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S.A.No.1210 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.1210 of 2014

and

MP.No.1 of 2014

1.G.Thandavarayan (deceased)

2.Pattammal

3.Bhuvaneswari

4.Maheswari

...

Appellants/defendants

[appellants 2 to 4 are brought on record as
LRs of the deceased sole appellant vide
order dated 26.07.2017 made in
CMA.No.8831 to 8833 of 2016]

Vs.

A.D.Gunasekaran

...

Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C against to set aside the Judgement and Decree dated 31.01.2012 passed in A.S.No.57 of 2010 on the file of the Addl. District Court (Fast Track Court No.1) Chengalpet confirming the judgement and Decree dated 06.07.2009 passed in O.S.No.91 of 2006 on the file of the Sub Court, Madurantagam.



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For Appellants : Mr.M.Marudhachalam for
Mr.K.Govi Ganesh.
For Respondent : Ms.R.V.Gayathri assisted by
Mr.P.B.Ramanujam

JUDGEMENT

The deceased 1st appellant was the defendant before the Trial Court against whom the plaintiff has filed the suit for specific performance. The trial Court has decreed the suit and the appeal filed by the deceased 1st appellant was also dismissed by concurring with the judgment of the trial Court. The deceased 1st appellant has filed this second appeal challenging the judgement of the first Appellate Court. During the pendency of the second appeal, the 1st appellant died and hence his legal heirs have been brought on record as appellants 2 to 4.

2. The short facts pleaded in the plaint are as follows:

The defendant is the owner of the suit schedule property. The deceased 1st defendant has entered into a sale agreement to sell the suit property to the plaintiffs on 14.08.2006 for a sale consideration of Rs.3,33,000/-. On the same day itself, he received an advance amount at Rs.1,00,000/- and the time for



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completing the sale transaction was agreed at 90 days. Despite the plaintiff was ready and willing to pay the balance sale consideration, the 1st defendant did not come forward to execute the sale deed by receiving the same. On 11.09.2006 the defendant issued a notice with a false averment to the plaintiff that he was forced to enter into a sale agreement and all other facts were not admitted by the plaintiff. When the plaintiffs tendered the remaining sale consideration, the defendant refused to receive the same. Hence, he has filed the suit for specific performance to direct the defendant to execute and register the sale deed in favour of the plaintiffs in respect of the suit property, after receiving the balance sale consideration of Rs.2,33,000/-.

3. The brief facts of the written statement filed by the deceased sole defendant are as follows:

The pleading of the plaintiff that the sale agreement was entered into on 14.08.2006 for a sum of Rs.3,33,000/- after receiving the advance amount of Rs.1,00,000/- is not true. It is also false to state that 90 days have been agreed upon and that the plaintiff was ready and willing to pay the balance sale consideration. The defendant is a deaf person; by taking advantage of the same, the plaintiff has created a false sale agreement without the consent and knowledge of the deceased 1st defendant, his wife, and his daughter. The sale



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agreement Ex.A1 is a fabricated one. In fact, on 11.09.2006 the defendant informed the plaintiff by issuing advocate notice to get back the advance amount and give the market value of the suit property. But the plaintiff has cheated the defendant by fabricating a sale agreement for a low sale price, and he was trying to grab the suit property for a cheap price. Whenever the defendant was ready to return the advance amount, the plaintiff evaded to get back the same.

4. On the basis of the above pleading, the learned trial judge has framed the following issues:

1. வாதி. பிரதிவாதி மீது கோரும் ஏற்றவாறு ஆற்றுகைக்கு தீர்ப்பாணை பெற உரியவரா?
- 2, கிரைய ஒப்பந்தம் வாதியால் மோசடியாக புனையப்பட்ட ஆவணமா?
- 3,வாதி பெறத்தக்க பரிகாரம் என்ன?

5. During the course of the trial on the side of the plaintiff, two witnesses were examined as PW.1 and P.W.2 and three documents have been marked as Ex.A1 to A3. On the side of the defendant, one witness was examined as DW.1 and no document was marked.

6. After the conclusion of the trial, and on consideration of materials



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available on record, the trial Court has decreed the suit as prayed for. The first appeal preferred by the deceased 1st defendant also got dismissed, by confirming the judgement and decree of the trial Court.

7. The learned counsel for the appellant submitted that Ex.A1 sale agreement has got only one signature and has been signed by the defendant; usually in the agreement both the parties would sign and that itself would show that Ex.A1 sale agreement is a fabricated document. The contents of the sale agreement would show that there is no recital as to the origin of title for the suit property and hence it could not be a genuine one. Even the signatures of the witnesses are found to be having mere signatures, without any details as to their names and addresses. Though the suit has been filed for the relief of specific performance, an important issue as to readiness and willingness has not been framed. The Court below has omitted to appreciate these aspects in a proper perspective; the plaintiff has failed to prove readiness and willingness and without proving that he cannot get a decree for specific performance; unstamped and unregistered sale agreement is inadmissible evidence in view of Section 35 of the Stamp Act r/w Sec. 17 of the Registration Act.

7.1. In support of the above submission of the appellants, the following



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judgements were cited:

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(i) *In the judgement of **Durairaji and another Vs. Nadarajan** reported in **2021(3) CTC 520***

(ii) *In the judgement of **D.Sivagnanam Vs. Thirugnanaprakasham and others** reported in **(2010) 8 MLJ 66** and*

(ii) *In the judgement of **Lakshmipathy, A.C. Vs. A.M.Chakrapani Reddiar & Others** reported in **2001-1-L.W.257***

8. The learned counsel for the respondent submitted that when the defendant has admitted the execution of the sale agreement, there cannot be any question of fabrication and the admission of the defendant is the best evidence; as the sale agreement does not fall within Section 53A of the Transfer and Property Act; it is not the contention of the plaintiff that he was put in possession due to part performance of the contract and hence there is no necessity to register the same. As per Section 17(2)(5) of the Act, the agreement can only be considered as a right and not a title or possession. Hence, Ex.A1 is not hit by Section 35 of the Indian Stamp Act 1899.

8.1. In support of the above submission of the respondent, the following judgements were cited:

(i) *In the judgement of the Karnataka High Court in **Venkatappa***



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***Shetty Vs.Paras Jain* reported in 2015 SCC OnLine Kar 5714**

(ii) In the judgement of the Hon'ble Supreme Court of India in D.Sivagnanam Vs. Thirugnanaprakasham and others reported in 2023 SCC OnLine SC 1585 and

(iii) In the judgement of the Hon'ble Supreme Court of India in Motilal Jain Vs. Ramdasi Devi (Smt) and others reported in (2006) 6 Supreme Court Case 420

9. The following substantial questions of law have been framed to be appropriate for the sake of this Second Appeal:

"A. Whether Ex.A1, Agreement for sale is admissible in evidence as per Section 35 of the Indian Stamp Act,1899 when admitted it is not properly stamped or not drawn on stamp papers?

B. Will not the execution of Ex.A1 Agreement in a printed form establish the case of the defendant that the consideration was to be fixed in the later stage and the consideration as stated in the said Ex.A1 is a concluded one?

C. Whether the Court below have committed error in not framing the issue of "Readiness and Willingness" as per mandatory provision of Section 16(c) of Specific Performance Relief Act?"

10. Even though no specific issue has been framed about readiness and



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willingness, the Courts below have appreciated the evidence available on record as to the readiness and willingness, and hence the non framing of an issue to that effect will not affect the merits of the case. Though the sole appellant has denied the execution of the sale agreement, he has pleaded in his written statement that on 11.09.2006, he sent an advocate notice to the plaintiff to get back the advance amount and to raise the sale consideration to the present market value.

11. The fact that the defendant has received the advance amount would only show that he had executed the sale agreement, and thereafter he has received the advance amount. However, he changed his mind later and sent an advocate notice on 11.09.2006 by claiming a higher price than what was agreed earlier.

12. The learned counsel for the appellant has put more thrust on the printed form in which the Ex.A1 sale agreement is found. It is submitted that the sale agreement does not have the signatures of both parties and the details of the witnesses were not given though their signatures are affixed.

13. On perusal of Ex.A1 it appears that it does not contain the signatures of both parties. But the party in whose favour the sale agreement was executed



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did not deny the fact that he was a party to the sale agreement. In fact, only because he obtained the sale agreement from the defendant he has filed a suit for specific performance. The defendant who has agreed to sell the property has affixed his signature in Ex.A1 sale agreement. When the defendant himself admitted about the execution of Ex.A1 sale agreement and also about receiving sale consideration, he cannot go back and say that he did not execute the sale agreement.

14. In this regard the learned counsel for the respondent cited the decision reported in *Aloka Bose Vs. Parmatma Devi, reported in AIR 2009 SC 1527*, wherein it is held that an agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms and it can be oral, it can be by exchanging of communications which may or may not have been signed or it may be a single document signed by both parties. For the sake of convenience the relevant paragraph of the judgement is extracted hereunder:

"7) We find that neither of the two decisions have addressed the real issue and cannot be said to be laying down the correct law. The observation in Md. Mohar Ali (supra) stating that an agreement of sale is an unilateral contract is not correct. An unilateral contract refers to a gratuitous promise where only party makes a promise without a return promise. Unilateral contract is explained thus by John D. Calamari & Joseph M. Perillo in The Law of Contracts (4th



Edition Para 2-10(a) at pages 64-65):

"If A says to B, 'If you walk across the Brooklyn Bridge I will pay you \$ 100,' A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation."

All agreements of sale are bilateral contracts as promises are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase. On the other hand, the observation in [S.M. Gopal Chetty \(supra\)](#) that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. [Section 10](#) of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the [Contract Act](#). The proviso to [section 10](#) of the Act makes it clear that the section will not



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apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale."

The above position about the sale agreements has been adopted by the Karnataka High Court also in **Venkatappa Shetty Vs.Paras Jain** reported in **2015 SCC OnLine Kar 5714** which has been cited by the respondent herein.

15. The above inconsistent pleas of the plaintiffs themselves would show that he had received the sale consideration as alleged. A hefty sum of Rs.1,00,000/- would not have passed in favour of the defendant unless the sale



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agreement has been executed. When the witness to the sale agreement has been examined as PW.2, the defendant did not deny the fact that he was the witness to the document. PW.2. has asserted that the sale agreement was entered in his presence and that the defendant had affixed his signature by agreeing the sale consideration at Rs. 3,33,000/- by receiving Rs.1,00,000/- as an advance amount. The time for the completion of the sale transaction was agreed at 90 days and the balance sale consideration that has to be paid was Rs.2,33,000/- .Even before the expiry of 90 days the defendant has sent a notice on 11.09.2006 to the plaintiff, calling upon the remaining balance sale consideration to be paid and get the sale deed registered. That would show that the plaintiff was always ready and willing to perform his part of the contract. So, the **first and second substantial questions of law are answered against the appellants.**

16. Though the appellant was making a submission that the Trial Court did not frame any issue with regard to readiness and willingness, the fact remains that the trial court had adverted into the evidence available on those aspects and it has given a finding that the plaintiff was very much ready and willing to perform his part of the contract. The respondent/defendant did not deny the financial capability of the plaintiff to pay the balance sale consideration



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and get the sale deed registered. In fact, on 11.09.2006 itself, the plaintiff sent a legal notice, but for some reason or other the defendant did not come forward to get the balance sale consideration and execute the sale deed.

17. When the plaintiff did not have any quarrel as to the title of the defendant and the defendant also received the advance amount, the absence of recitals as to the origin of title in respect of the suit property in the sale agreement is of no consequence and it is insignificant. Only in the absence of readiness and willingness on the part of the plaintiff, the defendant can claim to retain the advance amount and exclude himself from the obligation to execute the sale deed. But here is a case where the plaintiff has issued the legal notice as early as on 11.09. 2006, which is within the agreed time of three months from the date of executing the sale deed.

18. It is not the case of the defendant that the plaintiff did not have any wherewithal to pay the balance sale consideration of Rs.2,33,000/-. So far as the readiness and willingness is concerned, the learned counsel for the appellant has vehemently argued that the readiness and willingness ought to have been pleaded in the plaint and the evidence would also have been let in this regard. In fact, in the plaint, a specific averment has been made stating that the plaintiff



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is ready and willing to pay the balance sale consideration and the Courts below have rightly appreciated the readiness and willingness on the part of the plaintiff to execute the sale deed.

19. In fact it is held by the Hon'ble Supreme Court in ***Motilal Jain Vs. Ramdasi Devi (Smt) and others*** reported in **(2006) 6 Supreme Court Case 420** that the averment of readiness and willingness in the plaint is not a mathematical formula, which should be in specific words. In the averments in the plaint as a whole clearly indicates the readiness and willingness of the plaintiffs to fulfil his part of obligations under the contract which is the subject matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale. It is reiterate that in the instant case the plaintiffs have explicitly stated in their plaint itself about the readiness and willingness. Hence the 3rd judgement of the appellant cited has also got no application to the facts of the present case. Hence, **the third substantial question of law is also answered against the appellants.**

20. The judgement cited by the learned Counsel for the appellant is with



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regard to the non-registration is found to be in respect of the family arrangement through which the title and interest in the immovable property is being created and declared. But in the instant case, there is no question of passing of title. In this regard it is relevant to cite the judgement of a three-Judge Bench of the Hon'ble Supreme Court in ***Suraj Lamp and Industries Pvt.Ltd Vs. State of Haryana*** reported in ***(2012) 1 SCC 656***. In the said case, it is held as under:

"18.It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of [sections 54](#) and [55](#) of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under [section 53A](#) of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. [Section 54](#) of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."

21. The above decision has been discussed and followed in the subsequent judgement of the Hon'ble Supreme Court held in ***Vijay Vs. Union***



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of India and others reported in **2023 SCC OnLine SC1585**. It is only an agreement to execute a sale deed and hence, the judgements serial Nos.2 & 3 cited by the appellants/defendants are not applicable to the facts of the case.

22. In the result, this Second Appeal is **dismissed**. The Judgement and Decree dated 31.01.2012 passed in A.S.No.57 of 2010 on the file of the Additional District Court (Fast Track Court No.1) Chengalpet, confirming the judgement and Decree dated 06.07.2009 passed in OS.No.91 of 2006 on the file of the Sub Court, Madurantagam, stands confirmed. No costs. Consequently, the connected miscellaneous petition is also closed.

15.11.2024

jrs

Index : Yes/No

Speaking/ Non-Speaking

Internet: Yes/No

Neutral: Yes/No



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To

1. The Addl. District Court (Fast Track Court No.1) Chengalpet.
2. The Sub Court, Madurantagam.
3. The Section Officer, V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

jrs

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