IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.03.2024	Pronounced on 29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.994 of 2020

R.Krishnamurthy
S/o.K.C.Ramamurthy
No.88, R.K.Mutt Road
Mylapore
Chennai 600 064. ... Appellant

Vs.

1.D.Purushothaman
S/o.Late Devarajan

2.Lakshmi
W/o.Late Devarajan

3.Kumudha
D/o.Late Devarajan

4.Kamala
S/o.Late Devarajan

(R1 to R4 are residing at
No.8, Mathiazhagan 2nd Cross Street
Ullagaram, Chenani 600 061)

5.G.Gopikumar
S/o.P.Ganeshwaran
No.52/2, Old No.24/2
Periyar Salai
Teynampet, Chennai 600 018

6.J.Gopinathan
S/o.N.K.Jayaraman
No.17/8, 3rd Trust Cross Street
Mandavelipakkam
Chennai 600 028

7.D.Viajyalakshmi
W/o.S.Dhinasekaran
Door No.59/29, Chintadripet
Saami Nayakkan Street
Chennai 600 002

8.P.Kannan
S/o.M.Pannerselvam

9.P.Veeramani
S/o.M.Pannerselvam

(R8 & R9 are residing at
Old Door No.25/2, New No.53/2
Mylapore, New Street
Chenani 600 004)

10.G.Chitra
W/o.J.Gobinadhan
No.17/8, Mandavelipakkam
3rd Trust Cross Street
Chennai 600 028
11.S.Kumaragurubaran

S/o.Sadagoparajanum
Door No.33, Pallavaram
Saavadi Theru
Chennai 600 043

12.S.Dhinasekaran
S/o.R.Subramani
Door No.59/29, Chindadripet
Saami Nayakkan Street
Chennai 600 002

13.Rajalakshmi
Old Door No.25/2, New No.53/2
Mylapore, New Street
Chenani 600 004

(R7 to R13 set exparte in O.S.No.53 of 2011,
I Additional District Court, Tiruvallur) ... Respondents

PRAYER: This Appeal is filed under Section 96 of Civil Proceedure Code against the Judgment and Decree dated 22.05.2020 passed in O.S.No.53 of 2011 on the file of the I Additional District Judge, Tiruvallur.

For Appellant : Mr.T.R.Rajagopalan
Senior counsel
for Ms.D.Chitra Maragatham

For Respondents : Mr.A.R.Suresh (for R1 to R4)
R5 & R6 – No appearance
R7 to R13 - Exparte

JUDGMENT

This Appeal has been filed against the Judgment and Decree dated 22.05.2020 passed in O.S.No.53 of 2011 by the learned I Additional District Judge, Tiruvallur.

2.For the sake of convenience and clarity, the parties are referred to as per their litigative status before the trial Court.

3.The unsuccessful Plaintiff is the Appellant herein. The Plaintiff filed O.S.No. 53 of 2011 before the I Additional District Court, Tiruvallur, seeking specific performance of Ex.A2/suit sale agreement dated 05.11.2009. The Defendants 1 to 4 are the legal representatives of the deceased/A.Devarajan, land owner, who died on 22.01.2010. The 5th Defendant is projected as general power of attorney agent of the said A.Devarajan, who had executed Ex.A1/general power of attorney dated 15.10.2008. The 6th and 7th Defendants are alienators, after the alleged settlement in favour of the first Defendant, who had sold various pieces of lands to D7 to D13 and hence, they are impleaded as party Defendants by order dated 06.07.2019 in I.A.No.799 of 2019 before the trial Court.

4.The brief facts necessary for determination of this Appeal are as under:

4(a).The suit property originally belonged to A.Devarajan, he having purchased the same under sale deed dated 26.08.2002 vide document Nos.1007/2002 and 1008/2002 and had been in absolute possession and enjoyment of the same.

4(b).A.Devarajan executed General Power of Attorney deed dated 15.10.2008 and appointed one G.Gopikumar the 5th Defendant as his general power of attorney agent to deal with the suit properties including power to sell.

4(c).The said Devarajan offered to sell the schedule mentioned property and the Plaintiff agreed to purchase the same for a total sum of Rs.16,00,000/-. On 15.10.2008, the Plaintiff paid Rs.1,00,000/- towards advance and subsequently, on various dates paid major portion of sale consideration amounting to Rs.15,00,000/- and the balance of one lakh rupees alone has to be paid.

4(d).On 05.11.2009 an agreement of sale has been entered into with the said Devarajan through his General Power of Attorney Agent G.Gopikumar, the 5th Defendant herein and on the same day possession of the suit schedule property was handed over to the Plaintiff and the documents of title were given to the custody of the Plaintiff, since the major portion of the sale consideration has been paid to the said Devarajan.

4(e).On 22.01.2010, Devarajan died intestate and left his only son D.Purushothaman and his widow Lakshmi and two daughters Kumudha and Kamala, the Defendants 1 to 4 as his class I legal heirs. Defendants 1 to 4 promised and agreed to execute necessary deed of conveyance in favour of the Plaintiff and believing the same, the Plaintiff also waited patiently till he received notice dated 30.06.2010 by way of which, the Plaintiff was called upon to return the power of attorney and the original documents. It is alleged that the notice contained false and fabricated allegations, the Plaintiff sent a reply on 15.07.2010 informing about the true facts.

4(f).On receipt of the reply, the Defendants once again sent a false rejoinder on 22.07.2010 which was replied on 28.07.2008. Again on 26.08.2010, the Defendants sent another notice to the Plaintiff alleging that their father never intended to sell the suit property and that the original title deeds were entrusted to the Plaintiff for safe custody. The Plaintiff sent a reply, however, Defendants had not stopped and attempted to encumber the suit schedule property.

4(g).On 27.09.2010, the Defendants 2 to 4 executed the settlement deed in favour of 1st Defendant without any right in the suit property and on 09.10.2020 despite the above exchange of notices, claims and counter claims the 1st Defendant seem to have executed general power of attorney deed in favour of one J.Gopinath the 6th Defendant herein.

4(h).The settlement deed and the power of attorney are not binding the Plaintiff and the same are subject to Ex.A2 agreement dated 05.11.2009 entered by 1" Defendant's father with Plaintiff.

4(i).While so, the Plaintiff issued legal notice on 11.05.2011 to the Defendants 1 to 4 as well as the power agent Gopinathan to execute the sale deed in favour of the Plaintiff. Even during life time of Devarajan, the Plaintiff is ready and willing to pay the balance sale consideration of Rs.1,00,000/-

4(j).The Plaintiff is always ready and willing to pay the balance sale consideration. During the pendency of the suit, the 1st Defendant has sold major portion of the plaint schedule properties to Defendants 7 to 13. On 09.04.2013, the 1st Defendant has cancelled the general power of attorney executed in favour of the 6th Defendant. The 1st Defendant has alienated 5 acres of land out of 8 acres of land mentioned in the plaint schedule properties during the pendency of the suit. The sale deeds executed by the 1st Defendant during the pendency of the suit are void under law. The 1st Defendant has played fraud on court by not revealing the sale transactions during the trial. Hence, the suit.

5.The first Defendant filed written statement, which was adopted by D2, D4 & D6. The brief averments in the said written statement are as under:

5(a).A.Devarajan has purchased the schedule mentioned property under the sale deed dated 26.08.2002 from its lawful owners and had been in absolute possession and enjoyment of the same.

5(b).A.Devarajan has executed a general power of attorney deed in favour of 5th Defendant to deal with the suit schedule properties including power to sell. This Defendants' father Devarajan died intestate on 22.01.2010 and the Defendants 1 to 4 are his legal heirs.

5(c).The exchange of notices are true and admitted. It is true that on 27.09.2010 the Defendants 2 to 4 have executed a registered settlement deed in favour of the 1st Defendant. The Defendants 2 to 4 as the absolute owners of the property had an equal rights and had settled the same in favour of the 1st Defendant. Further, the 1st Defendant as the absolute owner of the entire property has executed the general power of attorney in favour of the 6th Defendant to deal with the scheduled property. This Defendant is in actual possession and enjoyment and maintaining the same through his agent.

6.According to the Defendants the alleged agreement of sale deed dated 05.11.2009 is forged and fabricated one, after the death of the land owner A.Devarajan. Since the Father A.Devarajan, worked with Plaintiff for more than 20 years, in good faith and trust they are given the original document pertaining to the property on trust. They denied Ex.A2/suit sale agreement as forged and fabricated, after the death of the Father of the first Defendant Devarajan in collusion with the fifth Defendant. Additional written statement was filed admitting the sale of the some of the portion of the properties, due to the family circumstances. Accordingly, Defendants D7 to D13 were impleaded.

7.Separate written statement was filed by the fifth Defendant, projected as general power of attorney agent of the original land owner Devarajan, during his life time on 15.10.2008/Ex.A1. He had admitted the execution of the general power of attorney of Ex.A1 by Devarajan and agreement of sale with Plaintiff on 05.11.2009. Since major sale consideration has been paid, original document and possession of the document was handed over to the Plaintiff. Land owner Devarajan died on 22.01.2010.

8.Following issues have been framed based upon the pleadings before the trial Court:

1.Whether the Plaintiff is entitled for specific performance?

2.Whether the Plaintiff is entitled to permanent injunction against the Defendants not to alienate the suit property?

3.Whether the agreement of sale is forged and fabricated?

4.Whether the suit is barred by limitation?

5.To what relief, the Plaintiff is entitled to?

9.On behalf of the Plaintiff, PW1 to PW3 were examined and Ex.Al to Ex.A20 were marked. On behalf of the Defendants 1 to 4 DW1, DW2 and DW4 were examined and Ex. B1 to Ex.B13 were marked. The 5th Defendant was examined himself as DW3 and no documents were produced. The Plaintiff examined the vendor of the stamp paper used in sale agreement Ex.A2, as PW2, one more independent witness as PW3/Paul Pandi was also examined. The original sale deed of the Devarajan was produced by DW1 as Ex.B1 to Ex.B3, revenue records were marked as Ex.B5 to Ex.B9. District Registrar was examined on witness summons as DW4 and register extract relating to stamp paper series found in Ex.A2 was produced and marked as Ex.B13. The power of attorney agent of Devarajan viz., fifth Defendant is DW3.

10.Heard Mr.T.R.Rajagopalan, learned Senior counsel for Ms.D.Chitra Maragatham. learned counsel for the Appellant and Mr.A.R.Suresh, learned counsel for Respondents 1 to 4. Perused the written arguments filed by the Plaintiff and Defendants 1 to 4 and 6.

11.After perusing the pleadings and the submissions made by the rival parties, the following points arise for consideration:

1. *Whether Ex.A1/suit sale agreement is true and genuine as pleaded by the Plaintiff or is a forged and fabricated as projected by the Defendant?*
2. *Whether the suit is bared by limitation?*
3. *Whether the alleged payment under Ex.A2/sale agreement is true and*

genuine?

4. *Whether the Plaintiff is ready and willing to perform his part of the contract?*
5. *Whether the Plaintiff is entitled for specific performance?*
6. *Whether the order of the trial Court is justifiable in law?*
7. *To what other relief?*

12.The admitted factual matrix of the case are as under:

One Devarajan is father of the Defendant 1 to 4. The Plaintiff filed Suit for specific performance of Ex.A2/sale agreement dated 05.11.2009. Father of the Defendants 1 to 4, Devarajan, purchased the suit property under Ex.B1 to Ex.B3 on 26.08.2002. Totally there are three schedules in the property measuring 8 acres. The said Devarajan executed general power of attorney Ex.A1 dated 15.10.2008 in favour of the 5th Defendant. The original registered power of attorney is marked as Ex.A1. There is a recital in the said Ex.A1 for power of alienation.

13.It is a specific case of the Plaintiff that Devarajan offered to sell the suit property to the Plaintiff for the sale consideration of Rs.16,00,000/-. On the said day Rs.1,00,000/- was handed over to Devarajan, on the subsequent days several payments were made totally Rs.15,00,000/-. On 05.11.2009, on the date of the power of attorney agent on behalf of the land owner Devarajan, the power agent DW3 entered into sale agreement with the Plaintiff, who is the 5th Defendant, his evidence is discussed infra.

14.Perused the written statement. According to the Defendants, Ex.A2 sale agreement is denied and projected as forged and fabricated after the death of Devarajan on 22.01.2010. The fifth Defendant being the employee of the Plaintiff, has collided with the Plaintiff in creating the suit sale agreement under Ex.A2. As the execution of the sale agreement Ex.A2 was denied by the Defendants in a specific terms as well as in his evidence, the burden of proof falls on the shoulder of the Plaintiff to prove the execution of the sale agreement.

15.Evidence of PW1, PW3 and DW3 were relied upon by the learned senior counsel for the Plaintiff. The learned senior counsel draw my attention to the oral evidence of PW1, PW3 and DW3. PW1 is the Plaintiff. Ex.A2 is the sale agreement in original Ex.A1 is the general power of attorney, which is admittedly executed by the original land owner Devarajan on 15.10.2008. Ex.A1 was not denied by the Defendants. The fifth Defendant general power of attorney of Devarajan admitted the execution of Ex.A2 in the written statement as well as deposed as DW3. PW3 is one Paul Pandi, who has admitted in the cross examination that he is not the attesting witness in the sale agreement. Since PW3 is not the attestor of the sale agreement, his evidence cannot advanced the case of the Plaintiff.

16(a).Perused Ex.A2, there are two attestors available in the sale agreement, for the reasons best known the Plaintiff has not chosen to examine any one of the attestors found in Ex.A2/sale agreement, assumes significance. Thus, this Court finds that non examination of the attestors on the background of the case that the Defendants has raised, the specific plea that after the death of the Father of the Defendants 1 to 4, Devarajan, Ex.A2 was fabricated with the active aid connivance of the fifth Defendant.

16(b).The fifth Defendant was examined as DW3, he admitted execution and hence, the contracting parties viz., the fifth Defendant and the Plaintiff admitted the execution of the sale agreement. Now it remains to be tested that whether execution of agreement is to be considered as proved before the Court of law in the manner known to law.

17.The Defendants in the written statement has specifically raised a plea as stated supra, Ex.A2 is a fabricated document, executed without the knowledge of Devarajan and therefore, in view of the discussion in the preceding paragraphs and in view of the evidence of PW1 and DW3 (fifth Defendant), the burden of the proof is now shifted upon the Defendants to prove the same. The evidence of DW1 was perused, who could deposed that during life time of Devarajan, no such sale agreement was came into existence and his evidence is specific and also there is a specific denial of Ex.A2.

18.For the plea of forgery and fabrication, the Defendant has relied upon the oral evidence of DW1, DW2 & DW4 and answer elicited from the cross examination of the Plaintiff. The relationship of the fifth Defendant with the Plaintiff is admitted by DW3 also by PW1.

19.On perusal of the pre-suit notice exchanged between the parties, this Court noticed that Ex.A3, notice is during the earlier of point of time. Ex.A3 is dated 30.06.2010. It is emanated from the Defendants, who issued notice to the Plaintiff, calling upon the Plaintiff to hand over the original document, which is in their custody. The Plaintiff's reply Ex.A4 dated 15.07.2010 and the Defendants' rejoinder is Ex.A5 dated 22.07.2010. Further letter in turn is Ex.A6 dated 28.07.2010. The legal reply notice is Ex.A7 dated 26.08.2010, for which reply by the Defendant is Ex.A8 dated 07.09.2010.

20.On a combined reading of pre-suit notice exchanged between the parties, as narrated supra, Ex.A3 to Ex.A8, I find that for Ex.A3 notice of the Defendant, the Plaintiff replied under Ex.A4 stating that her Father Devarajan received total sum of Rs.15,00,000/- for the sale of the suit property and balance to be paid is only Rs.1,00,000/-.

21.On a close perusal and scrutiny of Ex.A4, I find that there is no recital or no mentioning about the alleged existence of the sale agreement dated 05.11.2009, assumes significance. It was followed by two rejoinders dated 22.07.2010 and 26.08.2010 viz., Ex.A5 & Ex.A7, that was sent by the first Defendant to the Plaintiff, wherein the Defendant specifically denied alleged receipt of the amount. It remains to be stated that Ex.A8 is the notice in the form of reply to the rejoinder by the Plaintiff to the Defendants. It is relevant to note that even in the said reply, there is no mentioning or whisper about the existence of sale agreement. It remains to be stated that only in the notice dated 10.05.2011 viz., Ex.A11 issued by the Plaintiff to the Defendants, the alleged sale agreement (Ex.A2) has surfaced and stated that suit sale agreement was executed on 05.11.2009 by the fifth Defendant in favour of the Plaintiff, assumes significance. For the reasons best known to the Plaintiff, though there is exchange of notice between the parties, since 2010 till 2011, for almost one year, no whisper about the sale agreement alleged to have been executed on 05.11.2009 was appeared. It remains to be stated that non disclosure of the existence of Ex.A2 sale agreement said to be on 05.11.2009 remains as a mystery.

22.Had there been an agreement of sale on 05.11.2009, there could be no impediment to the Plaintiff to make the date of the agreement, or mentioned the date of the agreement in any of the pre-suit notices, Ex.A3 to Ex.A9. If any agreement of sale existed at that relevant point of time, this factum assumes a greater significance in the light of the defence raised by the Defendant that Devarajan died on 22.01.2010, thereafter the sale agreement was created by fabrication of the old stamp paper.

23.In connection with the said contention, Ex.A2 was produced by the Plaintiff. Perused Ex.A2 and it is an unregistered document, written in the stamp paper value of Rs.20/- bearing Reg. No.8648, indicating date as 05.11.2009.

24.The stamp paper is said to have been purchased from I.Jesintha, who is a stamp vendor. In this case, since the genuineness of the agreement itself was in doubt, the stamp vendor was examined by the Plaintiff as PW2.

PW2 has in her statement stated that she is a licenced stamp vendor and she maintained register in which she noted down the persons to whom the stamp papers were sold. Further she admitted that the stamp papers found in Ex.A2 was purchased from her.

25.At this juncture, it is relevant to refer to the statement made by DW4. DW4 is the District Registrar, who had been examined by the Defendants. DW4 has also produced the extract of the register submitted by the stamp vendor during the relevant period of time. The extract of the register has been marked as Ex.B13. The original register was produced and a copy of the extract was marked for the purpose of the present case. Upon perusal of Ex.B13, it is seen that the stamp paper used in Ex.A2 was sold to one Akilan on 04.12.2009 and not to the Plaintiff assumes significance.

26.On perusal of Ex.B13 original register maintained by DW4/District Registrar during the regular course of business, I find that according to the extract the stamp paper bearing serial number 8464 to 8563 was sold to the said person. Now it is relevant to note that the date found on the stamp paper in Ex.A2 would indicated as 04.11.2009. However, the entry in the stamp paper register would show that the non-judicial stamp paper itself was purchased only on 04.12.2009.

27.Therefore, there is a clear contradiction between Ex.A2 stamp paper entry as to the date of sale with the relevant stamp register produced by the competent authority DW4/District Registrar, who maintained Ex.B13 in a regular course of business as defined under Section 35/36 of the Indian Evidence Act.

28.The learned senior counsel appearing for the Appellant would contend that if the stamp vendor does some mischief, the party should not be suffered. Admitted case of both the parties that the Defendants' 1 to 4 father Devarajan passed away on 22.01.2010. Specific plea of the Defendants 1 to 4 is that subsequent to the death of the Devarajan with the help of the fifth Defendant, the Plaintiff purchased the stamp paper and sale agreement was created by entering an antidate.

29.On a close perusal of the evidence of DW4, the competent witness, the District Registrar, who is competent under the Tamil Nadu Registration Manual, who maintains Ex.B13 as required under the Tamil Nadu Registration of the Manual and Code. Ex.B13 being a book maintained in the regular course of the business subject to the audit as spoken to by DW4. Under Section 74 of the Indian Stamps Act, the power to make rules relating to sale of stamp paper was assigned to the State Government in turn was given to the District Registrar with regard to maintenance of the suitable register indicating sale of the stamp paper and the delegation of the powers by the State Government to the Chief Controlling Revenue Authority in respect of Section 74 was dealt with 76-A of the Indian Stamp Act.

30.According to section 74 of the Indian Stamp Act the State Government is empowered to frame rules with regard to the supply and sales of stamps. As per Tamilnadu Stamp Rules, the District Registrar concerned is empowered to issue licence to vendor for sale of stamps. As per the licence, the licenced stamp vendors shall sell the nature, category and denominations non-judicial stamp within such geographical limit as indicated in their licence.

31.Under Section 74 of the Indian Stamps Act, the power to make rules relating to sale of stamp paper was assigned to the State Government in turn was given to the District Registrar with regard to maintenance of the suitable register indicating sale of the stamp paper and the delegation of the powers by the State Government to the Chief Controlling Revenue Authority in respect of Section 74 was dealt with 76-A of the Indian Stamp Act.

32.Stamp Manual Rules 19 to 25 are relevant and circular issued by Inspector General of Registration. The Inspector General of Registration had issued certain orders regarding sale of the stamp by the stamp vendor in Board proceedings Rt.No.6770 (L), dated 7th November 1964, regarding checking of stamp vendor, necessary orders are being issued.

33.Under the Tamil Nadu Stamp Manual Rule 25 (XI) of the Rules for supply and distribution of stamps lays down rules therein.

34.As per the Government Order dated 07.04.1988 and 16.07.1994, all the licenced stamp vendors were directed to submit weekly stock position to the concerned Sub-Registrar and the sale account has to be submitted before the concerned District Registrar twice a year along with necessary documents in support of their sale.

35.From the evidence of DW4/District Registrar, the stamp paper available for sale on 03.11.2009, was only Sl.Nos.2201 to 2685. Therefore, the purchase of the stamp paper bearing No.8648 dated 03.11.2009 or 04.11.209 itself is highly improbable. This Court is not elaborating the issue further, except to show that Ex.A2/stamp paper which is having a Registration number assigned by the Tamil Nadu treasury as 8468 was not available for sale on 04.11.2009 or 03.11.2009 as could be seen from Ex.B13/Register maintained by DW4/District Registrar.

36.When that being so, coming to the existence of the sale agreement on 05.11.2009 is also improbable. The Serial Number that is available for sale on 03.11.2009 is only between 2201 to 2685 and hence, accepting the evidence of the official witness/District Registrar/DW4, who is the competent authority to maintain the sale of the non judicial stamp papers and the Register Ex.B13, the trial Court has rightly come to the conclusion that all is not well with Ex.A2 and coming into the existence of Ex.A2 on 05.11.2009 is highly improbable. None of the attesting witnesses was chosen to be examined by the Plaintiff, agreement holder. PW1 agreement holder admitted that one of the attestors of Ex.A2 sale agreement is none other than his own son. For the reasons best known the Plaintiff has not examined his son, who is one of the attesting witness also indicates that the sale agreement is a fabricated document.

37.The trial Court has accepted the evidence of DW4 and Ex.B13, on the reasoning that Ex.B13 has been produced from proper custody and marked through the competent witness/DW4, which was subjected to audit. Hence, as rightly assigned statutory presumptions under Section 114 of the Indian Evidence Act, presume that Ex.B13 is the official record maintained as per the Rules and Regulations concerning Tamil Nadu Registration Manual.

38.After hearing the learned senior counsel for the Appellant who had invited my attention to the evidence of PW2, I find that PW2 the stamp vendor has not stated in her evidence that the date of issuance was stamped by her in the manner found in the stamp paper. She has merely admitted the fact that the stamp paper was purchased from her owing to her signature and seal found in the stamp paper. Therefore, the evidence of PW2 is not in any way helpful to the Plaintiff to establish their case that the stamp paper was purchased on 04.11.2009,

39.Therefore, in view of the above reasoning I find that there is sufficient material available on record to show that Ex.A2 stamp paper should not have been purchased on 04.11.2009 as projected by the Plaintiff and in Ex.B.13 the stamp paper sold on 03.11.2009 and 04.11.2009, does not indicates the Serial Number of Ex.A2 and therefore, based upon Ex.B13, the trial Court has come to the conclusion that as there was no sale of stamp paper on 04.11.2009, as per the Register, Ex.B13 and in the absence of any entry on 04.11.2009, which caused a serious doubt upon the case of the

Plaintiff.

40.In view of the fact that Ex.B13, produced by DW4, the entry in the public record which is maintained in the regular course of business is relevant and the certified copies thereof is admissible. Examination of the person making the entry is not necessary, since it was marked through competent revenue Registrar viz., Sub Registrar from the District Registry. Hence, I have no hesitation to held that the evidence of DW3 and Ex.B3 is admissible and are relevant to the facts raised by the Defendant.

41.As stated supra, the attestor of the document was not examined to prove the execution. Hence, the trial Court has rightly come to the conclusion that the Defendants have proved the plea as to Ex.A1 is a fabricated document, based upon the statutory presumption under Section 114 of the Indian Evidence Act and under Section 35 & 36 of the Evidence Act which was not rebutted by the Plaintiff and hence, this Court is of the considered view that by way of preponderance of probability, the sale agreement could not have been created on the date it bears in the document.

Accordingly, I held that the Plaintiff has failed to prove the Ex.A2/sale agreement dated 05.11.2009 is true, genuine and valid, in the manner known to law.

42.Hence, this Court finds that plea of forgery and fabrication of document has been clearly demonstrated by the Defendant and non mentioning of the date in the agreement and the first reply notice issued by the Plaintiff between Ex.A3 to Ex.A8 also caused clear doubt as observed in the previous paragraphs and the trial Court has rightly placed reliance upon the name and number referred to the stamp paper on which Ex.A2 was created on the background of defence plea of fabrication and forgery. Based upon the evidence of the official witness DW4/Sub Registrar from the District Registry and Ex.B13 book of register regarding selling of the stamp paper, the trial Court has rightly come to the conclusion that the fabricated document cannot be enforced in the court of law, such a finding by the trial Court is well considered and well merited and does not warrant any interference at this Appellate stage.

43.On a combined reading of oral evidence of DW4 and Ex.B13, this Court finds that it is sufficient enough to come to the conclusion that the sale agreement Ex.A2 is a fabricated document. Since this Court has come to the conclusion that Ex.A2/sale agreement itself is s fabricated document, the ready and willingness of the Plaintiff pale into insignificance. Accordingly, the finding of the trial Court that Ex.A2 suit sale agreement is a fabricated document is hereby confirmed.

44.In view of the same, the point for consideration as to whether the Plaintiff is ready and willing to perform his part of contract does not arise for consideration and with regard to the amount deposited during the pendency of the Suit viz., Rs.1,00,000/- before the trial Court, the Plaintiff is at liberty to withdraw the same.

45.In the result, I find no merits in the Appeal and the Appeal is dismissed. No costs.

29.08.2024

Index : Yes/No

Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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RMT.TEEKAA RAMAN, J.

sai

To

The I Additional District Judge,
Tiruvallur.

Pre-delivery Judgment made in
A.S.No.994 of 2020

Dated: 29.08.2024