to the first defendant in the year 2001 and in the subsequent years, the same was shown as amount towards house sale agreement. The trial Court has given much weightage to the above documents. Ex.A.17 is the statement of total income, profit and loss account for the year ended 31.03.2002 and the same was issued by the plaintiff's Chartered Accountant. Ex.A.18 is the copy of the assessment order passed by the

Income Tax Officer, Ward-II, Trichirappalli along with the Charal Form II-D with enclosure of Profit and Loss account issued by the Chartered Accountant.

26. The plaintiff has produced the intimation received by him under Section 143(1) of the Income Tax Act and Charal Form-II D for the assessment year 2004-2005 along with the profit and loss account issued by the Chartered Accountant as Ex.A.19 and the profit and loss account for the year ended 31.03.2005 as Ex.A.20. It is pertinent to note that in the profit and loss accounts produced along with the assessment order / I.T. Returns, no doubt, contain the entry with regard to the loan given to the first defendant and the amounts given to the first defendant towards house sale agreement. But, in the profit and loss account and the statement of income, as rightly pointed out by the learned Counsel for the first defendant, there is neither any seal nor any endorsement made by the Income Tax Department. As rightly pointed out by the learned Counsel for the first defendant, the plaintiff has not taken any steps to summon the original records to show that the profit and loss accounts now produced were really submitted to the Income Tax return and the same was considered by the Income Tax Department. Moreover, the above

statements are given by the plaintiff's own Chartered Accountant and as such, no weightage or importance can be given to the same. As rightly contended by the learned Counsel for the first defendant, even assuming that the above statements were submitted to the Income Tax Department, the particulars therein were given by him and that there is every possibility that it may have been premeditated.

27. The next main contention of the plaintiff's side is that the plaintiff was given possession of a room to the extent of 10' x 10' in the first floor of the suit property by executing Ex.A.4 - “Swatheena Oppadaippu Pathiram”, dated 30.09.1998, that the plaintiff has been in possession and enjoyment of the said portion of the suit property since Ex.A.4, that the plaintiff has been using the said room for storing his goods, that the plaintiff has taken a Standard Fire and Special Perils Policy in respect of the goods stored in the said room, vide Ex.A.8 policy and that the plaintiff's possession of the said room was confirmed by the first defendant in the suit sale agreement, as part performance of the sale agreement.

28. The first defendant has specifically disputed the execution of Ex.A.4 and according to her, no portion of the property was given to the plaintiff at any point of time and the entire suit property has been in her possession and enjoyment. During the cross-examination of D.W.1, the deposition given by the first defendant in I.A.No.892 of 2007 was brought to her notice and a particular sentence was exhibited as Ex.C.1, whereunder the first defendant would admit that the plaintiff had placed cardboard box with articles in one room at the time of sale agreement.

29. As already pointed out, the mortgage deed was executed on 02.09.1998 and it is only a simple mortgage. But, within a month, according to the plaintiff, the first defendant has handed over the possession of one room to an extent of 10' x 10' in the first floor of the suit property and executed Ex.A.4 – Possession hand over document. As rightly contended by the learned Counsel for the first defendant, when the mortgage deed itself was on 02.09.1998, the plaintiff has not offered any reason or explanation as to why such a document under Ex.A.4 came to be executed within 28 days.

30. As rightly pointed out by the learned Counsel for the first

defendant, in Ex.A.4, absolutely there is no reason assigned for execution of such a document and no consideration was shown to be passed, except referring to the mortgage under Ex.A.2. No doubt, as rightly pointed out by the learned Counsel for the plaintiff, the plaintiff has taken insurance policy with respect of the goods stored in that particular room, but that policy under Ex.A.8 was for the period from 09.05.2002 to 08.05.2003.

31. As already pointed out, according to the plaintiff, possession was handed over and Ex.A.4 was executed on 30.09.1998. It is not the case of the plaintiff that the Insurance policy was taken for the earlier years and for the subsequent years. P.W.1, in his cross-examination, wold say that he does not remember as to whether the policy was taken for the earlier years prior to Ex.A.8. When a specific suggestion was put to P.W.1 that in order to support and strengthen Ex.A.4, Ex.A.8 policy was taken, he would deny the same. He would say that the Insurance policy was taken to protect the goods. But as already pointed out, he has not produced the Insurance policies taken for the earlier or subsequent years. Moreover, when a specific suggestion was put to P.W.1, as to whether he had taken such Insurance policy with respect to the loans

advanced to others, he would say that he does not remember.

32. The plaintiff as well as the trial Court have given much importance for the relationship between the defendants 1 and 2 and passing of exparte decree and the consequent execution of sale deed in favour of the plaintiff and the mutation of all the official records. No doubt, originally the defendants 1 and 2, after setting aside the exparte order, have filed the written statement and that while the case was posted for trial, they have again remained exparte and exparte decree was passed. It is also not in dispute that subsequent to the exparte decree, the plaintiff has laid execution and got the sale deed executed by the Court under Ex.A.10. According to the plaintiff, patta has been transferred under Ex.A.16, that the building has been assessed in his name and E.B., connection has also been transferred in the name of the plaintiff under Ex.A.14 to A.16. It is also not in dispute that subsequently the first defendant has filed an application under Section 5 of the Limitation Act to condone the delay in filing the petition for setting aside the exparte decree and also a petition for setting aside the exparte decree and that the said petitions were ordered to be allowed and the case was restored to file.

33. The case of the first defendant is that while the suit was pending, the second defendant had taken another lady and left the first defendant in lurch, that the first defendant was kept in dark about the pending proceedings and that the first defendant came to know about the passing of exparte decree through the plaintiff and immediately had taken steps to get the exparte decree set aside.

34. The main complaint of the plaintiff is that the second defendant was very much living with the first defendant, that both of them have purposely protracted the proceedings, that the second defendant had attended his daughter's marriage, that both of them have discharged another mortgage loan due to one Kartheeswaran and that both of them were in collusion. No doubt, the plaintiff has produced the certified xerox copy of the discharge receipt issued by the said Kartheeswaran, in favour of the defendants 1 and 2 and whereunder it is evident that the said Kartheeswaran has executed the discharge receipt on 28.06.2006 in favour of the defendants 1 and 2 on receiving the principal amount of Rs.1,00,000/-. But according to the first defendant, the said loan amount was remitted by her son and since the mortgage loan was taken by both

the defendants, the receipt was issued in favour of both the defendants. In order to substantiate his contention, the plaintiff has also produced the copy of the paper publication issued by the first defendant and her children under Ex.B.5, wherein it has been stated that her husband eloped with another lady and attended her daughter's marriage without invitation and he has been permitted to attend the marriage to avoid any complication and taking advantage of the same, he has been trying to borrow money, but neither the first defendant nor her children are liable for his borrowal.

35. The learned Counsel for the plaintiff would contend that the above publication came to be issued only for the purpose of present case to show that the defendants were not in terms and they were living separately, but the fact remains that the second defendant had attended his daughter's marriage.

36. At the out set, this Court is at loss to understand as to how the so called good or strained relationship between the defendants is relevant for deciding the main issue as to whether Ex.A.1 is genuine or not.

Moreover, since the exparte decree has already been set aside, the sale deed executed by the Court and the mutation of revenue and other records in the name of the plaintiff would stand automatically cancelled and the same would have no value, from the date on which the decree was set aside.

37. On considering the entire evidence, this Court is of the clear view that the plaintiff has miserably failed to prove the execution of Ex.A.1 sale agreement as alleged by him, but on the other hand, the first defendant through ample evidence has proved that Ex.A.1-sale agreement was fabricated with the help of the signatures already obtained in the blank stamp papers. Since the suit sale agreement itself is not proved, the question of deciding as to whether the plaintiff has been ready and willing to perform his part of the contract, as contemplated under Section 16(c) of the Specific Relief Act does not arise. The learned trial Judge, without considering the evidence adduced in proper perspective, by giving importance to the irrelevant aspects and by ignoring the admissions and the relevant circumstances, has given a finding that the first defendant has failed to prove that Ex.A.1 is forged and concocted, but on the other hand, the plaintiff has proved the same

through the attesting witnesses. Considering the above, this Court concludes that the plaintiff is not entitled to get the relief of specific performance.

38. Now turning to the alternative relief of refund of advance amount, no doubt, since this Court has given a finding that Ex.A.1 agreement stands not proved, the question of ordering refund of advance amount does not arise. But as already pointed out, the first defendant herself has admitted the loan transaction under Ex.A.2 – mortgage deed. Moreover, the first defendant has admitted her signatures found in Ex.A. 5 to A.7 – promissory notes. Since the signatures on the promissory notes are admitted to be that of the first defendant, a statutory presumption contemplated under Section 118 of the Negotiable Instruments Act, has to be drawn, for consideration on the date which it bears. The main contention of the first defendant is that the plaintiff, at the time of Ex.A.2 – mortgage, had taken signatures in blank promissory notes, blank stamp papers and blank papers and that there was no need or necessity for the first defendant to borrow Rs.11,00,000/- within a period of five months from the plaintiff.

39. As already pointed out, Exs.A.5 to A.7 promissory notes are dated 02.04.2001, 02.05.2001 and 02.09.2001 respectively. As rightly contended by the learned Counsel for the first defendant, when the plaintiff, even for advancement of loan of Rs.2,00,000/- had taken mortgage of the suit property, the contention of the plaintiff that he had advanced Rs.11,00,000/- only under three promissory notes, cannot be believed. Admittedly, the first defendant has not paid any interest for the mortgage loan under Ex.A.2 till 02.04.2001, the date on which the first promissory note debt was taken. When the first defendant has not paid the agreed interest for the mortgage loan for more than 2 ½ years, as rightly contended by the learned Counsel for the first defendant, a genuine doubt arises as to whether the plaintiff had really advanced the loan of Rs.11,00,000/-. Considering the above, it can easily be taken that the presumption arisen under Section 118 of the Negotiable Instruments Act stands rebutted.

40.. The first defendant has specifically admitted that the mortgage loan is not yet discharged. As already pointed out, the stand of the plaintiff that the said mortgage loan along with the promissory note loans were considered as part of sale consideration for the sale agreement, has not been accepted by this Court. Considering the above and also the fact that since the first defendant has specifically admitted the factum of mortgage loan and its non-discharge, this Court is of the view that interest of justice would be met by directing the first defendant to repay the mortgage loan of Rs.2,00,000/- with interest. In Ex.A.2 – mortgage deed, the parties have fixed the rate of interest at 30% ie., Rs.2.50/- per Rs.100/- per month. No doubt, the interest shown in Ex.A.2 is excessive and exorbitant in nature. Considering the facts and circumstances of the case, this Court decides that the plaintiff is entitled to get interest at 12% per annum from the date of mortgage loan till the date of decree and thereafter, at 6% per annum till the date of realisation and proportionate costs.

41. In the result, the Appeal Suit is allowed and judgment and decree passed in O.S.No.178 of 2004, dated 06.01.2014, on the file of I Additional District Court, Trichirappalli is set aside. The appellant/first Defendant is directed to repay the mortgage loan of Rs.2,00,000/- with interest at 12% per annum from the date of mortgage loan till the date of decree and thereafter, at 6% per annum till the date of realisation and

proportionate costs. Consequently, the connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

06.02.2023

Index : Yes : No
Internet : Yes : No
SSL

To

1. I Additional District Court, Trichirappalli

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.48 of 2014

06.02.2023