



S.A.No.745 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on	21.12.2023
Judgement Pronounced on	14.03.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.745 of 2012

Natarajan

...Appellant

Versus

Lalitha

... Respondent

Prayer: The Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgement and decree dated 09.03.2011 made in A.S.No. 12 of 2010 on the file of the District Court, Nagapattinam, confirming the judgment and decree dated 12.03.2010 made in O.S.No. 1 of 2009 on the file of the Subordinate Judge, Nagapattinam.

For Appellant : Mr.A.Arunbabu
for Mr.B.Jawahar
For Respondent : No appearance



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JUDGMENT

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This second appeal is preferred by the plaintiff challenging the judgement and decree dated 09.03.2011 in A.S.No.12 of 2010 on the file of District Court. Nagapattinam, confirming judgement and decree dated 12.03.2010 passed in O.S.No.1 of 2009 on the file of Subordinate Judge. Nagapattinam.

2. Parties here would be referred by their original status in the suit, such as, appellant as plaintiff and the respondent as defendant.

3.It is the case of the plaintiff that the defendant executed a sale agreement dated 06.09.2008 for the sale of suit property for a total sale consideration of Rs.2,50,000/- in favour of the plaintiff. On the date of agreement the defendant has received Rs.2,35,000/- as advance towards sale consideration. It is also agreed between the parties that the sale shall be completed within 3 months. Within such time, the defendant shall keep the vacant position of the suit property. It is also agreed between the parties, in the event of delay by either party, Rs.5,000/- shall be forfeited by the party who causing the delay. The plaintiff was always ready and willing to pay the



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remaining sale consideration of Rs.15,000/-. However, the defendant has not taken any steps to handover the original document and also not kept the suit property vacant for completing the sale. When the matter stood thus, on 12.11.2008 the plaintiff met the defendant personally and requested for execution of the sale deed. However, the defendant refused to execute the sale deed. The defendant demanded Rs.2,00,000/- more to complete the sale. Therefore, the plaintiff issued a legal notice on 15.11.2008. The defendant purposely evaded to receive the notice and thereafter again on 02.12.2008 the plaintiff sent another notice to the defendant. The above notice was also refused by the defendant. Hence the plaintiff was constrained to file the above suit for specific performance and also for alternative relief of refund of advance amount with subsequent interest.

4.On the other hand, the defendant resisted the suit on the ground that the defendant never executed an agreement for sale and received a sum of Rs.2,35,000/- from the plaintiff at any point of time Further, sending of the legal notice and refusal of the same by the defendant is also denied. It is the



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contention of the defendant that the plaintiff while working in Nagapattinam Taluk Office, the defendant's first daughter Sivagamasundari was also working temporarily in the above office. After some time, the plaintiff was transferred to Kilvelur Taluk Office as Tahsildar, Kilvelur. The plaintiff who was staying at Kilvelur used to take food from the defendant's Mess. In the initial stage, the plaintiff was helping the defendant's family like a brother. Due to such relationship the plaintiff used to avoid some alliance proposals offered to the defendant's elder daughter. The defendant thereafter realizing the conduct of the plaintiff, started searching for suitable alliance for her daughter. Knowing the above fact, the plaintiff requested the defendant to give her daughter in marriage to the plaintiff. However, the defendant refused the same. From then onwards the plaintiff became inimical towards the defendant's family. The defendant has handed over the title document to the plaintiff for transfer of patta. In view of the misunderstanding, the plaintiff fabricated the suit agreement with the help of the document handed over to him by the defendant. Further, he has also created documents as if he has sent the legal notices and was refused by the defendant. The signature



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found in the suit agreement do not belong to the defendant. The defendant never agreed to sell the suit property for a sum of Rs.2,50,000/- nor received the amount of Rs.2,35,000/- as advance on 06.09.2008. Hence, prayed for dismissal of the suit.

5. On the basis of above aforesaid pleadings, the issues were framed by the trial Court are as follows:

- 1. Whether the defendant has not executed the suit agreement and the same was created by plaintiff?*
- 2. Whether the plaintiff was always willing and ready to perform his part of contract?*
- 3. Whether the plaintiff is entitled for the decree for specific performance as prayed for or in the alternative decree for Rs.2,40,875/- as against the defendant with cost?*

6. The trial Court found that the defendant has not executed Ex.A1 sale agreement by stating that the same is created by the plaintiff and accordingly dismissed the suit with costs.



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7. Aggrieved by the decision rendered by the trial Court, the plaintiff preferred the appeal in A.S.No.12 of 2009, before the District Court, Nagapattinam.

8. The appellate Court has framed points for consideration which are as follows:

1. Whether the defendant has not executed the suit agreement and the same was created by plaintiff?

2. Whether the plaintiff was always willing and ready to perform his part of contract?

3. Whether the plaintiff is entitled for the decree for specific performance as prayed for or in the alternative decree for Rs.2,40,875/- as against the defendant with cost?

9. The appellate Court also dismissed the appeal filed by the plaintiff by its judgement and decree dated 09.03.2011.

10. Aggrieved by this, the present second appeal is directed against



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the judgement and decree passed by the first Appellate Court in A.S.No.12 of 2010 dated 09.01.2011 on the file of District Judge, Nagapattinam.

11. In the present suit, at the time of admission, this Court has formulated the following substantial question of law:

"Whether the Court below erred in applying the theory of Dominant-Weaker party relationship between the parties when there is no plea for Undue Influence?"

12. The learned counsel appearing for the appellant/plaintiff would submit that the Courts below erred in applying the theory of dominant weaker party relationship between the parties when there is no plea for Undue Influence. The Courts below failed to take note of the fact, the cogent evidence of P.W.I and P.W.2 with regard to execution of agreement and the material admissions of D.W.1 at the time of cross examination. Though it was the main defence of the defendant that, the plaintiff requested her to give her daughter in marriage and when the same was refused by the defendant, the plaintiff fabricated the suit agreement, the defendant (D.W.1)



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herself admitted in her cross examination that the plaintiff never requested to give her daughter in marriage to the plaintiff. His further submission is that, the evidence of D.W.1 is not trust worthy as she denied her signature in her vakalat and in the suit summons. He would further submit that the postal endorsement "refused" creates a legal presumption in favour of plaintiff's case and the defendant has not rebutted the said presumption by letting in evidence to show that such endorsement is wrong. The Court below erred in not considering Exs.A.1 to A.6 in proper perspective. Though, the evidence of PW1 and PW2 were on the same line with regard to consideration paid and document signed in the house of P.W.1, the Courts below erroneously held that there are contradictions in the evidence of P.W.1 and P.W.2. The first appellate Court misread the evidence of PW2 and failed to consider the same.

13.Admittedly, Ex.A.1 is an unregistered document and alleged to be signed only by the defendant. For this, the learned counsel for the appellant/plaintiff would submit that even if the agreement is not registered, the document can be received as evidence for considering the relief of



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specific performance. His further submissions is that though the document was signed only by the defendant/vendor, in the event of breach by vendor, it can be specifically enforced by purchaser. To support his contention he has relied upon the judgements reported in

1. 2022 SCC Online Mad 7211

2. (2009) 2 SCC 582

14. Therefore, the fact that Ex.A.1 sale agreement is not registered and not signed by the plaintiff is not fatal and it can be acted upon as an evidence for deciding the relief of specific performance.

15. The learned counsel appearing for the appellant/plaintiff would further submit that the Courts below, failed to consider the burden of proof and its discharge by the plaintiff in accordance with the Evidence Act. The trial Court failed to consider the categorical admission made by D.W.1 that the plaintiff never approached the defendant to marry her daughter and that her daughter has never worked in the Taluk Office along with plaintiff. The Courts below failed to take note of the above facts. The defendant apart from



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denying the execution of said agreement and the service of pre suit notices, she had also denied her signature in the vakalathnama and in the suit summon. The Courts below ought to have compared the signatures under Section 73 of Indian Evidence Act, while the defendant denied the signature in the admitted documents, the Courts below ought to have held that the contention of the defendant is falsehood.

To support his contention, he has relied upon the judgement in **(1999) 6 SCC 104.**

16. The learned counsel for the appellant/plaintiff would further contend that, the defendant having denied the execution of suit agreement, the burden is upon the plaintiff to prove that the suit agreement is executed by the defendant. In the present matter, the plaintiff discharged his burden by examining himself and one of the attesting witness and it has to be presumed that the suit agreement is valid. The onus shifts on the defendant to rebut the presumption. However, the defendant failed to lead evidence to rebut the presumption. Onus while shifted and having not been able to discharge said burden, it will not now be open for the defendant to fall back.



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To support his contention, he has relied upon the following

Judgements:

1.2016 SCC Online Bom 16057

2.(2021) 15 SCC 300

17. Heard learned counsel for the Appellant and records perused.

18.In this case, the plaintiff has examined himself and one attesting witness to prove the execution of the suit agreement. While such evidence has emerged on record, burden of proof would have no significance and the Court will have to decide matter in accordance with evidence as on record ***[Ref: Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd., reported in (2006) 6 SCC 94]***.

19. Section 110 of Indian Evidence Act, 1872, deals with burden of proof. As a matter of fact, Section 110 merely enunciates the burden of proof as to execution. But any rule of burden of proof is irrelevant when the plaintiff has led evidence and that evidence has to be considered unless it is rebutted by the defendant. No such rebuttable evidence was let in by the



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defendant. The evidences of P.W.1 and P.W.2 could not be dispelled in the cross examination. P.W.2, the attesting witness, examined on behalf of the plaintiff, to quite large extent have given evidence about the sale agreement, its execution and contents.

20. The Courts below have not given sufficient reason to discard their evidence. Apart from that, the categorical admissions of D.W.1 that the plaintiff never asked her daughter for marriage and her daughter never worked along with the plaintiff, which allegation were set up as defence, falsifies the contention of the defendants. The defendant miserably failed to prove her side of the case. Taking into account the evidence on record, there can hardly be any suspicion or doubt about genuineness of the suit agreement. The agreement appears to have been proved as per requirements of the provisions of the Indian Evidence Act. When the plaintiff creates a high degree of probability of execution of sale agreement, it would be enough to shift the onus on the defendant. If the defendant fails to shift back the onus, the plaintiff's burden of proof would stand discharged. ***[Ref: (2003)]***



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8 SCC 754].

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21. Moreover, the Courts below erred in applying the theory of dominant and weaker party relationship between the parties, when there is no pleading as to 'Undue Influence' in the written statement. Moreover, when a person, who alleges 'Undue Influence' must prove allegations positively. The general allegations that the sale agreement is a forged document are insufficient. Moreover, the contradictory statements made in pleadings and evidence, would destroy the allegation made by the defendant that the suit agreement is a fabricated document. The defendant has not brought any consistent case. The contradictions in the pleadings and in the evidence of D.W.1 would clearly show that the theory of fabrication falls to the ground.

22. Therefore, I have no hesitation to hold that the suit sale agreement marked as Ex.A.1 is a genuine document which is executed by the defendant. Therefore, the findings rendered by the Courts below are liable to be set aside. Accordingly, this substantial question of law is answered.



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Additional Substantial Question of Law:

Whether the plaintiff is entitled for discretionary relief of specific performance?

23. Whether the plaintiff is entitled for the discretionary relief has to be considered. Under Section 20 of the Specific Relief Act, the specific performance is a discretionary remedy Court is not bound to decree specific performance because it is lawful to do so. It can be seen from Section that the discretion of the Court is not arbitrary but sound and reasonable, guided by the judicial principles. The relief of specific performance is an extraordinary equitable remedy that compels a party to execute the terms and conditions of the contract according to the precise terms agreed upon between them or to execute it substantially, so that in the given set of circumstance, complete justice will be done between the parties. So far as this case is concerned, considering the conduct of the plaintiff and the defendants, interest of parties under the sale agreement, it would not be in the interest of justice to grant the relief of specific performance. The suit agreement is dated 06.09.2008



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stipulating three months time for executing the sale deed. The plaintiff also issued a legal notice on 15.11.2008 calling upon the defendant to perform her part of contract. However, the above suit is filed only in the year 2009. Apart from that, the galloping raise in price with leaps and bounds should also be taken into consideration. Under such circumstances granting of relief of specific performance would put the defendants into undue hardship and put the plaintiff under an unfair advantage and therefore, the grant of specific performance would not be in the interest of justice. Moreover, the plaintiff himself sought for the alternative relief of refund of advance money with interest.

24. In view of the foregoing, this Court is of the considered opinion that the appellant/plaintiff was not entitled to the relief of specific performance, however entitled for refund of advance money.

25. The Second Appeal is partly allowed. The impugned judgment and



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decree dated 09.03.2011 in A.S.No.12 of 2010 on the file of the learned District Judge, Nagapattinam, confirming the judgment and decree dated 12.03.2010 made in O.S.No.1 of 2009 on the file of the learned Sub Judge. Nagapattinam, are accordingly set aside. The respondent/defendant is directed to pay the earnest money of Rs.2,50,000/- to the appellant/plaintiff within a period of three months from the date of receipt of copy of this order with interest at the rate of 6% per annum from the date of this judgment and decree till the date of refund. It is open to the appellant/plaintiff to withdraw the deposit if any, of the balance sale consideration in Court. No costs.

.03.2024

vsn

To

1. The District Judge, Nagapattinam
2. The Sub Judge, Nagapattinam,

K.GOVINDARAJAN THILAKAVADI,J.

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vsn

PRE- DELIVERY JUDGEMENT MADE IN

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