



S.A.No.853 of 2021
and C.M.P.No.16332 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.853 of 2021
and
C.M.P.No.16332 of 2021

P.Padmavathi (Died)

1. E.Pushparaj
2. P.Anandaraj
3. P.Ramya Jennifer

... Appellants

Vs.

1. Anachiammal
2. Venkatesan
3. Lakshmanan
4. Raju
5. Alamelu

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.02.2020 passed in A.S. No.67 of 2019, on the file of the Principal District Court, Salem, upholding the decree and judgment dated 05.01.2019 passed in O.S.No.128 of 2004, on the file of the I Additional Sub Court, Salem.

For Appellants	: Ms.A.Lakshmi for Mr.A.B.Ravichandran
For RR1 and 2	: Mr.V.Sekar
For RR3 to 5	: No appearance



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JUDGMENT

The appellant is the plaintiff in O.S.No.128 of 2004, on the file of the I Additional Sub Court, Salem. She filed the suit for specific performance of contract or in the alternative to refund the advance amount of Rs.2,50,000/- paid by her to the defendants 1 and 2.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

The suit property is owned by the defendants 1 and 2. The first defendant in his capacity as the Power Agent of other defendants entered into a registered agreement of sale (Ex.A1) with the plaintiff on 12.03.1999 to sell the suit property for a consideration of Rs.4,00,000/-, out of which, a sum of Rs.1,00,000/- was paid towards advance on the same day. Time fixed for performance of contract was two years. The plaintiff was always ready and willing to perform her part of the contract.



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However, the defendants demanded more amount than what was mentioned in the sale agreement (Ex.A1). The plaintiff paid a sum of Rs.2,00,000/- to the first defendant on 22.04.1999 (Ex.A2) and an endorsement was made on the sale agreement. The defendants subsequently received a sum of Rs.3,75,000/- on 13.01.2001 and 20.05.2002 and made endorsements (Ex.A3 and Ex.A4) on the sale agreement. Thus, the balance sale consideration was just Rs.25,000/-. When the plaintiff requested the defendants to execute the sale deed in her favour, they evaded which forced the plaintiff to issue a legal notice dated 06.10.2003 (Ex.A5) to the first defendant. Though the first defendant received the said notice as is evidenced by the postal acknowledgment card (Ex.A6) he did not come forward to execute the sale deed. He did not also send a reply. Hence the suit.

4. The third defendant filed his written statement and the same was adopted by the other defendants. In the written statement the following averments were made ;



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- i. It is false to contend that the first defendant and the plaintiff entered into an agreement of sale on 12.03.1999 (Ex.A1).
- ii. The third defendant was in need of money and therefore, he approached the husband of the plaintiff for financial assistance.
- iii. The husband of the plaintiff insisted the first defendant to execute a registered sale agreement (Ex.A1) and the defendants never intended to sell the suit property.
- iv. The defendants 2 to 5 gave a Power of Attorney (Ex.A7) in favour of their father (the first defendant) and he executed the sale agreement.
- v. The plaintiff's husband advanced a sum of Rs.1,00,000/- on the date of the sale agreement (Ex.A1).
- vi. Though the value of the property was more than Rs.10,00,000/- the sale price was fixed as Rs.4,00,000/- which itself shows that the first defendant never intended to sell the suit property.
- vii. On 22.04.1999, Pushparaj (husband of the plaintiff) advanced another sum of Rs.3,00,000/- to the third defendant and an endorsement was made on the copy of the sale agreement.



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viii. The third defendant repaid a sum of Rs.30,000/- on 12.03.1999

and an endorsement was made in the photostat copy of Ex.A1 mentioning the date as 12.06.1999. The third defendant had also repaid a sum of Rs.1,80,000/- on various dates, to the plaintiff.

ix. The signature of the first defendant on the endorsements made on 13.01.2001 (Ex.A3) and 20.05.2002 (Ex.A4) are forged.

x. The suit is also barred by limitation.

xi. The plaintiff is entitled to get only a sum of Rs.1,20,000/- from the defendants.

5. On the basis of the above pleadings, the trial Court framed the following issues :

"i. Whether the plaintiff is entitled to the relief of specific performance ?

ii. Whether there was any cause of action for the suit ?

iii. Whether the suit as framed is not maintainable ?

iv. To what relief is the plaintiff is entitled ?"



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6. In the trial Court, the plaintiff examined herself and two other witnesses and marked Ex.A1 to Ex.A12. The defendants 2 and 4 examined themselves and two other witnesses and marked Ex.B1 and Ex.B2. A Scientific Officer of Forensic Department was examined as D.W.4 and the forensic lab reports were marked as Ex.C1 to Ex.C3.

7. The learned trial court judge on considering the evidence on record, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 06.01.2020, on the following grounds:

- i. The defendants had denied the signatures of the first defendant on the endorsements dated 13.01.2001 (Ex.A3) and 20.05.2002 (Ex.A4) and they had filed an application to send the documents to the forensic lab to verify the signature of the first defendant on these endorsements. The Scientific Officer had, in his report, opined that the signatures of the first defendant on Ex.A3 and Ex.A4 are forged. However, the expert's opinion is only advisory in nature.
- ii. When the defendants had denied the execution of Ex.A1 sale



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agreement itself, the plaintiff has not proved the same by adducing acceptable evidence.

- iii. The third defendant in his written statement had categorically contended that he borrowed loan from the husband of the plaintiff and Ex.A1 sale agreement came to be executed at the instance of the plaintiff's husband.
- iv. Though there is a bar under Section 92 of the Indian Evidence Act that no oral evidence can be permitted to be given varying the written instrument, it can always be shown that the document was never intended to be operated as an agreement especially where there is a fraud, misrepresentation and lack of consensus ad-idem .
- v. The plaintiff was not ready and willing to perform her part of the contract within the period of two years mentioned in the contract (Ex.A1).
- vi. The first legal notice was sent after the expiry of two years.
- vii. The suit is also barred by limitation under Article 54 of the Limitation Act, as it is filed only on 01.04.2004.



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8. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.67 of 2019, on the file of the Principal District Court, Salem. The learned Principal District Judge, Salem, after analysing the evidence on record, upheld the findings recorded by the trial court judge vide his decree and judgment dated 06.02.2020, as against which the present second appeal is filed.

9. At the time of admission the following substantial questions of law were framed by my learned predecessor.

“i. Whether the Courts below were right in holding that the suit was barred by limitation?

ii. Whether the Courts below were right in dismissing the suit despite the respondents admitting receipt of the advance amount?

iii. Whether the Courts below were right in holding that Ex.A3 and Ex.A4 were forged endorsements based on the forensic experts opinion?

iv. Whether the trial Court can go into questions which have not been raised in the written statement or formulated as an issue and dismiss the suit on the said basis?



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v. Whether the Courts below have properly appreciated the oral and documentary evidence before decreeing the suit?"

10. Heard Ms.A.Lakshmi, learned counsel for the appellants, and Mr.V.Sekar learned counsel for the respondents 1 and 2.

11. The plaintiff has filed the suit for specific performance of contract based on the registered agreement of sale dated 12.03.1999 (Ex.A1). In the sale agreement (Ex.A1), Kaliappan (since deceased), the first defendant and the plaintiff had signed. The contention of the third defendant in his written statement was that the sale agreement was not true and valid and it was executed only as a security for obtaining a loan from the husband of the plaintiff. Thus the execution of registered sale agreement is admitted by the defendants. It is pertinent to point out though Kaliappan, the first defendant is the signatory to Ex.A1, he did not file his written statement. He has only adopted the written statement filed by the third defendant. During the pendency of the suit the first defendant died and thereafter, the other defendants filed an application to send the



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signatures of Kaliappan on Ex.A3 and Ex.A4 endorsements to the forensic lab to compare the same with his admitted signatures. The handwriting expert had in their report had opined that the signatures of Kaliappan on Ex.A3 and Ex.A4 were forged.

12. A perusal of the registered sale agreement (Ex.A1) shows that Kaliappan, the first defendant has the habit of signing differently at different points of time. The signatures of Kaliappan on each page of Ex.A1 turns out to be different. The first defendant also did not get into the witness box even though he was alive after the closure of plaintiff's evidence. He died subsequently and the other defendants filed the petition to send the signatures of Kaliappan on the endorsements (Ex.A3 and Ex.A4) to forensic lab only after his death. As already observed, Kaliappan did not file his written statement and also avoided getting into the witness box. He did not send a reply notice to the plaintiff's legal notice dated 06.10.2003 (Ex.A5). The conduct of the first defendant appears to be suspicious. It is also seen from the records that Kaliappan received a sum of Rs.25,000/- towards the sale transaction on 20.05.2002



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i.e., after the issuance of the legal notice, which means he had never stated that the sale agreement was for a loan transaction.

13. As far as immovable properties are concerned, time is not the essence of contract of sale. In the instant case, the first defendant had received Rs.25,000/- even after the two year period stipulated in the sale agreement. Thus, it is seen that the parties never intended that the contract should be completed within two years from the date of sale agreement.

14. The third defendant in his written statement had contended that Ex.A1 sale agreement was executed for a loan transaction. Section 91 and 92 of the Indian Evidence Act, bars a person from giving oral evidence contradicting and varying the contents of a written instrument.

15. In the facts and circumstances of the case, the report of the forensic department is not useful to the case of the defendants. As already



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observed, the first defendant Kaliappan did not send reply notice denying his signatures on Ex.A3 and Ex.A4 and did not also file a written statement. The defendants had not also proved that the sale agreement was executed for a loan transaction. Payment of Rs.50,000/- by the third defendant to the plaintiff's husband's bank account (Ex.B2) cannot be said to be for the present suit transaction i.e. agreement of sale (Ex.A1). Both the Courts below were mainly swayed by the forensic lab report to dismiss the suit filed by the plaintiff. They did not advert their attention to the evidence on record. The plaintiff was always ready and willing to perform her part of the contract as is seen from the evidence. The balance sale consideration was only Rs.25,000/-. The defendants have not proved that the transaction between the plaintiff and the first defendant was only a loan transaction. Therefore, findings recorded by both the Courts below are perverse and are liable to be set aside. The suit is filed within three years after the issuance of the notice by the plaintiff and hence, the suit is not barred by limitation under Article 54 of the Limitation Act. The substantial questions of law are answered accordingly.



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16. In the result,

- i. the Second Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. the decree and judgment dated 06.02.2020 passed in A.S. No.67 of 2019 on the file of the Principal District Court, Salem and the decree and judgment dated 05.01.2019 passed in O.S.No.128 of 2004, on the file of the I Additional Sub Court, Salem, are set aside.
- iii. The suit in O.S.No.128 of 2004, on the file of the I Additional Sub Court, Salem, is decreed with costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Principal District Court, Salem.

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2. The I Additional Sub Court, Salem.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J
mtl

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