



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN  
AND  
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

**A.S.No.107 of 2020**  
**and**  
**C.M.P.No. 1091 of 2020**

1.P.Ravichandran

2.Venkatachalam

3.S.S.Rajmanohar

...Appellants

Vs.

S.Radhakrishnan

...Respondent

Prayer: First Appeal filed under Section 96, Order 41, Rule 1 of the Code of Civil Procedure, against the judgment and decree dated 30.03.2016 made in O.S.No.32 of 2011 on the file of the First Additional District Court, Coimbatore.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.R.Shase for

Mr.M.Guruprasad



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## **J U D G M E N T**

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Unsuccessful plaintiffs in a suit for specific performance in O.S.No.32 of 2010 on the file of the I-Additional District Judge, Coimbatore are on appeal.

2. The suit was laid for specific performance of an agreement dated 27.09.2010. According to the plaintiffs, the defendant agreed to sell the suit property for a total consideration of Rs.35,00,000/- and received an advance of Rs.32,50,000/- on the date of the agreement. A period of four months i.e., upto to the end of 1<sup>st</sup> week of Thai of Vikruthi Tamil year equivalent to 20.01.2011 was fixed for performance. Since the defendant did not come forward to execute the sale deed, the plaintiff issued a notice on 12.01.2011 demanding performance. Though the same was received by the defendant on 14.01.2011, he neither replied nor had he come forward to execute the sale deed. Hence, the plaintiffs filed a suit on 27.01.2011. According to the plaintiffs, they have been always ready and willing to perform their part of the contract to pay the balance of sale consideration within the time prescribed under the agreement and they have been ready and willing to take the sale deed.



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3. The suit was resisted by the defendant contending that the agreement is not true. According to the defendant, since his co-brother's brother, Suresh who was doing business in Erode was in need of funds and the 1<sup>st</sup> plaintiff who is a Financier agreed to advance money to him. He would however, insist on security for repayment of the monies. Therefore, in order to help Mr.Suresh, the defendant had executed few documents in favour of the 1<sup>st</sup> plaintiff and his allies. The plaintiffs took the defendant's signature in few stamp papers and green sheets and printed promissory notes as security, in addition to the security obtained from the borrower, Mr.Suresh. It was also contended that the plaintiffs are money lenders and they had craftily converted the documents as if the defendant had entered into a sale agreement agreeing to convey his valuable property. It is also claimed that the defendant who is a successful businessman has no occasion to sell the property or borrow money. The averments regarding readiness and willingness was denied as false apart from being termed as redundant.

4. On the above pleadings, the learned Trial Judge framed the



following issues:-

*"1) Whether the suit agreement for sale dated 27.09.2010*

*is true, genuine and valid ?*

*2) Whether the plaintiffs are entitled for the relief of specific performance ?*

*3) To what other relief ?"*

5. At trial, 1st plaintiff was examined as P.W.1 and one K.P.Velusamy was examined as P.W.2 on the side of the plaintiffs. Exs.A1 to A8 were marked. The defendant was examined as D.W.1 and two other witnesses were examined as D.W.2 & D.W.3. Exs.B1 to B9 were marked on the side of the defendants. On a consideration of the evidence on record, the learned Trial Judge came to the conclusion that the agreement is not true and genuine. The learned Trial Judge accepted the defence contention that the document was executed as security for the borrowings made by Suresh. The learned Judge also found that the payment of Rs.32,50,000/- as advance has not been proved. On the said findings, the learned District Judge dismissed the suit sans costs. Aggrieved, the plaintiffs are on appeal.

6. We have heard Mr.N.Manokaran, learned counsel for the appellants and Ms.R.Shase, learned counsel for the respondent.



7. Mr.N.Manokaran, learned counsel for the appellants would vehemently contend that the learned Trial Judge was not right in disbelieving Ex.A2, agreement. He would also point out that the original sale deed in favour of the defendant has been handed over to the plaintiff and the same has been produced by him as Ex.A1. The learned counsel would also further submit that in view of Sections 92 and 95 of the Evidence Act, the oral evidence of the defendant to the effect that the document was intended to be security for a loan transaction cannot be accepted and once the defendant takes the plea that it is a document which was executed as security for loan transaction, it is for him to prove the said contention.

8. The learned counsel would also submit that the learned Trial Judge had not even tested the readiness and willingness of the plaintiffs which is an essential question to be determined in a suit for specific performance. On the conclusion of the learned Trial Judge that the agreement is not true and genuine, the learned counsel for the appellants would submit that the Trial Court was not right in basing its conclusion regarding the validity of



the agreement on Exs.B5 & B6, which were not projected in the pleadings.

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9. Contending contra, Ms.R.Shase, learned counsel for the respondent would submit that the defendant had not admitted the execution of the instrument. She would also point out that the evidence of P.W.1 in cross-examination which would go to show that the plaintiffs are money lenders engaged in obtaining agreements as security for loan transactions supported by powers of attorney executed by the borrowers and they transferred the property to third parties when there is a failure on the part of the borrowers to repay the money. The learned counsel would also point out total absence of evidence as to the payment of advance of such huge sum of Rs.32,50,000/- on the date of the agreement. We have considered the rival submissions.

10. From the arguments of the learned counsel, the following points arise for determination:-

*i) Whether the defendant has probalised the case projected by him that the agreement was taken as security for borrowing by a third party.*



ii) *Whether the Trial Court was right in concluding that the agreement was not true and valid.*

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11. The sum and substance of the contention of Mr.N.Manokaran, learned counsel for the appellants is that once the execution of the document is admitted, evidence contrary to the written instrument cannot be looked into by the Court in view of the prohibition contained in Section 92 of the Evidence Act. He would also seek to invoke the aid of Section 95 to contend that the defendant who had taken a plea that the document was executed as security for a loan transaction cannot be allowed to render the document meaningless.

12. Reliance is also placed on the judgment of the Hon'ble Supreme Court in ***Shenbagam and Others Vs. KK Rathinavel*** reported in ***2022 SCC Online SC 71*** wherein, the Hon'ble Supreme Court has pointed out that there must be an issue regarding readiness and willingness in a suit for specific performance and the said issue must be answered by the Court on a consideration of the evidence on record. The defence that is projected in the suit is that the defendant signed in blank papers in order to secure the



borrowing made by a third person by name, Mr.Suresh.

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13. It is the specific case of the defendant that the agreement is abnormal or prepared with the aid of those signatures obtained at the time of borrowing by Suresh. A reading of the written statement would show that the execution of the agreement as it stands and the receipt of the advance is denied. What is admitted is only the signatures appeared in Ex.A1. The 1<sup>st</sup> plaintiff as P.W.1 would admit that he has been lending monies on the strength of sale agreements and on one occasion when the defendant borrowed from the 1<sup>st</sup> plaintiff, he had taken an agreement in respect of a property situate at Perundurai and a power of attorney. He has also admitted that he had sold the property to his grand father under Ex.B7 when the defendant was unable to repay the loans.

14. The said facts are specifically admitted by P.W.1 in his evidence in cross-examination where he admits that Exs.B5, B6 & B7 are agreement of sale, power attorney and sale deed. Exs.B5 & B6 namely, power of attorney and agreement of sale were executed as security for a loan transaction and on the defendant's failure to pay up the loan, Ex.B7 sale



deed was executed. It is therefore, clear that the plaintiffs are Financiers engaged in money lending on the strength of security of sale agreements.

Apart from the above, the plaintiffs claim to have paid Rs.32,50,000/- on the date of the agreement, in his cross-examination, he has admitted that he had not produced any documentary evidence to show that the plaintiffs were in possession with huge sum of Rs.32,50,000/- on 27.09.2010 namely, the date of the agreement.

15. Yet another factor which has been taken note of the learned District Judge is the purchase of stamp paper for Ex.A2. Though it is stated that the agreement was executed at Karungalpalayam in Erode town, the stamp paper has been purchased on the same date from the place called Sivagiri which is about 35 kilometres away from Erode. There is no explanation for the purchase of stamp papers on the said date at Sivagiri. Further, one Vijayakumar who is shown to be the scribe of Ex.A2, sale agreement has been examined as D.W.2. He has, in his evidence, deposed that he does not know anything about the agreement. He has also denied having met the plaintiffs 2 and 3. He has also deposed that Ex.A2, document was not written in his presence and none of the signatories signed



in his presence. He has also deposed that no money was paid on that date.

He has also deposed that the counsel for the plaintiff, Gurusamy had accompanied the plaintiff to his Office on certain occasions. The evidence of P.W.1 is contrary to evidence of D.W.3 where P.W.1 has deposed that he met the counsel only at the time of filing of the suit. Though P.W.2 / Velusamy had deposed as an attester of the instrument, his evidence shows that the 1<sup>st</sup> plaintiff is his longstanding friend and he happens to be well acquainted with the Court proceedings. Upon considering the conflicting evidence of P.W.2 & D.W.3 that is available, we find that the evidence of D.W.3 is more natural and acceptable. We are therefore, unable to fault the Trial Court for having come to the conclusion that the agreement is not true and genuine.

16. No doubt, Mr.N.Manokaran would submit that Section 92 of the Evidence Act bars oral evidence contrary to the recitals of the document. The prohibition under Section 92 will not apply when an Executant seeks to establish certain invalidating circumstance. Even the 1<sup>st</sup> proviso to section 92 excludes an invalidating factors like fraud, intimidation, illegality, want of due execution etc., from the sweep of the principal Section which



prohibits evidence contradicting, varying, adding to, or subtracting from the terms of a written instrument.

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17. This Court has repeatedly held that in a suit for specific performance, a defence of the document that was executed for a loan transaction is available to the defendant. In the case on hand, we find that the defendant admits only the signatures in Ex.A2. He has specifically claimed that he signed in blank papers only to secure the borrowing of the third party namely, Suresh. We have no doubt in our mind, such a plea would squarely fall within the ambit of 1<sup>st</sup> proviso to Section 92.

18. As regards the claim that Section 95 would bar such evidence, we are unable to agree. Section 95 deals with the situation where the clear recitals in a document are rendered meaningless then it would be open to the parties to substantiate by evidence and show this was the real intention of the parties. Therefore, Section 95 would not, in the circumstances, apply. The Trial Judge has, upon examination of the evidence reached a conclusion that Ex.A2 has come into being in the circumstances set out in defence. The absence of proof of payment of advance also militates against the plaintiffs.



There are in all three plaintiffs, their claim that they have paid a sum of Rs.32,50,000/- as advance. Not even a scrap of paper is produced to show

that they were possessed of that money on the date of the agreement.

Absence of consideration would also be an invalidating factor which would fall within the 1<sup>st</sup> proviso to Section 92. In fact, the 1<sup>st</sup> proviso to Section 92 includes want of consideration as a circumstance which would invalidate the document. Therefore, Section 92 cannot be applied to non-suit the defendant. We are therefore, unable to fault the learned District Judge for having come to the conclusion that the agreement is not true and genuine.

19. The evidence in totality, particularly, the evidence of P.W.1 in cross-examination and that of D.W.3 would probalilise the case of the defendant that the agreement was not intended to be a sale agreement and it was executed in circumstances alleged by the defendant. In the absence of any proof of payment of advance, we are of the considered opinion that the Trial Court was right in dismissing the suit in its entirety. Of course, Trial Court has not framed an issue regarding readiness and willingness. It has framed an issue as to whether the plaintiff would be entitled to specific performance and has answered it in a negative way because it has answered,



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the first issue regarding the truth and validity of the agreement against the plaintiffs. Once it is held that the agreement itself is not true and valid, there is no question of examining the readiness and willingness of the plaintiffs. Hence, both the points framed for determination are answered against the appellants and we see no reason to interfere with the judgment and decree of the Trial Court. This Appeal Suit fails and it is accordingly, **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)  
12.06.2024

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Internet: Yes

Index: No

Speaking

Neutral Citation : No

**R.SUBRAMANIAN, J.**  
**and**  
**R.SAKTHIVEL, J.**

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To:-

WEB COM The First Additional District Court,  
Coimbatore.

**A.S.No.107 of 2020**  
**and**  
**C.M.P.No. 1091 of 2020**

**12.06.2024**