



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 285 of 2009

and M.P.Nos.1 and 2 of 2009

1. Rajammal (Died)

2. Ashok Kumar

Rep. By Power of Attorney Vanishri

(A2 is substituted in the place of A1 Rajammal

vide Court order dated 20.12.2022 made in

C.M.P.No.11763,13925, 13926/22 in

S.A.No.285/09 (PTAJ)

... Appellant/Defendant

Vs.

Alamelu Ammal (died)

1.Jayaraman

2.Krishnaveni Ammal (Died)

3.Shanmugam

4.Kanniappan

5.Radha Ammal

6.Ranganathan

7.Arputhaadevi

8.Mani

9.Ramamoorthy



10.Sankar

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(R7 to R10 are brought on record as Lrs
of deceased R2 viz., Krishnaveni Ammal vide
order of Court dated 10.01.2023 made in
C.M.P.No.645, 651 and 652/23
in S.A.No.285/2009 (PTAJ).)

... Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 06.11.2008 in A.S.No.35 of 2006 passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, reversing the judgment and decree dated 15.06.1998 in O.S.No. 225 of 1996 passed by the learned District Munsif-cum-Judicial Magistrate, Arcot.

For Appellant	: Mr.R.S.Singaravelan Senior Counsel for Mrs.V.Ambika
For Respondents	: Mr.V.P.Sengottuvel Senior Counsel

JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 06.11.2008 in A.S.No.35 of 2006 passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, reversing the judgment and decree dated 15.06.1998 in O.S.No. 225 of 1996 passed by the learned District Munsif-cum-Judicial Magistrate, Arcot.



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2. The 1st appellant viz., Rajammal who is the sole plaintiff, died pending this appeal and the second appeal was dismissed as abated vide order of this Court dated 15.06.2021. The 2nd appellant is the subsequent purchaser of the suit property from Kathiravan who purchased the suit property from the said Rajammal and her daughter Kalyani. As Rajammal and her daughter Kalayani sold the property to Kathiravan, they are not interested in pursuing the litigation. Hence, the present appeal has been restored by the subsequent purchaser namely Ashok Kumar who is the second appellant herein. The respondents herein are the legal heirs of one Perumal Gounder and Krishnaveni Ammal.

3. For the sake of convenience, the parties are referred to as per their ranking in this appeal.

4. Before the Trial Court, the legal heirs of Perumal Gounder filed the suit in O.S.No.225 of 1996 for the relief of specific performance against the defendant Rajammal to direct her to execute the sale deed and register the same in favour of the plaintiffs. The said suit was contested by the defendant Rajammal admitting the execution of sale agreement, however, she denied the subsequent endorsement made in the agreement. It is also stated by Rajammal that the alleged cause of action is untrue and the plaintiffs have no cause of



action and the claim is barred by limitation. Thereby, the plaintiffs are not entitled for the relief as they prayed for.

5. Before the trial Court, on the side of the plaintiffs, P.W.1 to P.W.3 were examined and Exs.P1 to P11 were marked. On the side of the defendant, the defendant Rajammal was examined as D.W.1 and her daughter was examined as D.W.2 and no document was marked on the side of the defendant.

6. Based on the pleadings, the Trial Court framed the following issues:

(i). Whether the plaintiff is entitled for the relief of specific performance?

(ii). Whether the endorsement dated 14.06.1989 made on the sale agreement is forged one as alleged by the defendant?

7. After analysing the evidence on record, the trial court held that the agreement was entered between the parties stipulating the time period of three months and the plaintiffs have failed to prove the readiness and willingness to perform their part of the agreement. Besides, the plaintiffs have also failed to prove that Ex.A3 endorsement dated 14.06.1989 was made by the defendant by receiving a sum of Rs.1000/- as a part of sale consideration. As the plaintiffs failed to perform their readiness and willingness to perform their part of contract within the stipulated time, the suit is liable to be dismissed.



The learned Trial Judge upon perusal of the signatures of the defendant in Ex.A1 and A2 with the disputed signature in Ex.A3, found that the signature in Ex.A3 is different from that of the defendant's signature in Ex.A1 and A2. Accordingly, dismissed the suit.

8. Challenging the said finding of the Trial Court, the plaintiffs have preferred an appeal before the Appellate Court in A.S.No.35 of 2006 and the learned First Appellate Judge independently framed the three issues in respect of the suit property.

(i) Whether the Ex.A3 endorsement dated 14.06.1989 made on the suit agreement is true?

(ii). Whether the suit is barred by limitation?

(iii). Whether the decree and judgment of the trial Court is valid?

(iv). Whether the recital “possession was handed today itself to Perumal Gounder” found in Ex.A1 dated 13.04.1986 is later on included, thereby forged the agreement?

9. Considering the evidence on record and upon comparing the signatures found in Ex.A1 agreement as well as the endorsement made by the defendant which was marked as Ex.A2 along with signature Ex.A3 made on the agreement as per the Section 73 of the Indian Evidence Act, the learned First Appellate Judge concluded that all the three signatures found in the suit



agreement were one and the same and the signatures of the defendant Rajammal

and the plea of forgery made by the defendant is bound to be proved by her.

However she failed to prove the same. On the other hand, the plaintiffs have proved the due and proper execution of Ex.A1, A2 and A3 and more particularly Ex.A3 contains the signature of the defendant, thereby, the suit agreement was proved before the Trial Court, but the learned Trial Judge failed to appreciate the said facts. Based upon Ex.A3 coupled with the provisions of Article 54 of the Limitation Act, the learned First Appellate Judge concluded that the suit has been filed within the period of limitation. The plaintiffs also proved that they are in possession and enjoyment of the suit property through Exs.P7 to P9, accordingly the appeal was allowed by the First Appellate Court by setting aside the Judgment of the Trial Court and the plaintiffs were directed to pay the balance sale consideration of Rs.4,000/- within 05.12.2008 and the defendant was directed to receive the same and execute the sale deed immediately in favour of the plaintiffs. Aggrieved by the reversal finding, the defendant Rajammal has preferred this appeal.

10. During the pendency of the appeal proceedings, Rajammal died leaving behind her daughter. During the pendency of the proceedings, the defendant sold the property to one Kathiravan under the sale deed dated 22.07.2009. Subsequently, the said Kathiravan sold the property to Ashok



Kumar under sale deed dated 26.10.2010. So, the said purchaser Ashok Kumar added as a second appellant in the present appeal and prosecuting the present appeal.

11. The learned counsel for the appellants praying to set aside the findings of the first Appellate Judge on the following grounds:

(i). Learned First Appellate Judge failed to see that Ex.A3 is a forged document created only for the purpose of overcoming the legal bar of Limitation, and hence, ought to have rejected the same.

(ii).When the document Ex.A3 is “ex facie” forged, capable of being differentiated by a normal man and patently illegal, the learned First Appellate Judge ought to have held that the document is inadmissible.

(iii).The learned First Appellate Judge failed to see that the concrete terms of the agreement were to perform the contract within a period of “3” months and undoubtedly, time being the essence of the contract, more fully when the defendant states that the intended purpose of sale being his son's marriage, the learned First Appellate Judge ought to have denied the relief of specific performance for violation of the terms of the agreement.

(iv). The learned First Appellate Judge failed to see that the material alteration in the agreement by the inclusion of a sentence that the possession was handed over to the plaintiff's father is only an after-thought which is



obviously evident from a mere perusal of the document.

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(v). The learned First Appellate Judge failed to see that by virtue of Sec 20 of the Specific Relief Act, the relief of specific performance lies in the discretion of the Court and the Court is not bound to grant such relief merely because it is lawful to do so. The Court has to satisfy itself that the circumstances are such that it is equitable to grant Decree for specific performance of the contract. The learned District Judge further failed to see that while exercising the discretion, the Court has to take into consideration the circumstances of the case, the conduct of the parties and their respective interest under the contract.

12. In support of his contention, the learned Senior counsel for the appellant relied upon the judgment in the case of U.N.Krishnamurthy (Dead) Through Lrs. Vs. A.M.Krishnamurthy reported in 2022 (3) T.N.C.J 956 SC dated 12.07.2022.

13. The appeal was admitted on the following substantial questions of law:

(i) Whether the course adopted by the trial Court in making comparison on its own of the signature of the defendant in the disputed document with that of the signature of the defendant in his deposition as DW1, which is much later in point of time and in arriving at conclusion that both are one and the same is



contrary to the principles laid down by the High Court?

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(ii) Whether the trial Court failed to see that comparison of the admitted signature with that of the disputed signature with that of the dispute signature on its own by the Court below is deprecated by the higher forum.

(iii). When the possession remained with the vendor, is the learned District Judge right in relying upon the 'interlineation' made regarding possession and a few kist receipts in granting a decree for injunction?

(iv) When the alleged Ex.A3 endorsement being a fabricated one, still is the learned District Judge right in holding that the suit is in time? and

(v) Whether the relief of specific performance being discretionary in nature, the plaintiff who has relied on forged signature is entitled to such relief?

Substantial questions of Law 1 to 5:

14. It appears that before the trial Court, the plaintiffs attempted to prove Ex.A1 sale agreement executed by the defendant Rajammal by examining one of the plaintiff Kanniappan as P.W.1 and the executor of the agreement as well the endorsements.

15. Learned counsel appearing for the respondents would submit that though the trial Court failed to appreciate the same, the First Appellate Judge rightly granted the decree in favour of the plaintiff and the same needs no



interference by this Court. Further he would submit that though the defendant pleaded that Ex.A3 endorsement was created by fabricating the signature of the defendant Rajammal in order to extend the time to specific limitation, the same has not been proved by material evidence and the same was rightly observed by the first appellate judge that it was not considered by the Trial Court is just and sustainable one. He would submit that there is no substantial question of law involved in this case since the plaintiffs have proved the endorsement Ex.A3. Therefore, he prayed for dismissal of appeal as no merits in it.

16. Heard the learned senior counsel appearing for the appellants and the learned senior counsel appearing for the respondents and this Court had perused the materials available on record.

17. Considering the submissions made by the learned senior counsel on either side, the fact reveals that suit property is absolutely belongs to the defendant Rajammal. While so, Perumal Gounder entered into a sale agreement with an intention to purchase the property on 13.04.1986 for a sum of Rs.19,000/- and paid a sum of Rs.12,000/- as advance and within a period of three months from the date of agreement, the terms are to be concluded as per agreement Ex.A1. Again a sum of Rs.2,000/- was paid by the plaintiffs and made an endorsement Ex.A2. Further, the plaintiffs also contend that again on 14.06.1989, the defendant Rajammal received a sum of Rs.1,000 /- and made an



endorsement and the same has been marked as Ex.A3. The defendant denied the signature in Ex.A3. Under law, the Court is empowered to compare the signatures found in the documents with the admitted signatures of the parties concerned.

18. Learned Trial Court Judge himself considered the signature of Rajammal/defendant found in the suit agreement and held that all the signatures are not similar. More particularly, the signature in Ex.A3 is vary from the signatures found in Ex.A1 and A2 thereby, concluded that it is a fabricated one which was interpreted by the plaintiff in order to seek limitation.

19. Admittedly, Ex.A3 endorsement was said to be made on 14.06.1989 which is 4 days prior to the end of three years limitation. In fact, three months time period was fixed to execute the terms but within that period, plaintiffs paid a sum of Rs.2,000/- and got endorsement in agreement (Ex.A2) from the defendant. The plaintiffs were not interested in executing the sale deed. There is an urgent need on the side of the defendant. By relying upon Ex.A3 endorsement, the plaintiffs claim that the suit was filed within a period of three months from the date of execution of Ex.A3.

20. When the signature is denied by the defendant in Ex.A3, initial burden upon the plaintiffs are bound to prove that the signature(Ex.A3) is the signature of defendant Rajammal and was not fabricated.



21. P.W.2 is the close relative of Perumal Gounder and P.W.3 is also close associate of Perumal Gounder. In her evidence **DW1** stated that the agreement as well as Ex.A2 endorsement were prepared by the plaintiff and used to get her signature. So, she is not aware of the witnesses P.W.2 and 3. Since P.W.2 and 3 are close associates, still burden heavily cast upon the plaintiffs to prove the endorsement Ex.A3.

22. Learned senior counsel for the respondents/plaintiff submits that the Court has power to compare the signature of the defendant and the same was rightly done by the learned First Appellate Judge. By pointing out the said exercise, the learned counsel argues that even this Court is empowered to compare the signatures under Section 73 of the Evidence Act.

23. Considering that while comparing the signatures, it appears that the signatures found in Ex.A1 and A2 of the defendant Rajammal differs from the signature in Ex.A3. The letter “ஜ” found in Exs.A1 and A2 is differ with the structure of the letter “ஜ” found in Ex.A3. The stroke, letter of “u” also differs from the admitted signatures with the disputed signature Ex.A3. Therefore, with bare eyes, proves that the signature of Rajammal found in Ex.A3 is fabricated one. Moreover, the signatures found in Ex.A1 and A2 are one and the same. There is lot of possibilities to create Ex.A3 endorsement by the plaintiffs with help of same witness.



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24. The Trial Court rightly concluded these aspects, however, the learned First Appellate Judge failed to compare the signatures of the defendant Rajammal properly. Furthermore, there is an endorsement made in the Ex.A1 sale agreement in respect of the handing over the possession. During the evidence, the defendant totally denied the handing over of possession to the plaintiffs, on the other hand, the plaintiffs contend that they are in enjoyment of the property. The said insertion in the agreement also not been initialled by the scribe. So the alleged insertion of the recital in respect of the possession was subsequently inserted in Ex.A1 agreement as rightly pointed out by the appellants. Therefore, the alleged possession claimed by the plaintiffs also not been proved beyond the reasonable doubt. Thus, the conduct of the plaintiffs that they are ready and willing to perform their part of the agreement within the specified period of three months is not proved. By fabricating the endorsement, the plaintiffs have filed the suit nearly about 6 years from the date of original agreement, but the learned First Appellate Judge failed to discuss the legal aspects and erroneously granted the relief in favour of the plaintiffs. As such, the same is liable to be set aside.

25. The findings of the learned First Appellate Judge that Ex.A3 is the signature of the defendant Rajamaml is erroneous one and the same is liable to



be set aside. Furthermore, the first Appellate Court failed to see that the endorsement was made in the agreement by fabricating the sentences by the plaintiffs and the same was also not been property appreciated. Finally, this Court is of the view that Ex.A3 endorsement is fabricated one eventually the plaintiff not approached the court with clean hands. Therefore, the relief granted in favour of the plaintiffs by the First Appellate Judge is perverse and the same is liable to be set aside. Thus substantial questions of law are answered accordingly. Thereby, the suit is dismissed as no merits as the plaintiffs have not proved their claim before the Court thus they are not entitled to any relief.

26. In the result, the second appeal is allowed. The judgment of the learned First Appellate Judge is set aside and the judgment of the trial court is confirmed. Consequently suit is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.10.2024

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Index: Yes/No

Internet: Yes/No

Speaking order: Non-speaking order

Note: Issue order copy on or before 06.11.2024.



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T.V.THAMILSELVI,J.

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