



O.S.A.No.89 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM :

THE HONOURABLE MR. R. MAHADEVAN, ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

O.S.A.No.89 of 2024

AND

C.M.P.No.10859 of 2024

D.Rajesh

... Appellant

Vs.

C.Jones Chelliah (Deceased),
S/o.Late J.D.Chelliah,
Plot No.20, Door No.47,
1st Main Road,
Ram Nagar, Peravallur,
Chennai - 600 082.

Sheila Jones (Deceased)
W/o.Mr.C.Jones Chellaiah,
Plot No.20, Door No.47,
1st Main Road,
Ram Nagar, Peravallur,
Chennai - 600 082.

1.Timothy Jones,
S/o.Late C.Jones Chelliah,
Represented by his guardians,
(1) Pamela Thomas
and (2) C.R.Thomas,
No.101-B, 3rd Street,
Gill Nagar, Cholaimedu,
Chennai - 600 094.

... Respondents



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Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent to set aside the order of the learned Judge dated 08.04.2024 passed in A.No.1231 of 2024 in C.S.No.639 of 2012.

For Appellant : Mr.K.Shanmugakhani

For Respondents : Mrs.Lita Srinivasan

JUDGMENT

[Judgment of the Court was delivered by Hon'ble Acting Chief Justice)

This original side appeal arises from an order dated 08.04.2024 passed by the learned Judge in Application No.1231 of 2024 in C.S.No.639 of 2012.

2. The short facts of the case are as follows:-

2.1. The appellant/plaintiff filed a suit for specific performance in C.S.No.639 of 2012 against the original defendants 1 and 2 based on a sale agreement dated 16.07.2012 executed in respect of a property for a consideration of Rs.2,15,00,000/-. The original defendants 1 and 2, C.Jones Chelliah and Sheila Jones, did not file a written statement during their lifetime. They passed away on 13.03.2018 leaving behind the third defendant, Timothy Jones, who is a person with autism. Subsequently, two persons viz., Pamela Thomas and C.R.Thomas were appointed as guardians for the third defendant on 18.06.2014. The said



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Pamela Thomas is none else than the sister of the deceased second defendant and C.R.Thomas is her husband. On 08.06.2022, the third defendant, through his appointed guardians, filed a written statement denying the execution of the sale agreement in favour of the plaintiff.

2.2. The appellant was examined as PW1 in the suit, and one of the guardians of the third defendant, Pamela Thomas, was examined as DW1. DW1 in her deposition, denied the existence of the suit sale agreement dated 16.07.2012. In the said circumstances, the appellant filed Application No.1231 of 2024 before the learned Judge, seeking appointment of an Advocate Commissioner for the purpose of sending the disputed signatures in the sale agreement (Ex.P1) along with admitted signatures of the defendants 1 and 2 to a handwriting expert for comparison.

2.3. The learned Judge, by the order dated 08.04.2024 impugned herein, dismissed the application, after having held that comparison of disputed signatures with those on vakalath is impermissible and the signatures in the legal proceedings after the dispute arose, cannot be a safe basis for comparison. Furthermore, the learned Judge opined that the application was filed belatedly and the suit is at the final stage of arguments. For better appreciation, the relevant portion of the said order is extracted hereunder:-



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"7. At the outset, an Application seeking to compare the disputed signatures with signatures found in the vakalatnama, is impermissible. The law is well settled on this issue and signatures in legal proceedings after the disputed arose cannot be basis for safe comparison with the disputed signatures. In the instant case, viz., the Agreement of Sale. Moreover, the suit is in its fag end and the stage of arguments, the present Application has been taken out and even otherwise as already stated herein above, the comparison as sought for by the applicant/plaintiff cannot be permitted. Hence, I do not find any merit in the Application and consequently, the Application in A.No.1231 of 2024 is dismissed."

2.4. Aggrieved by the order so passed by the learned Judge, the plaintiff has filed the present original side appeal.

3. The learned counsel for the appellant would contend that the dismissal of the application effectively denies the right of the appellant to prove his case. It is further submitted that in a suit for specific performance, the burden of proving the agreement lies on the plaintiff, and the comparison of signatures by an expert is a crucial evidence to discharge the burden lying on the plaintiff. It is also submitted that the comparison of signatures can be permitted even at the appellate stage, and the fact that one of the guardians of the third defendant is an attesting witness to the agreement, makes the comparison even more relevant.

3.1. The learned counsel would also draw our attention to the fact that



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the original defendants never denied the execution of the agreement of sale during their lifetime, and the denial comes only from the third defendant's guardians after a considerable lapse of time. It is further argued that this unique circumstance warrants a thorough investigation into the authenticity of the signatures found in the agreement.

4. On the other hand, the learned counsel appearing for the respondent opposes the appeal, contending that the application is belated and intended to harass the third defendant, who is a person with autism. She would further argue that at the fag end of the suit, allowing such an application would unnecessarily prolong the proceedings. She would ultimately submit that the learned Judge, on proper appreciation of the facts and circumstances of the case, rightly dismissed the application. Therefore, the learned counsel prays for the dismissal of the appeal.

5. Heard the learned counsel on either side and also perused the materials available on record.

6. It is not in dispute that the appellant filed the suit for specific performance of an alleged Agreement of Sale dated 16.07.2012 executed by the original defendants 1 and 2 in his favour in respect of a property for a



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consideration of Rs.2,15,00,000/-. It is also not in dispute that the original defendants 1 and 2 (C.Jones Chelliah and Sheila Jones) are now no more and the third defendant, son of the original defendants, is represented by his guardians Pamela Thomas and C.R.Thomas due to his disability.

7. Admittedly, the suit is at the stage of final arguments, after having adduced the evidence on both parties. The third defendant, through his guardians, filed a written statement denying the execution of the agreement of sale by his parents. One of the guardians of the third defendant, C.R.Thomas, is an attesting witness to the alleged agreement of sale. When that be so, the appellant filed Application No.1231 of 2024 seeking appointment of an Advocate Commissioner to compare the signatures on the alleged agreement of sale with the signatures on the vakalat.

8. The suit for specific performance is of the year 2012 and the application seeking appointment of Advocate Commissioner is of the year 2024. This Court is of the view that at this belated stage, entertaining such an application for verification of signatures would only protract the proceedings unnecessarily. The Courts must be cautious about allowing such applications at the fag end of trial, as it could be a dilatory tactic. The appellant had ample opportunity during trial to adduce evidence to prove the execution of the sale agreement. Having failed



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to do so, he cannot be permitted to fill up the lacunae in evidence at this distant point of time. It is trite law that the parties must adduce all available evidence during trial and they cannot be allowed to improve their case belatedly.

9. It is also to be pointed out that in the case on hand, one of the guardians of the third defendant is stated to be an attesting witness to the agreement of sale. Yet, the appellant did not take steps to examine this crucial witness during trial. Having failed to do so, the appellant cannot now seek indirect means to prove his case. Hence, the application so filed by the appellant appears to be an afterthought and the same cannot be entertained, as allowing such claim would cause prejudice to the respondent and prolong the proceedings.

10. Thus, in the opinion of this court, the learned Judge has taken note of all the relevant factors and has rightly rejected the application filed by the appellant by the order impugned herein, which does not warrant any interference by this Court. However, it is open to the appellant to raise all the contentions raised herein in the pending suit. The learned Judge is requested to proceed with the suit and dispose of the same, on merits and in accordance with law, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this judgment.



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11. With the above observation, this Original Side Appeal stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., A.C.J.] [M.S.Q, J.]
12.07.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

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Madras High Court, Chennai.



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