



S.A.(MD).No.85 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.09.2023

PRONOUNCED ON: 13.12.2023

CORAM:

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.(MD)No.85 of 2017

and

CMP.(MD) Nos.1731 of 2017, 6067 of 2022, 2375 & 3691 of 2023

1. Krishnammal

2. Muthammal

... Appellants/Defendants 13 & 15

Vs.

1. Vanaraja Perumal

... 1st Respondent / Plaintiff

2.S.Sankar

3.Mahaboob John

4.Iyyappan

5. Velmurugan

6.Boothathan

7.Siva Subramanian

8.Shanthanakumar

9.Pappammal

10.The Superintendent of Police,
Tirunelveli District Office at Palayamkottai,
Tirunelveli District,
Tirunelveli-2.

11.The Inspector of Police,
Vikramasingapuram Police Station,
Vikramasingapuram.



S.A.(MD).No.85 of 2017

12.State of Tamil Nadu through its

District Collector,

Tirunelveli.

13.Subramania Pillai (died)

... Respondents/2nd Appellant

14.Kandhasamy

15.S.Meenakshinathan

16.Ulagammal

... Proposed additional Respondents/Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree made in A.S.No.23 of 2014 dated 23.02.2015 on the file of Principal District Court, Tirunelveli confirming the judgment and decree dated 11.12.2013 made in O.S.No.44 of 2010 on the file of Sub Court, Ambasamudram.

For Appellants : Mr.T.Arul

For Respondents : Mr.S.Parthasarathy
for Mr.K.Govindarajan for R1
Mr.A.Arumugam for R3
Mr.M.Senthil Ayyanar
Govt. Advocate for R10 to R12
No Appearance for R2, R4, R5,
R7 to R9 & R16

JUDGMENT

The appellants are the defendants 13 and 15, who are none other than the legal heirs of the deceased first defendant. The first respondent herein was the plaintiff before the Trial Court. The other respondents were the defendants before the Trial Court.



S.A.(MD).No.85 of 2017

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3 (a). The brief facts, which give rise to the instant Second Appeal is that; the plaintiff has purchased items 1 and 2 schedule properties from the first defendant through two different registered Sale Deeds dated 07.12.2006 and 11.12.2006. The plaintiff further submits that in pursuance of the said purchase, the Revenue records have been mutated in the name of the plaintiff, and that the plaintiff has been paying the electricity charges and other tax dues to the local bodies. According to the plaintiff, the first defendant viz., the deceased Valliammal was an assertive woman and having good health. Based upon her request, even after purchase the plaintiff permitted her to reside in the suit property for a period of three months without any rent. However, the first defendant requested the plaintiff further time, and as on the date of filing of the suit, the first defendant was in the possession and enjoyment of the suit property.

(b). The plaintiff further submits that the 8th defendant is residing in one of the house in the II Schedule property namely, the 5th item. The 8th defendant, with an intention to grab the property of the first defendant, got a Will executed in his name by the first defendant, thereby, bequeathing large



S.A.(MD).No.85 of 2017

extent of Nanja land. In the meanwhile, taking averses with the sale made by the first defendant, the 8th defendant has hatched conspiracy against this plaintiff by unduly influencing the first defendant. Thereby, they were attempting to cut the trees stands in the schedule property.

(c) The plaintiff further submits that, with false and untenable plea, the first defendant gave a police complaint to the 11th defendant. Wherein, it was complained by the first defendant that the plaintiff's sale deed are not supported by consideration. Based upon the false complaint, the 11th defendant namely, the police have been compelling the plaintiff to convey the property in the name of the Trust to be created by the first defendant. According to the plaintiff, the 8th defendant is one of the witnesses in the Sale Deeds dated 07.12.2006 and 11.12.2006. Thus, this plaintiff submits that he is the absolute owner of the schedule mentioned properties. However, the 8th defendant is not admitting the title over the plaintiff. Hence, he come forward with the suit for declaration and for possession.

4 (a). The said suit was resisted by the **first defendant** by contending that the alleged Sale Deeds dated 07.12.2006 and 11.12.2006 are not true and valid, and that this defendant, without knowing the character and contents of the documents, have been induced to sign the same. Further,



S.A.(MD).No.85 of 2017

while registering the document, even the Sub Registrar did not explain the character of the document. It is the further submission of this defendant that she is impaired by hard of hearing and also having loss of memory due to her ageing. It is the specific submission of the first defendant that she did not receive any sale consideration from the plaintiff and that the plaintiff is not a man of means, and that recovery suits are pending against him.

(b). This defendant further submits that, the name transfer of the suit property by the local body will not bind upon this plaintiff as no notice was served to her. As such, it is the submission of this defendant that she is the absolute owner of the suit property and she has been in actual physical possession and enjoyment of the same. Thus, the sum and substance of the first defendant's contention is that, while signing the sale deed, the first defendant's mind did not go with the execution of the document. Hence, as per the principle of *non-est* factum, the sale deed stands in the name of the plaintiff become void *ab-initio*.

5. The **8th defendant** has also filed written statement supporting the case of the first defendant. However, he further stated that he has committed a grave mistake by abetting the plaintiff to have the sale deeds fraudulently from the first defendant.



S.A.(MD).No.85 of 2017

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6. The **11th defendant**, being the Inspector of Police, has no serious objection in respect of the factual matrix of the either side cases.

7. The **13th defendant**, who is the appellant herein, has filed written statement supporting the statement filed by the first defendant and they further stated that the first defendant did not execute any Will in favour of the 8th defendant. Thus, all the defendants prayed to dismiss the suit.

Evidence, Documents and Findings of the Courts below:-

8. Before the Trial Court, the plaintiff has examined 3 witnesses as PW1 to PW3 and marked 5 documents as Exs.A1 to A5. On behalf of the defendants, 2 witnesses were examined as DW1 and DW2 and 12 documents were marked as Exs.B1 to B12.

9. The Trial Court, after having considered the oral and documentary evidence arrived at a conclusion that the defendants 13 to 15 are the legal heirs of the first defendant and that the Sale Deeds dated 07.12.2006 and 11.12.2006 are true and binding upon these defendants and ultimately decreed the suit. Aggrieved with the same, the defendants 13 to 15 preferred the First Appeal, wherein the First Appellate Court confirmed the findings of the Trial Court and thereby, dismissed the first appeal. Aggrieved with the said order, the defendants 13 and 15 have filed the



S.A.(MD).No.85 of 2017

instant Second Appeal.

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Substantial Question of Law:-

10. At the time of admission, this Court has formulated the following substantial question of law:-

“i) Whether the impugned sale deeds are tenable under law under Section 68 of Evidence Act, when admittedly one of the attesting witness has forged his signature?

ii) Whether the first respondent/plaintiff can make a mutually contradictory and destructive plea of possession of the plaint scheduled property and consequently seek for recovery of possession of the same?

iii) Whether the non disclosure of the factum of possession of the appellants deceased sister over the plaint scheduled property, factum of lease existing in the plaint scheduled property and the existence of trees in the plaint scheduled property as per Section 55 of the Transfer of Properties Act in the impugned sale deeds, vitiate the sale, more so when the seller alleges fraud, misrepresentation and cheating?

iv) Whether the Courts below had failed to appreciate the evidence both oral and documentary in a proper perspective and had committed impropriety in rejecting the case of the appellant?

v) Whether the sale deeds Ex.A1 and Ex.A2 are valid



S.A.(MD).No.85 of 2017

in the eye of law when there is no consideration was passed to the vendor and it was endorsed by one of the witnesses signing in the documents?”

Submissions of either side counsels:-

11 (a). The learned counsel for the defendants 13 and 15/Appellants would contend that the plaintiff, by taking advantage of the senility of the first defendant and her ageing and also by taking advantage of her hard of hearing, manipulated the first defendant and has obtained Exs.A1 and A2-Sale Deeds by playing fraud. The learned counsel would further argue that neither the plaintiff nor the Sub Registrar has explained as to the character of the document, which is allegedly executed by the first defendant. The learned counsel would further contend that without understanding the character and contents of the documents, the first defendant was forced to sign Exs.A1 and A2-Sale Deeds. Therefore, the learned counsel for the appellants would vehemently contend that Exs.A1 and A2-Sale Deeds are hit by the principles of *non-est* factum, and thereby, both the sale deeds are void ab-initio. It was further contended that the plaintiff has not proved the due execution and passing off consideration for Exs.A1 and A2-Sale Deeds. Therefore, would contend that the order of both



S.A.(MD).No.85 of 2017

the Trial Court as well as the First Appellate Court in decreeing the suit, without gone into the defence of *non-est* factum is liable to be interfered with.

(b). The learned counsel for the appellants would rely upon the judgment of the Hon'ble Supreme Court in ***S.P.Chengalvaraya Naidu (Dead) by LRs. Vs. Jagannath (Dead) by LRs and others*** reported in (1994) 1 SCC 11 to substantiate their contention in respect of fraud. The learned counsel for the appellants also relied upon the judgments of this Court in ***A.Mahimaidas Vs. P.Parameswari and another*** reported in (2019) 2 MLJ 24, and ***Ponnusamy Vs. Govindan and another*** reported in 2022 (2) CTC 770. The learned counsel for the appellants would also invite the attention of this Court in respect of two applications filed under Order 41 Rule 27 CPC in CMP.Nos.2375 of 2023 and 3691 of 2023, wherein the petitioner prayed to receive certain documents, so as to prove that the plaintiff has no means to pay the sale consideration to the defendant. Hence, prayed to allow the Second Appeal.

12. Per contra, the learned counsel for the plaintiff would vehemently contend that the first defendant was an assertive woman, and was hale and healthy, and that by virtue of Section 60 of The Registration



S.A.(MD).No.85 of 2017

Act, there is a statutory presumption in favour of the plaintiff. It is the further submission of the learned counsel for the plaintiff that notwithstanding the statutory presumption, the plaintiff has independently proved the due execution of Exs.A1 and A2-Sale Deed, and passing-off consideration by examining the attestor and scribe of Exs.A1 and A2-Sale Deed. It is the further contention of the learned counsel for the plaintiff that, though the first defendant has set up the plea in respect of *non-est* factum, except such pleading, there are no proof available before the Court. Therefore, it is the contention of the learned counsel for the plaintiff that the pleading alone is not sufficient and what is require before the Court is a proof in respect of *non-est* factum, which absolutely lacks. It is also the further contention of the plaintiff that the appellants are not all the legal heirs of the deceased first defendant, and that these defendants had categorically admitted that they did not know about the execution of Exs.A1 and A2-Sale Deeds and that they were not at all residing along with the deceased first defendant. Therefore, it is the contention of the plaintiff that the defendants have not at all substantiated any material to support their defence of *non-est* factum. Hence, prayed to dismiss the Second Appeal.



S.A.(MD).No.85 of 2017

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13. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

14. From the submissions of the learned counsel for the defendants, their entire contention is based upon their defence of *non est* factum. In order to explain the said *non-est* factum, the learned counsel relied upon the judgment of this Court in **A.Mahimaidas's** case [cited supra] and **Ponnusamy's** case [cited supra]. In the said judgments, the Hon'ble single Judge in support of his findings has followed various judgments of the Hon'ble Supreme Court.

15. At this juncture, this Court deems it appropriate to refer the latest judgment of the Hon'ble Supreme Court in **Ramathal and others Vs.K.Rajamani (Dead) through LRs and another** reported in **(2023) 5 MLJ 1 (SC)** on the principle of *non-est* factum. In this judgment, the Hon'ble Supreme Court has elaborately dealt about the principle of *non-est* factum. Hence, this Court deems it appropriate to extract the relevant portions of the judgment, and the same read as follows:-

“17. A plea of non est factum can be taken by an executor or signatory of the deed to plead that the said document is invalid as its executor/signatory was mistaken about its character at the time



S.A.(MD).No.85 of 2017

of executing/signing it. It is a latin maxim which literally means “it is not the deed.” A plea of non est factum is a defence available in Contract Law allowing a person to escape the effect of a document which she/he may have executed/signed.

18. As already noted above, the plea of non est factum basically means, “it is not my deed.” The said plea has been a subject matter of consideration of this court in the case of **Bismillah v. Janeshwar Prasad (supra)**. In the said case, the plaintiff/appellant therein had claimed herself to be a Pardanashin lady and on the representation of the defendant/respondents, had appointed them as agent to manage the estate under a written document which was drafted in Hindi, a language not known to her. Later on, she discovered that it contained an unauthorized clause empowering sale of properties. Taking advantage of the same, the said agents had executed fraudulent and elusive sale of the said property. The said case set up the plaintiff/appellant was considered and dealt with in paras 12 and 13 of the report. A further issue which this Court considered in the said case was a distinction between **fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof**. Such defense of non est factum was held to be available only where the mistake was as to the very nature or character as to the transaction. This Court also relied upon an earlier decision in the case of **Ningawwa v. Byrappa**. This Court further placed reliance upon the judgment of the House of Lords in case of **Saunders v. Anglia Building Society** to fine tune the distinction between the document being void or voidable. **Paras 11 to 15 of Bismillah (supra) are reproduced hereinunder:**



S.A.(MD).No.85 of 2017

“11. The assumption underlying the reasoning of the High Court is that if the action had really been one based on the need for the cancellation of the deeds, without which possession could not be granted, the civil court would have had jurisdiction. The cause of action in the appellant's suit does admit of being brought within this class of cases.

*12. The common law defence of non est factum to actions on specialities in its origin was available where an **illiterate person, to whom the contents of a deed had been wrongly read, executed it under a mistake as to its nature and contents, he could say that it was not his deed at all.** In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. **In most of the cases in which this defence was pleaded the mistake was induced by fraud;** but that was not, perhaps, a necessary factor, as the transaction is “invalid not merely on the ground of fraud, where fraud exists, **but on the ground that the mind of the signor did not accompany the signature; in other words, that he never intended to sign, and therefore, in contemplation of law never did sign, the contract to which his name is appended**”*

*13. Authorities drew a distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. **It was held that the defence was available only if the mistake was as to the very nature or character of the transaction.***

14. In Foster v. Mackinnon [[L.R.] 4 C.P. 704 : 38 LJCP 310], Mackinnon, the defendant was induced to endorse a



S.A.(MD).No.85 of 2017

bill of exchange on the false representation that it was a guarantee similar to one he had signed on a previous occasion. He was held not liable when sued even by an innocent endorsee of the bill. Byles, J. said:

“... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the ‘actual contents’ of the instrument.”

15. This decision was referred to with approval by this Court in *Ningawwa v. Byrappa* [(1968) 2 SCR 797 : AIR 1968 SC 956]. It was observed : (SCR pp. 800-01)

“It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded.”

This would be a voidable transaction. But the position was held to be different if the fraud or misrepresentation related to the character of the document. This court held : (SCR p. 801)

“The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has



S.A.(MD).No.85 of 2017

been held that the transaction is void, while in the case of the latter, it is merely voidable.”

(emphasis supplied)

However the House of Lords in Saunders v. Anglia Building Society [[1971] A.C. 1004 : [1970] 3 All ER 961] reviewed the law and held that the essential features of the doctrine, as expressed by Byles, J. in Foster v. Mackinnon [Chitty on Contracts, 25th edn., p. 341], had been correctly stated. Lord Reid, however, observed : (AC headnote at p. 1005)

“The plea of non est factum could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing.””

19. The ingredients of the plea of non est factum as laid down not only in the case of Bismillah (supra) are existing in the present case, but also the three parameters as can be deduced from Saunders (supra) were in existence in the present case as well. The aforementioned test for a successful plea of non est factum requires that:

A. The person pleading non est factum must belong to “class of persons, who through no fault of their own, are unable to have any understanding of the purpose of the particular document because of blindness, illiteracy or some other disability”. The disability must be one requiring the reliance on others for advice as to what they are signing. As Lord



S.A.(MD).No.85 of 2017

Pearson had aptly put:

“In my opinion, the plea of non est factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy) is not capable of both reading and sufficiently understanding the deed or other document to be signed. By “sufficiently understanding” I mean understanding at least to the point of detecting a fundamental difference between the actual document and the document as the signer had believed it to be.”

B. *“The “signatory must have made a fundamental mistake as to the nature of the contents of the document being signed”, including its practical effects. Lord Wilberforce has succinctly put this aspect:*

*“In my opinion, a document should be held to be void (as opposed to voidable) **only when the element of consent to it is totally lacking, that is, more concretely, when the transaction which the document purports to effect is essentially different in substance or in kind from the transaction intended**”*

C. *The document must have been radically different from one intended to be signed. As Lord Reid Remarked in the judgment:*

“There must, I think, be a radical difference between what he signed and what he thought he was signing — or one could use the words “fundamental” or “serious” or “very substantial.” But what amounts to a radical difference will depend on all the circumstances.”

(Emphasis supplied by this Court)



S.A.(MD).No.85 of 2017

16. For easy understanding, this Court deem it appropriate to restate the principles emerging from the above precedent.

(i) the *non-est* factum is a latin maxim, which literally means “it is not my deed”.

(ii) if there is fraudulent misrepresentation as to the character of the document, then such document would become void. However, if the fraudulent misrepresentation is as to the contents thereof, then it will become voidable.

(iii) Even the contracts tainted by fraud is not void, but voidable, and would bind the parties till the transaction is avoided.

(iv) the common law defence of *non-est* factum would attract to illiterate persons and also can be extended to other than those of illiteracy namely, the executor was induced by fraud and that the mind of the signor did not accompany the signature.

(v) whenever *non-est* factum defence was taken, the burden is upon the other person (plaintiff) to prove that the document was duly executed.

17. Now let us consider the facts available before this Court with a principle enunciated in the above precedents. Admittedly, in the written



S.A.(MD).No.85 of 2017

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statement of the first defendant, she has pleaded as to the misrepresentation as to the contents, as well as the character of the document. She had further pleaded that no consideration was passed to the defendants for the sale deed. In this case, the 8th defendant, who was the attesor to Exs.A1 and A2-Sale Deeds, has also filed written statement supporting the first defendant's case. However, curiously he was set ex-parte later on. Therefore, it is the duty of this Court to find out whether both the Courts below cast the burden of proof upon the right person.

18. In this case, the plaintiff, after examining himself as PW1, has also examined the attesor to the documents viz., PW2, and the scribe of the documents PW3. Both the attesor and the scribe have explained as to the passing-off consideration and due execution of the documents.



S.A.(MD).No.85 of 2017

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19. Though it was contended by the defendants 13 and 15 that PW2 being the father-in-law of PW1, he is an interested witness and the probative value of his evidence is so weak, cannot be accepted on the face of it, unless some falsity or unreliability of his evidence is explained or shown. Here except raising suspicion over the evidence of PW2, no material available to disbelieve his evidence.

20. At this juncture, this Court is of the view that though PW2 is the father-in-law of PW1, qua the plaintiff, admittedly, he being the attestor has been rightly examined by the plaintiff on his behalf, and he spoke about the passing-off consideration. Further, the defendant did not make out any case through the cross examination against the plaintiff.

21. In order to substantiate the other contention of the defendant as to the misrepresentation as to the character of the documents, there are no independent evidence available or submitted on behalf of the defendants. In fact the defendants 13 and 15 were not at all residing along with the first defendant and not even participated in the funeral of the first defendant. Therefore, admittedly the DW1, who is the 13th defendant did not have any personal knowledge as to the transaction that had taken place between the plaintiff and the first defendant. Though the deceased first defendant has



S.A.(MD).No.85 of 2017

pleaded as to the *non-est* factum, there are no material available before this Court to prove such defence.

22. However, the defendants 13 to 15 would project a collateral facts before this Court that the plaintiff did not have means to pay the sale consideration. However, this Court is not in a position to accept the said contention in the place of PW2's evidence. No doubt there are certain borrowals by the plaintiff with some 3rd parties and there were some suits. Since because there were certain recovery suits, we cannot standardise the such borrowal with third parties, and contesting the recovery suit is a proof of no means, unless it is separately proved through proper witnesses against such non payment. Both the Trial Court as well as the First Appellate Court have given a categorical finding that through the evidence of PW2, the passing-off consideration and due execution have been proved, and this Court could not find any perversity over the said finding.

23. At this juncture, this Court would like to refer the argument advanced by the learned counsel for the defendants as to the ailments suffered by the first defendant. Admittedly, no medical records submitted. But, in this regard, the learned counsel relies upon the Power of Attorney deeds executed by the first defendant in favour of the plaintiff. Wherein, she



S.A.(MD).No.85 of 2017

has stated that she was suffering from hard of hearing. Apart from that, there are no material or no recital as to the health condition of the first defendant. But the very fact of filing of RCOP by the first defendant herself and appointing the plaintiff as the Power Agent to conduct the case would evidently establish the sound mental state of the first defendant.

24. Though the defence of senility and age related problems have been pleaded by the first defendant, there are no material available before this Court to substantiate the same. In fact, by examining PW3, who was the scribe, he has explained as to how the contents of the documents was explained to the first defendant. But fortunately or unfortunately, though the first defendant took all such effective defences, before examining herself as witness, she died during the pendency of the suit on 25.10.2009. But the conduct of appointing the plaintiff as a power agent to contest the RCOP was not questioned. As such her independent thinking and her understanding as to the execution of deeds can be inferred from her above act.

25. At this juncture, this Court would like to refer the Will executed under Exs.B5 and B6. Admittedly, the execution of Ex.B5-Will came into effect on 07.12.2006, when Ex.A1-Sale Deed was executed. However, the Will was subsequently cancelled within 9 months on



S.A.(MD).No.85 of 2017

28.09.2007, and another Will was executed through Ex.B6 in favour of the 8th defendant for the same property which was referred in Ex.B6-Will. In respect of these two Wills also, there is no pleading in the first defendant's written statement. Therefore, this Court is of the view that the first defendant's defence that she has no knowledge about the procedure or proceedings taken place in the Sub Registrar Office and the character and contents of the document is not rational, probable and far from truth. It is pertinent to mention here that the first defendant though he plead that he did not know the character of the document, curiously she did not plead as to her understanding about the documents submitted before the Sub Registrar's Office, and under what circumstances she went to Sub Registrar Office is covertly and overtly absent. Though it was contended by the first defendant in her pleading that the Sub Registrar did not explain as to the character of the documents, such factum was disproved by the plaintiff by examining PW3-scribe.

26. Thus, both the Trial Court as well as the First Appellate Court have gone into all these aspects and arrived at a conclusion that Exs.A1 and A2-Sale Deeds were duly executed. Though there were some instances referred by the defendants 13 & 15 in respect of some money decree, to say



S.A.(MD).No.85 of 2017

no consideration passed, and disguised signature made by the 8th defendant, so as to project a case of fraud, as held in **Ramathal's** case (cited supra), such documents are only voidable document and would bind the parties until it is avoided by filing a suit to set aside the sale.

27. At this juncture, it is pertinent to mention here that, in spite of the fact that the plaintiff has discharged his burden to prove that Exs.A1 and A2 are not hit by the principles of *non-est* factum, the defendants miserably failed to establish before the Court in respect of the alleged fraud played by the plaintiff by examining the 8th defendant, who in his pleadings supports the first defendant's case. The Trial Court has dealt about the absence of personal knowledge of DW1 and DW2 and has also relied upon the evidence of PW 1 to PW3, besides Section 92 of The Indian Evidence Act as to the presumption towards the contents of the document, and ultimately decreed the suit.

28. The First Appellate Court has also relied upon the evidence of PW1 to PW3 and has recorded a finding of fact that the plaintiff has discharged his onus of proof. Therefore, when both the Courts have recorded a finding of fact that as to the due execution of Exs.A1 and A2-Sale



S.A.(MD).No.85 of 2017

Deeds, this Court could not find any material to deviate from the said well merited finding.

29. At this juncture, this Court would like to refer the judgment of the Hon'ble Supreme Court in ***Hero Vinoth (Minor) Vs. Seshammal*** reported in ***(2006) 5 SCC 545***. The relevant paragraphs are paragraphs 13 & 19 and the same read as follows:-

“13. Though as rightly contended by learned counsel for the appellant the scope for interference with concurrent findings of fact while exercising jurisdiction under Section 100 CPC is very limited, and reappraisal of evidence is not permissible (sic except) where the trial court and/or the first appellate court misdirected themselves in appreciating the question of law or placed the onus on the wrong party certainly there is a scope for interference under Section 100 CPC after formulating a substantial question of law.

*19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. **In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be***



S.A.(MD).No.85 of 2017

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interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.”

30. As per the above judgment, when the finding of fact recorded by both the Courts below is based upon the available evidence, since because there is a possibility for different reasoning cannot be a ground to unsettle the findings of both the Trial Court as well as the First Appellate Court. Further, the Trial Court and the First Appellate Court have rightly cast the burden of proof upon the plaintiff and the plaintiff has discharged his burden of proof. Therefore, in view of the above detailed discussion, all the substantial questions of law are answered in favour of the respondents.

31. As regards CMP.Nos.2375 and 3691 of 2023, the learned counsel for the defendants would rely upon the documents referred to in both the CMPs and would contend that those documents are very much helpful to pronounce the judgment and these documents are relevant for a substantial



S.A.(MD).No.85 of 2017

cause. But, while perusing the documents, the documents are of the year 2005, and the documents relied in CMP.No.3691 of 2023 is the affidavit of a third party, wherein there is a pleading in respect of the plaintiff and the first defendant, and also there is a pleading in respect of the alleged evil design of the plaintiff. However, the first defendant was also the party to the said proceedings. In CMP.No.2375 of 2023, the plaintiff wants to mark some documents, wherein the plaintiff has compromised and settled the money decree.

32. But, this Court is of the view that the receipt of documents by way of an additional document is an exceptional remedy, which cannot be used to fill up the lacunas. In this regard, this Court would like to refer the judgment of the Hon'ble Supreme Court in ***Union of India V. Ibrahim Uddin*** reported in ***(2012) 8 SCC 148***. The relevant portion of the judgment reads as follows:-

“36. The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties



S.A.(MD).No.85 of 2017

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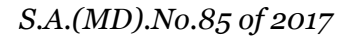
are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. (Vide: *K. Venkataramiah v. A. Seetharama Reddy & Ors.*, AIR 1963 SC 1526; *The Municipal Corporation of Greater Bombay v. Lala Pancham & Ors.*, AIR 1965 SC 1008; *Soonda Ram & Anr. v. Rameshwaralal & Anr.*, AIR 1975 SC 479; and *Syed Abdul Khader v. Rami Reddy & Ors.*, AIR 1979 SC 553).

37. *The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).*

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40. *The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not*



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47. *Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed.*

48. To sum up on the issue, it may be held that application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted



S.A.(MD).No.85 of 2017

his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.”

(Emphasis supplied by this Court)

33. While applying the above ratio, here, both the Courts have recorded a finding of fact that mere loan transaction of the purchaser with third party is not sufficient to hold that he had no means to pay the sale consideration. As rightly held by both the Court below, we cannot stereotype such instances. Therefore, this Court is of the view that in view of the above detailed discussion both the CMP.Nos.2375 and 3691 of 2023 are also liable to be dismissed.



S.A.(MD).No.85 of 2017

WEB COPY

34. In the result, the Second Appeal is dismissed by confirming the judgment of the First Appellate Court. The connected CMPs in CMP.Nos. 2375 and 3691 of 2023 are also dismissed. There shall be no order as to costs. Consequently, connected CMPs are closed.

13.12.2023

Index :Yes/No

Speaking Order : Yes/No

NCC : Yes/No

kmi

To

- 1.The Principal District Court,
Tirunelveli.
2. The Sub Court,
Ambasamudram.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).No.85 of 2017

C.KUMARAPPAN, J.

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Judgment in

S.A.(MD) No.85 of 2017

13.12.2023