



A.S.(MD)No.242 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**A.S.(MD)No.242 of 2022
and
C.M.P(MD)No.11262 of 2022**

S.Usha Mary

..Appellant/Defendant

Vs.

Ramesh Anand

...Respondent/Plaintiff

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, as against the judgment and decree dated 05.08.2022 in O.S.No.10 of 2016 on the file of the learned Additional District Judge, Kuzhithurai.

**For Appellant : Mr.M.Ashok Padmaraj
For Respondent : Mr.S.Ramakrishnan**



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JUDGMENT

Challenging the judgment and decree dated 05.08.2022 passed by the trial Court in O.S.No.10 of 2016, the present appeal came to be filed.

2.The brief facts of the case are as follows:

The defendant, who is the owner of the suit property, has agreed to sell the property in favour of the plaintiff to the tune of Rs.24,00,000/- and both of them had entered into an agreement for sale, dated 06.03.2013 and received a sum of Rs.5,50,000/- as advance, towards part of the sale consideration. The balance sale consideration of Rs.18,50,000/- agreed to be paid to the defendant within six months. After the sale agreement, the defendant has received a sum of Rs.50,000/- on 18.06.2013, Rs.1,00,000/- & Rs.1,50,000/- on 10.07.2013 and a sum of Rs.50,000/- on 03.02.2024 from the plaintiff. Therefore, it is the contention of the plaintiff that he was ready and willing to perform his part of contract. However, the defendant is not ready and willing to perform the part of contract. Contrary, the defendant sold the property to one Jegan, on 26.11.2014. Therefore, the plaintiff sent a legal notice on 01.02.2016 to the defendant, seeking return



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of the advance amount with 7% interest. On receipt of the said legal notice, the defendant sent a frivolous replay notice to the plaintiff on 13.02.2016, wherein, the defendant has admitted the sale agreement, but she did not come forward to give the advance amount. Hence, the suit for recovery of money is filed.

3.In the written statement, the defendant admits the agreement for sale, which was entered into between the defendant and plaintiff for a sum of Rs.24 lakhs and the receipt of the advance amount on various dates to the tune of Rs.3,50,000/- is totally denied by her. It is the contention of the defendant that those endorsements have been made by fabrication and her signature has also been fabricated and no such payments have been received by her after the agreement date. Further, it is the stand of the defendant that even the advance amount received by her is also paid in the presence of parents of the plaintiff. Hence, she opposed the suit.

4.The trial Court has framed the following issues:

- 1.Whether the defendant received amounts after the sale agreement date?*
- 2.Whether the plaintiff is ready and willing to perform*



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his counter?

3. Whether the sale advance amount was returned and the contract was rebutted?

4. Whether the plaintiff is entitled to the amount?

5. To what other relief? ”

5. Before the trial Court, on the side of the plaintiff, P.W.1 examined and Ex.A.1 to Ex.A.8 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.6 were marked.

6. After analysing the oral and documentary evidence, the trial Court has decreed the suit in favour of the plaintiff. The trial Court has also come to the conclusion that having taken a plea of forgery the defendant has not taken any steps to prove the same. Hence, decreed the suit. Aggrieved over the same, the present appeal came to be filed.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.



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8.The learned counsel appearing for the appellant/defendant would mainly contend that when the appellant/defendant has taken a specific stand that she has not received a sum of Rs.3,50,000/- as advance amount and she denied her signature also, the plaintiff has not discharged his burden in proving the alleged endorsement and the signature of the defendant. Therefore, the trial Court shifting the burden on the defendant at the first instance would not arise at all. The learned counsel would further contend that there was no reason as to why the only one signature is found in all the endorsements, though the amounts are said to have been paid in different dates. Hence, the trial Court has shifted the burden on the defendant to prove the alleged forgery, when the plaintiff has not even discharged his burden to establish the execution of document by the defendant. Therefore, decreeing the suit in favour of the plaintiff, is not proper.

9.The learned counsel appearing for the respondent/plaintiff would submit that the execution of sale agreement is not disputed. Even in the reply notice, the defendant has admitted the execution of sale agreement.



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Therefore, once the agreement is executed, the defendant cannot contend that only the part amount has been paid as advance amount. When the signature is not disputed, there is no need for the plaintiff to establish the execution once again. Having taken a plea of forgery and fabrication, the burden lies on the defendant to establish the same. Therefore, the judgment of the trial Court is proper and does not warrant interference of this Court.

10. In the light of the above submissions, the following points are raised for consideration:

(i) Whether the trial Court was right in shifting the burden on the defendant, when the plaintiff has not even proved the execution of the sale and the endorsements said to have been made by the defendant in the agreement.

(ii) Whether the plaintiff is entitled to recovery of the entire amount as claimed in the plaint?

11. On perusing the entire materials would show that it is not in dispute that under sale agreement dated 06.03.2013, Ex.A1, the defendant



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has agreed to sell the property for a total sale consideration of Rs.24 lakhs and an agreement was entered into between them, on 06.03.2013. On the date of agreement, a sum of Rs.5,50,000/- has been paid as advance to the defendant by the plaintiff. This aspect is also not disputed by the defendant in the written statement. The suit has been decreed for recovery of the advance amount and also another sum of Rs.3,50,000/- said to have been paid on various dates, after the agreement. The defendant has taken a specific stand in the written statement that those endorsement and payments have been fabricated and created. Besides, the defendants have also denied the signature found in the endorsement. In the light of the above stand of the defendant and the evidences of P.W.1 and D.W.1, this Court is of the view that when the signature and execution has been denied, it is for the plaintiff to establish either the execution of the document or the signature found in the said document. Once, the plaintiff has discharged his burden in establishing the signature of the defendant in the agreement, then the onus is shifted on the defendant to prove his stand.



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12.From the over all evidences perused, the plaintiff except stating in his chief examination that he has paid Rs.3,50,000/- on various dates and that endorsement has been made in the agreement, no other witnesses whatsoever has been examined to show that the payments have been made and signature was made by the defendant. It is relevant to note that it is the case of the plaintiff that various amounts have been paid on different dates ie., from 13.03.2013 to 03.02.2014. It will be the normal human conduct of any person that if any further amount is paid, the endorsement would be obtained in the agreement then and there.

13.On a perusal of Ex.A.1/sale agreement, though the endorsement indicates the amounts have been paid on four different dates only one signature was found below the third entry and above the last entries in the agreement and, that has not been explained by the plaintiff. It is against the normal human conduct, particularly, when the amounts have been paid on different dates, it will be the normal conduct of the parties to make an endorsement then and there and get the signature of the other side, whereas, in Ex.A.1 four endorsements have been made in one particular date and only

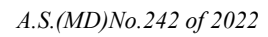


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one signature has been obtained. It creates a serious doubt about the very endorsement and payments. The defendant has totally denied her signature in the endorsement, as only one signature was found in the four entries, which has been totally denied by the defendant. Such being the position, the initial burden would lie on the plaintiff to establish the signature of the defendant found below the endorsement.

14. On an over all perusal of the evidence, it is seen that except P.W.1, no other witnesses examined. Further, no other documents have been produced to show that on the particular date the amount has been withdrawn from his personal account to show that the payments have been effected. Therefore, once the plaintiff has failed to prove his initial burden to establish the execution or signature of the defendant, the trial Court shifting the burden at the first instance to the defendant is not correct according to law. Though the defendant has taken the plea of forgery, onus is on her only when the initial burden of the plaintiff proving the signature is discharged, whereas the plaintiff has not discharged his onus to prove the endorsement and not even established the signature and the endorsement and thereby



15. In such view of the matter, this Court is of the view that since execution of the agreement is not disputed and advance amount is also admitted, the defendant is liable to pay the amount with interest at the rate of 12% from the date of agreement till the date of realization. Therefore, the judgment of the trial Court in decreeing the suit in its entirety excluding the amount said to have been paid on different dates on the face of the agreement, is not proper, accordingly, the points in this appeal, are answered in affirmative.



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16.In the result, the appeal is partly allowed. The suit is decreed for a sum of Rs.5,50,000/- with interest at the rate of 9% from the date of agreement till the date of realization, with cost. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

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To

1.The Additional District Judge,
Kuzhithurai.

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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