



A.S(MD)No.161 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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K.Kennedy Ravikumar

... Plaintiff/Appellant

Vs.

Fathima Mary

... Defendant/Respondent

Prayer : This Appeal Suit filed under Section 96 CPC., to pass a judgment and decree, setting aside the judgment and decree, dated 14.08.2013 passed in the suit in O.S.No.163 of 2010 on the file of the IV Additional District Judge, Madurai and granting a decree for specific performance of sale agreement as prayed for by the appellant / plaintiff in the plaint with costs.

For Appellant : Mr.R.Prabhakaran

For Respondent : Mr.S.Muthuraman



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JUDGMENT

This appeal has been preferred as against the decree and judgment passed in O.S.No.163 of 2010 on the file of the IV Additional District Judge, Madurai, wherein the appellant herein has filed a suit for the relief of specific performance and the suit was dismissed. As against the decree and judgment, the present appeal has been preferred by the plaintiff.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

3. The plaint averments in brief are as follows:

The suit property belongs to the defendant and the plaintiff and the defendant entered into sale agreement, dated 09.03.2007. The sale price was fixed as Rs.15,00,000/-, on the date of agreement itself, a sum of Rs.5,50,000/- was paid to the defendant by the plaintiff. The time fixed for completion of sale is one year, since the defendant is residing along with her family in a portion of the suit property. Even at the time of executing the sale agreement, the plaintiff was ready and willing to purchase the said



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property by paying the entire sale price, but at the request of the defendant, the period to execute sale was fixed for one year, since the defendant is residing in the portion of the property along with her family. Even prior to the sale agreement, the plaintiff took possession of two portions in the ground floor of the suit property after executing an un-registered usufructuary mortgage on 09.11.2005. As per the mortgage, the plaintiff paid a sum of Rs.70,000/-. Further, the plaintiff also took another portion in the first floor on lease after executing lease agreement, dated 27.07.2006. Further, as per the sale agreement, the defendant handed over another portion in the first floor to the plaintiff. Prior to the agreement, the defendant borrowed loan from the TVS Co-operative Building Society Limited, Madurai. After executing the sale agreement between the plaintiff and the defendant, the defendant paid entire loan amount to the Society on 09.03.2007 itself and cleared the encumbrance and handed over the original receipt issued by the TVS Co-operative Building Society issued in the name of defendant. Further, at the time of execution of sale agreement, the defendant agreed to receive the balance sale consideration after deducting the sale advance amount, mortgage amount and the rental advance amount. After executing sale agreement, the plaintiff was always



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ready and willing to perform his part of contract, but the defendant purposely evading to perform her part of contract. In the meanwhile, the defendant's husband Santhanaraj died on 10.07.2010. After the demise of Santhanaraj, the defendant purposely evading to perform his part of contract. The plaintiff issued notice, dated 09.08.2010 through registered post and the defendant also received the said notice and sent a reply notice, dated 17.08.2010 with false allegations. Hence, the plaintiff filed the suit.

4. The gist of the written statement and additional written statement filed by the defendant are as follows:

The allegations made in the plaint are denied as false and incorrect. The plaintiff is put to strict proof of the sale agreement and the suit is not maintainable either in law or on facts. The defendant never entered into sale agreement, dated 09.03.2007 and the alleged sale agreement is concocted and forged one for the purpose of grab the suit property. The plaintiff is only lessee in two rooms and a tenant in one room out of 12 rooms for the purpose of labours working in the petrol bunk. The defendant executed an un-registered lease agreement on 09.11.2005 for the



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lease amount of Rs.70,000/- and another one room was taken by the plaintiff for monthly rent of Rs.1,000/- and advance amount was paid as Rs.12,000/-, which was let out on 27.07.2006. The averments made in the plaint that the defendant handed over the another portion in the first floor to the plaintiff are denied as false. The said portion was let out to one Sethuraman, who was the defendant's husband's colleague for a monthly rent of Rs.800/-. The said Sethuraman abruptly handed over the portion to the plaintiff without defendants knowledge. The averments that the defendant paid entire loan amount to the TVS Co-operative Building Society after executing the sale agreement is denied as false. The defendant paid the loan amount with the help of her four brothers and the said loan settlement is well known to the Sethuraman. The said Sethuraman and the plaintiff joint together and conspired to create the alleged sale agreement. After the sudden demise of the defendant's husband, all it was schemed by Sethuraman with *mala fide* intention. The defendant never received any money from anybody as a sale consideration of Rs.5,50,000/- as an advance or token. The defendant never entered into any sale agreement or fixed the sale price as Rs.15,00,000/-, dated 09.03.2007 as stated in the plaint. The sale agreement was created one as



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if the defendant signed in the sale agreement. The defendant never signed on stamps or stamped papers except the lease agreement, dated 09.11.2005. The receipt of payment of loan was lost by the defendant's husband in her house. Later, the defendant came to understand that it was stolen by the Sethuraman, which was produced by the plaintiff. The defendant never handed over the receipt to anybody. The plaintiff is not entitled to any relief through this suit. After setting aside the *ex parte* decree passed against this defendant, when the present Counsel has questioned the plaintiff about the execution of agreement, dated 09.03.2007 in an one side white paper affixed with revenue stamp by typing with 8 point font size letters, which not followed in preparing such documents in common parlance when other such documents were properly prepared by the said document writer. The document writer is law graduate and not prepared the agreement in stamped papers and the same was prepared in white paper with revenue stamp. Then only, this defendant has remembered that her husband while he was alive, when he borrowed loans from the plaintiff, he had obtained signature of the defendant in the blank revenue stamp affixed one side white papers for handing over the same to the plaintiff by way of security and he had not settled the loan to the



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plaintiff while he was alive. Now by using one of such blank revenue stamp affixed signed white paper in his custody, the plaintiff has fabricated the alleged sale agreement, dated 09.03.2007 and filed the suit for specific performance against this defendant with ultimate motive. Therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings, the Trial Court has framed the following issues:

"1. Whether the sale agreement, dated 09.03.2007 is a forged documents and no advance paid on the said date?

2. Whether the plaintiff is entitled for an order of specific performance?

3. Whether the plaintiff is entitled to get refund of Rs.5,50,000/- from the defendant?

4. To what other relief the plaintiff is entitled?"

6. Before the Trial Court, on the side of the plaintiff, he examined P.W.1 to P.W.4 and marked Exhibits A.1 to A.10. On the side of the defendant, D.W.1 and D.W.2 were examined and marked Exhibit B.1.



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7. After considering the evidences adduced on both sides, the Trial Court has dismissed the suit. As against the decree and judgment passed by the Trial Court, the un-succeeded plaintiff has preferred this appeal on the following main grounds:

"1. The judgment and decree of the learned Additional District Judge, Madurai, dated 14.08.2013 passed in O.S.No.163 of 2010 are contrary to law, against the weight of evidence and adduced and the probabilities.

2. The lower Court has not properly appreciated the evidence adduced and has not applied the proper legal principles in analysing the evidence.

3. The lower Court has blindly believed the version of the respondent / defendant that the sale agreement had been concocted by appellant / plaintiff by utilising a blank paper signed by the defendant on a revenue stamp affixed in it, which had been obtained from her by her husband and handed over to plaintiff for getting a loan.

4. The lower Court omitted to properly analyse the plea and evidence of the respondent / defendant and omitted to note that the new



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plea in the additional written statement amounts to an admission that she had signed in the sale agreement (Exhibit A.1).

5. The lower Court failed to see that though the initial burden of proof is on the appellant / plaintiff to show execution of Exhibit A.1, the oral evidence of P.W.1 to P.W.4 amply discharge the initial burden of proof, and the onus of proof is shifted to the respondent / defendant in view of her new plea in her additional written statement.

6. The lower Court failed to consider the fact that the respondent / defendant had not proved by adducing any oral or documentary evidence to prove that her husband ever borrowed money from the appellant / plaintiff, especially when the appellant / plaintiff deny such lending of any loan to her husband at any time.

7. The lower Court ought to have attached due importance to the fact that when the appellant / plaintiff sent notice (Exhibit A.4) to the respondent / defendant, mentioning that she had handed over to him the receipt (Exhibit A.2) issued by T.V.S. Society for discharge of the loan, she did not at all deny the handing over of receipt or discharge of the loan out of the advance amount received by her in her reply notice (Exhibit A.5).

8. The lower Court has failed to see that the appellant / plaintiff has



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proved execution of the sale agreement (Exhibit A.1) and payment of the advance amount of Rs.5,50,000/- by adducing the oral evidence of himself as P.W.1, Sethuraman, the broker and former co-worker with the husband of the respondent / defendant as P.W.2, and also an attester to Exhibit A.1, Pitchaimani, an advocate cum document writer as P.W.3 and Ramasamy, another attester as P.W.4.

9. The lower Court failed to see that there is nothing unnatural when P.W.1 deposed that he did not see the original or copies of the title deeds of the property for the sale agreement, because, he already knows the title of the respondent / defendant; he had already obtained an Othi deed two years back in the year, 2005, which is attested by the husband of the respondent / defendant and prepared advocate cum document writer (P.W. 3), and the appellant / plaintiff had already taken lease of a portion of the building from the respondent / defendant which facts had been admitted by her as D.W.1.

10. The lower Court failed to see that it is nothing abnormal or unnatural for the respondent / defendant to have executed the sale agreement (Exhibit A.1) in not duly stamped paper, because she had previously executed Exhibit B.1, an unregistered, not duly stamped othi



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deed and also an un-registered and un-stamped lease deed in favour of the appellant / plaintiff (as admitted by her).

11. The lower Court erred in holding that the appellant / plaintiff did not prove has readiness and willingness to perform his part of contract.

12. The lower Court ought to have seen that the reason for delay is purely due to the respondent / defendant and there is no fault on the part of the appellant / plaintiff."

8. The learned Counsel appearing for the appellant would contend that the suit property originally belonged to the defendant. The plaintiff and the defendant entered into agreement to sell the property and the sale price was fixed as Rs.15,00,000/- and time fixed one year. The agreement was entered on 09.03.2007 and on the said date of agreement itself, the defendant received a sum of Rs.5,50,000/- towards advance of sale price and thereafter, the plaintiff was always ready and willing to perform his part of contract, but the defendant is evading from executing the sale deed as per agreement. In order to prove the agreement, on the side of the plaintiff, he himself examined as P.W.1 and also examined P.W.2 to P.W.4 and marked Exhibits A.1 to A.10. The plaintiff's side witnesses have



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categorically deposed about the execution and attestation of agreement passing of consideration. The defendant initially denied the execution of agreement and thereafter, filed herself additional written statement stating that her husband used to sign in the white paper and handed over to the plaintiff, when her husband was alive as security for the loan availed by him. Therefore, the defendant admitted the signature found in the agreement and thereby, the burden of proof is lies on the defendant. But the defendant has failed to prove her case. Per contra, the plaintiff established his case by examining witnesses. The plaintiff's side witnesses categorically deposed about the execution of the agreement and receipt of advance amount. The Trial Court has failed to consider the evidences adduced on the side of the appellant / plaintiff and erroneously dismissed the suit. The plaintiff was always ready and willing to perform his part of contract. After the agreement, the husband of the defendant died and thereby, the plaintiff issued notice on 09.08.2010, but the defendant issued reply notice with false allegations. The plaintiff was a tenant under the defendant and she also executed Othi deed (mortgage) by paying a sum of Rs.70,000/-. The defendant after receipt of advance amount of Rs.5,50,000/- evading from executing the sale deed in favour of the



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appellant and thereby, he filed a suit before the Trial Court. The Trial Court erroneously dismissed the suit. Therefore, the judgment and decree passed by the Trial Court are liable to be set aside. The defendant is not an illiterate person and she is educated. On the date of agreement itself, the plaintiff paid the loan amount of Rs.1,75,000/-, which was availed by the defendant in TVS Housing Society and the receipt was handed over to the plaintiff. P.W.3 is the writer of the document and he categorically deposed about the document and thereby, the plaintiff proved his case. Therefore, the judgment and decree passed by the Trial Court are liable to be set aside.

9. The learned Counsel appearing for the appellant had relied the following judgments:

1. ***Kannagi Vs. K.Kandasamy and Another,***
2. ***Bhagirati Sahu and Others Vs. Akapati Bhaskar Patra reported in 2001 SCC Online Ori 50,***
3. ***Nisar Vs. State of Kerala,***
4. ***Alka Bose Vs. Parmatma Devi and Others reported in MANU/SC/8475/2008,***



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5. MD. Mohar Ali Vs. MD. Mamud Ali & Others reported in 1998

(1) Gauhati Law Reports 430,

6. John Robert Douglas Vs. The Collector of Benares, Sheikh

Gholam Ahmud and Lado Begum reported in V MOORE IND. APP

272,

7. State of Rajasthan and Another Vs. Mohammed Ikbali and

Others reported in 1998 (1) WLN,

8. Shyam Sunder Bazaz Vs. Sanwaram Jalan and Others

reported in MANU/JH/0064/2005,

9. Rokad Singh and Others Vs. State of Madhya Pradesh reported

in 1994 M.P.L.J,

10. Mahendrapal and Another Vs. The State reported in 1954

SCC OnLine All 204,

11. Raju alias Balachandran and Others Vs. State of Tamil Nadu

reported in 2012 (12) SCC 701,

12. DR.N.G.Dastane Vs. S.Dastane reported in 1975 (2) SCC 326,

13. Blyth Vs. Blyth reported in 1966 (1) All E.R.,

14. Bater Vs. Bater reported in 1950 (2) All E.R.,

15. Hornal Vs. Neuberger Products Limited reported in 1956 (3)

All E.R. and



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16. Nandagiri Godavari and Another Vs. Kanuganti Sudershan

reported in 2011 SCC OnLine AP 376.

10. The learned Counsel appearing for the respondent would contend that the property originally belonged to the defendant and she is the owner of the property. She never executed any agreement in favour of the plaintiff and the Exhibit A.1 is un-stamped and only in the revenue stamp, the signature of the borrower is contained. The defendant never received any amount as advance. There is no whisper in the plaint averments about the payment of cash to the TVS finance and the plaintiff has not stated anything about the mode of payment. The manner of preparation of the agreement itself shows the intention of the plaintiff. Even as per the agreement, the plaintiff was not ready within one year and only after the date of death of husband, the notice was issued. In fact the plaintiff is a tenant and there is no whisper about which part of the first floor was handed over to the plaintiff. As per agreement, entire amount of advance amount of Rs.5,50,000/- was paid but the plaint stated that after deducting othi amount and the rent amount, he paid the advance amount. Therefore, there are major discrepancies between the plaint and the evidence of plaintiff's side witnesses. According to the plaintiff, on the



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date of sale agreement itself, xerox copy of the parental sale deed and the house tax receipts were handed over to him but those documents have not been produced along with the plaint. The agreement Exhibit A.1 is created one. The P.W.3 is none other than the document writer, who is also a law graduate and he prepared the Exhibit A.1 without any stamp and there is no reason stated as to why the agreement was not written in stamp paper when there is no any urgency. The evidence of plaintiff side witnesses are contrary to each other in respect of payment of advance amount and the execution of sale agreement. The P.W.2 in his cross-examination stated that after redemption of original deed from the TVS Housing Loan Society, the defendant offered to sell the property. But according to the plaintiff, he paid amount to the TVS Finance on the date of agreement and got receipt. Therefore, there are discrepancies between the plaintiff's side witnesses. When the plaintiff decided to entered into a written agreement, he has not executed the agreement in a stamped paper and there is no any explanation as to why the revenue stamp paper was used for the agreement. These are all creates serious doubt over the assignment of the Exhibit A.1 and the Exhibit A.1 is forged and concocted one and the same is not valid in the eye of law. The Trial Court after taking into



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consideration of the entire evidences adduced on both sides, correctly dismissed the suit. Therefore, the present appeal is liable to be dismissed.

11. The learned Counsel appearing for the respondent has relied the following judgments:

1. *Mayawanti Vs. Kaushalya Devi reported in 1990 (3) SCC 1,*
2. *Satish Kumar Vs. Karan Singh and Another reported in 2016 (4) SCC 352,*
3. *S.Palanivel and Another Vs. P.Natesan and Others reported in 2018 (1) CTC 50 and*
4. *Surendran Vs. G.Selladurai and Others reported in 2023 (1) CTC 9.*

12. This Court had heard both sides and perused the records. Upon hearing both sides and perusing the records, the points for determination in this appeal are as follows:

- "1. Whether Exhibit A.1 agreement was executed by the defendant to sell the property?
2. Whether the plaintiff was always ready and willing to perform his



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part of contract?

3. Whether the plaintiff is entitled to decree for specific performance of contract?

4. Whether the plaintiff is entitled to alternative prayer return of advance amount?

5. Whether the decree and judgment passed by the Trial Court are sustainable in law and on facts?

6. Whether the appeal has to be allowed or not?

7. To what relief the appellant is entitled to?"

Point No.1:

13. The plaintiff has filed the suit for specific performance of contract and alternative prayer for return of advance amount. According to the plaintiff, the plaintiff and the defendant entered into sale agreement, dated 09.03.2007. On the date of agreement itself, he paid a sum of Rs.5,50,000/- to the defendant and the time was fixed as one year. When the plaintiff approached the defendant for execution of sale deed, she evaded from execute a sale deed and thereby, he issued notice. After receipt of notice, the defendant issued reply with false averments. Therefore, he filed the suit. The defendants denied the execution of sale



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deed and their contention is the alleged sale deed is created for the purpose of filing a suit and already the plaintiff's husband obtained the signed white paper affixed the stamps and the same was handed over to the plaintiff for the security purpose of loan obtained by them. The said signed stamped un-filled white paper has been now used for creating this agreement.

13.1. In this context, the plaintiff in order to prove the agreement, the plaintiff has examined P.W.1 to P.W.4 and marked Exhibits A.1 to A.10. The Exhibit A.1 is the sale agreement. This Court has carefully perused the said agreement and the said agreement is not prepared in the stamp paper. Per contra, in the bottom of the paper, the revenue stamp was affixed. In that, one Fathima Mary has signed. In normal course, while the parties enter into agreement prepare the agreement in the stamp papers. But this agreement was not prepared in the stamp paper and obtained signature of the executor in a revenue stamp affixed in the white sheet. There is no explanation by the plaintiff as to why he obtained signature in the revenue stamp paper, instead of non judicial stamp papers. Once the plaintiff decided to purchase the property for a huge amount of



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Rs.15,00,000/- and paid a sum of Rs.5,50,000/- through the agreement it is for him to explain as to why he has not obtained the agreement in a stamped paper. When the plaintiff planned to get agreement through document writer, he has to explain as to why it was not executed in a stamp paper. But there is no any explanation to that regard. The only explanation offered by the learned Counsel appearing for the appellant during the argument is that, due to urgency and non availability of stamp papers, they used revenue stamp. Even according to the plaintiff, on the date of agreement itself, he was ready to purchase the property but in the agreement, the time was fixed one year. When the plaintiff had money to purchase the property on the date of agreement itself, then why such a long duration of one year time fixed has to be explained by the plaintiff, but no proper explanation to that regard. Therefore, the reasonable doubt would arise about the genuineness of the agreement.

13.2. Further, the learned Counsel appearing for the appellant would contended, even the agreement can be oral, therefore, the mere non executing the agreement in a stamp paper is noway affect the right of the plaintiff. But The plaintiff himself was examined as P.W.1 and he deposed



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about the execution of agreement and passing of consideration. In the cross-examination, P.W.1 admitted that the document writer is also working as Advocate and the rental agreement and the mortgage deed are all typed in the stamp papers. But the present agreement is not typed in the stamp paper and also it is stated that he questioned the document writer about the stamp paper and he replied that he does not have stock of the stamp papers since it is an evening time. Thereby, they typed in the paper with revenue stamp. At the same time, the said reason has not been mentioned in the plaint. P.W.1 has not stated about the other characters of document. P.W.2 in his chief examination stated in his evidence that the plaintiff asked about the agreement was not prepared in the stamp paper. For that, the document writer told that there is no stock of stamp papers, that is why, due to urgency, he typed in the revenue stamp paper. But, the P.W.1 has not stated about the manner of type (i.e.,) line space and font size in the agreement. But the P.W.2 and P.W.4 have voluntarily stated about the manner of type (i.e.,) line space and font size. Further, the witnesses P.W.2 and P.W.4 have stated about the un-filled stamp and the plea taken by the defendant in the written statement and the additional written statement.



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13.3. The P.W.2 in his chief examination stated as follows:

"பின்பு பரதிவாதி கிரைய ஒப்பந்தப் பத்திர பேப்பரில் அடிக்காமல் உள்ளதே என்றும் நெருக்கி டைப் செய்யப்பட்டுள்ளதே என்றும் கேட்டார். அதற்கு பத்திர எழுத்தர் பத்திரம் ஸ்டாக் இல்லை என்றும் அவசரப்பட்டதால் பேப்பரில் நெருக்கி டைப் செய்து பிரிண்டு எடுத்து ரெவின்யூ ஸ்டாம்பு ஒட்டிக் கொண்டு வந்துவிட்டேன் என்று கூறினேன். அதற்கு பரதிவாதி என் மீது நம்பிக்கை வைத்துக் கொள்ளுங்கள், நம்புங்கள் கிரைய ஒப்பந்தப்படி பத்திரத்தில் எழுதாவிட்டாலும் கிரையம் எழுதி பதிந்து கொடுத்துவிடுவேன் என்றும் தெரிவித்தார்."

13.4. Therefore, from the examination of P.W.2, it reveals that at the time of execution of agreement itself the plaintiff asked about the non preparation of agreement in the stamp paper and the defendant also agreed to register the sale deed in favour of plaintiff. The P.W.4 also deposed the same version. But the plaintiff neither in the plaint nor in his evidence stated about the said version spoken by the P.W.2 and P.W.4. Therefore, the conduct of P.W.2 and P.W.4 shows their interest in this case. Further P.W.2 and P.W.4 in the proof affidavit, shows the interest of the witnesses and there is no explanation as to how the witnesses came to knowledge



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about the written statement and the additional written statement filed by the defendants. Ordinary prudent man in general would get agreement in the stamp papers and the present agreement was prepared by the document writer and he know the procedure but he did not prepare the document in stamp papers and the reason that due to evening time, no stamp papers available on the day is unbelievable and not acceptable. Further according to the plaintiff, the defendant received a sum of Rs.5,50,000/- as advance of sale price, but he not even perused the original parental document for the suit property. Without perusing the original title deeds, the plaintiff paid such a huge amount as advance is also creates doubt. It is admitted by the plaintiff that he already paid money to the defendant and obtained mortgage, othi deed for Rs.70,000/-. While so, without any document, payment of Rs.5,50,000/- is unbelievable and the evidences adduced by the plaintiff side are not trustworthy.

13.5. In this context, the P.W.1 in his evidence admitted as follows:

"இந்த சொத்து சம்பந்தமான அசல் ஆவணங்களையோ, சான்றிட்ட நகல்களையோ நான் பார்க்கவில்லை. பிரதிவாதி புரோக்கர் சேதுராமன் மூலமாக தாவா சொத்தை விற்பது சம்பந்தமாக 2007ம் ஆண்டு ஜனவரி மாதம் என்னிடம் வந்து பேசினார். மார்ச் மாதம் வரை தாவா சொத்தின்



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வில்லை சம்பந்தமாக எங்களுக்குள் பேச்சு வார்த்தை இருந்தது. மார்ச் மாதத்தில் 15 லட்சத்திற்கு பேசி முடித்துவிட்டோம். 01.03.2007 அன்று வில்லை பற்றி பேசி முடித்துவிட்டோம் அன்று பிரதிவாதியும் இருந்தார். அவரது கணவர், சேதுராமன் மற்றும் ஒரு ராமசாமி ஆகியோர்கள் இருந்தனர். பேசிய அன்றே நான் இன்றே வாங்கி கொள்ள தயாராக இருப்பதாக சொன்னேன். அன்று ஒப்பந்தம் எதுவும் போடவில்லை.”

13.6. Therefore, from the evidence of P.W.1, it reveals that he not even perused the title deeds of the property while entering into agreement and prior to the date of agreement, he decided the sale price. While so, the reason stated by the plaintiff that due to urgency and non-availability of stamp papers he got the agreement in the white paper with revenue stamp is unacceptable. Though the defendant in the additional written statement alleges that her husband obtained signatures in a white revenue stamp affixed paper and the same was handed over to the plaintiff, the manner in which the agreement was prepared creates serious doubt and thereby, the plaintiff has to prove that the said agreement without any doubt. But he failed to prove the examination and passing of consideration through the said agreement. Moreover, the P.W.1 in his cross-examination admitted that the document writer, who had written the Exhibit A.1 agreement



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already prepared rental agreement and the said agreement was prepared with stamp papers. Therefore, the preparation of Exhibit A.1 itself creates suspicious. Therefore, the conduct of the witnesses shows that their involvement in this case. Therefore, the plaintiffs failed to prove that the agreement was executed by the defendant for the purpose of sale of property.

13.7. The learned Counsel appearing for the appellant has relied the following judgments:

1. Alka Bose Vs. Parmatma Devi and Others reported in MANU/SC/8475/2008 and

2. MD. Mohar Ali Vs. MD. Mamud Ali and Others reported in 1998 (1) Gauhati Law Reports 430.

13.8. On careful perusal of the above said judgments, they will not applicable to the present facts of the case because those judgments are related to validity of unilateral agreement. The present suit agreement is also unilateral agreement but in this case, the execution of agreement itself is doubtful and the plaintiff has failed to prove the execution of agreement



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and the witnesses examined on the part of the plaintiff also shows that they are interested witnesses.

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13.9. Further, the learned Counsel appearing for the appellant also relied the following judgments:

i) Rokad Singh and Others Vs. State of Madhya Pradesh reported in 1994 M.P Law Journal 57,

ii) Mahendrapal and Another Vs. The State reported in 1954 SCC OnLine All 204 and

iii) Raju alias Balachandran and Others Vs. State of Tamil Nadu reported in 2012 (12) SCC 701.

13.10. On careful perusal of the above said judgments, they will not be applicable to the present facts of the case. Because in this case, the attesting witnesses of the agreement stated about the averments of the written statement and the additional written statement and thereby, it shows their involvement in the case and further the proof affidavit in both the evidences are more or less same. Therefore, the judgments submitted by the appellant Counsel are not applicable to the present facts of this



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case.

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13.11. Further, the learned Counsel appearing for the appellant also relied the following judgments:

i) John Robert Douglas Vs. The Collector of Benares,

ii) Sheikh Gholam Ahmud and Lado Begum and The State of Rajasthan and Another Vs. Mohammed Iqbal and Others, by alleging that the additional written statement should not established new cause of action. In this case, the defendant has filed an additional written statement by stating that she signed in the revenue stamp in the un-filled white sheet. Apart from that, there is no any other new averments made in the additional written statement. Therefore, the additional written statement does not create the new cause of action.

13.12. Further the learned Counsel appearing for the appellant relied the following judgments that to prove the case of specific performance preponderance of probability is the standard of proof:

i) DR.N.G.Dastane Vs. S.Dastane reported in 1975 (2) SCC 326,

ii). Blyth Vs. Blyth reported in 1966 (1) All E.R.,524,



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iii). Bater Vs. Bater reported in 1950 (2) All E.R.,458,

iv). Hornal Vs. Neuberger Products Limited reported in 1956 (3)

All E.R. 970.

13.13. On a careful perusal of these judgments, it is clear that the Court has to determine where the preponderance of probabilities lies and case has to be proved by Court's satisfaction on preponderance of probability. In the case on hand, the manner in which the agreement was created itself speaks the intention of the plaintiff and conduct of the witnesses P.W.2 and P.W.4 also shows their interest in the case. Therefore, the said case laws also will not be applicable to the present facts of the case.

13.14. In view of the above said discussions, this Court is of the opinion that the plaintiff failed to prove that the agreement Exhibit A.1 was executed by the defendant for sale of the suit property and the defendant received advance of Rs.5,50,000/-.

Point No.2:

14. This Court already in the previous point decided that the



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agreement Exhibit A.1 was not proved by the plaintiff that the same was executed for sale of the property. Therefore, the question of readiness and willingness would not arise. However, even according to Exhibit A.1, the time was fixed one year but the plaintiff has not taken any steps to get sale deed within the time stipulated by the alleged agreement and the suit notice was issued after the long time. Therefore, the plaintiff was not ready and willing to perform his part of contract. According to the plaintiff, in the meantime, the husband of the defendant was died. Thereby, there is a delay in sending notice. But on perusal of records, it is observed that the husband of the plaintiff died on 10.07.2010. The date of agreement is 09.03.2007. The plaintiff has not issued any notice and the suit notice was issued only on 09.08.2010. Therefore, the contention of the plaintiff that he has not issued notice since the husband of the defendant was died is not acceptable. The plaintiff has not taken any steps within the stipulated time and also he waited for more than three years and thereby, failed to prove his readiness and willingness to perform his part of contract.

14.1. In this context, the P.W.1 in his cross-examination admitted that



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"ஒப்பந்தத்தில் குறிப்பிடப்பட்ட 1 வருட காலத்திற்குள் நான் தயாராக இருக்கிறேன் என்பதை தெரிவித்து பிரதிவாதிக்கு எவ்வித எழுத்து பூர்வமான அறிவிப்பும் நான் அனுப்பவில்லை."

Therefore, he himself admitted that he has not issued any notice by expressing his readiness and willingness to get sale deed in his favour. In view of the above, it is clear that the plaintiff was not ready and willing to perform his part of contract. Thus the point is answered.

Point No.3:

15. The suit is filed for the relief of specific performance of contract. The main requirement to grant specific performance is, the plaintiff has to prove his readiness and willingness. But in this case, already this Court decided that the plaintiff failed to prove the Exhibit A.1 agreement for sale of property and he was not ready and willing to perform his part of contract and thereby, the plaintiff is not entitled to the relief of specific performance of contract.

15.1. Further, the learned Counsel appearing for the respondent also



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relied the following judgments:

- i). Mayawanti Vs. Kaushalya Devi reported in 1990 (3) SCC 1,*
- ii). Satish Kumar Vs. Karan Singh and Another reported in 2016 (4) SCC 352,*
- iii). S.Palanivel and Another Vs. P.Natesan and Others reported in 2018 (1) CTC 50 and*
- iv). Surendran Vs. G.Selladurai and Others reported in 2023 (1) CTC 9.*

15.2. On a careful perusal of these judgments, it is clear that in a contract if there is any un-certainty or ambiguity, specific performance cannot be granted and if the genuineness of the contract is doubtful and it becoming unenforceable the same cannot be specifically enforced. Further, when plaintiff to establish existence of valid scheme agreement or passing of consideration, in any event merely because it is lawful to do so, Court is not compelled to grant relief of specific performance. In the case on hand also, the agreement was not proved and genuineness of agreement also not proved. Therefore, in view of the said judgments and as discussed *supra*, the plaintiff is not entitled to the relief of specific performance of contract. Thus the point is answered.



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Point No.4:

16. The plaintiff also pleaded alternative relief of return of advance amount. According to the plaintiff, he paid a sum of Rs.5,50,000/- on the agreement itself. The defendant denied the receipt of advance amount and according to the plaintiff, he already paid a sum of Rs.1,70,000/- to the TVS Finance Company and after deducting the Othi amount and rental amount, he paid the advance amount. But nowhere stated in the plaint about the alleged payment of money after deducting the Othi amount. This Court already decided in the previous point that the plaintiff failed to prove the execution of agreement and also he failed to prove the advance amount paid by him. Though the plaintiff has produced the bill for a sum of Rs.1,75,000/- stating that he only paid the amount to the TVS Co-operative Society, there is no evidence adduced by the plaintiff to prove the same. In the suit notice, the plaintiff has stated about the payment to TVS Co-operative Building Society and the defendants have issued reply. In the reply, they categorically denied the receipt of advance amount. While so, plaintiff had to prove the advance paid by the defendant. The P.W.2 in his cross-examination stated that after return of original



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document from the TVS Finance only, the defendant offered to sell the property, but the plaintiff's case is that after the agreement, he paid the amount to the TVS Finance on the date of agreement. Therefore, the plaintiff failed to prove the payment of advance amount. It is not the case of the plaintiff that the defendant borrowed money for other purpose and the specific case is that, he paid advance amount for sale consideration. If so, how Exhibit A.3 receipt came to the hands of the plaintiff has to be explained. According to the plaint averments on the date of agreement itself, he paid Rs.5,50,000/- to the defendant. If so, how the receipt for Rs. 1,75,060/- came to the plaintiff's had to be answered, the plaintiff has to explain, but there is no explanation to that regard. Therefore, the plaintiff failed to prove the payment of advance amount and thereby, not entitled to the alternative relief of return of advance amount. Thus the point is answered.

Point Nos.6 & 7:

17. The plaintiff has filed the suit before the Trial Court for the relief of specific performance of contract and alternative relief of return of advance amount. This Court in the previous points decided that the



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plaintiff failed to prove the execution of agreement and passing of consideration and readiness and willingness. The Trial Court has framed proper issues and discussed about the evidences and documents adduced on both sides. The Trial Court also in the judgment after elaborate discussion, held that the plaintiff failed to prove the execution of Exhibit A.1 agreement and the present agreement is not valid and also failed to prove the passing of consideration for the alleged advance amount and also dismissed the suit.

18. Therefore, the judgment and decree passed by the Trial Court are well reasoned judgment and no perversity or infirmity found in the judgment and warrants no interference. In view of the above said discussions, this Court is of the opinion that this appeal has no merits and deserves to be dismissed.

19. In the result, this appeal stands dismissed with cost by confirming the decree and judgment passed in O.S.No.163 of 2010 on the file of the IV Additional District Judge, Madurai.



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The IV Additional District Judge,
Madurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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