



S.A(MD)Nos.85 & 86 of 2012

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 30.08.2024**

**CORAM:**

**THE HONOURABLE MS.JUSTICE P.T.ASHA**

S.A.(MD) Nos.85 & 86 of 2012

S.A(MD)No.85 of 2012

Mohandas

.. Appellant/Appellant/  
Plaintiff

Vs.

1.John

2.Premakumari

.. Respondents/  
Respondents/Defendants

Prayer :- Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 25.02.2010 passed in A.S.No.63 of 2007 on the file of the Sub-Court, Kuzhithurai, confirming the judgment and decree dated 11.08.2006 passed in O.S.No.82 of 2004 on the file of the I Additional District Munsif Court, Kuzhithurai.

For Appellant :Mr.V.Jeyaprakash,  
for Mr.R.Joseph Thankaraj

For Respondent :Mr.K.N.Thambi



**S.A(MD)Nos.85 & 86 of 2012**

**S.A(MD).No.86 of 2012**

Mohandas

.. Appellant/Appellant/  
Defendant

Vs.

John @ Asari

.. Respondent/  
Respondent/Plaintiff

Prayer :- Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 25.02.2010 passed in A.S.No.64 of 2007 on the file of the Sub-Court, Kuzhithurai, confirming the judgment and decree dated 11.08.2006 passed in O.S.No.454 of 2001 on the file of the I Additional Disgrict Munsif Court, Kuzhithurai.

For Appellant :Mr.V.Jeyaprakash,  
for Mr.R.Joseph Thankaraj

For Respondent :Mr.K.N.Thambi

**COMMON JUDGMENT**

Since the facts involved in both the suits from out of which, the second appeals arise are common, the common judgment is being pronounced.



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2.The second appeal in S.A(MD)No.85 of 2012 is filed challenging the judgment and decree dated 25.02.2010 passed in A.S.No. 63 of 2007 by the Subordinate Court, Kuzhithurai, confirming the judgment and decree dated 11.08.2006 passed in O.S.No.82 of 2004 by the I Additional District Munsif, Kuzhithurai.

3.The Second Appeal in S.A(MD)No.86 of 2012 is filed challenging the judgment and decree, dated 25.02.2010 passed in A.S.No.64 of 2007 by the Subordinate Court, Kuzhithurai, confirming the judgment and decree dated 11.08.2006 passed in O.S.No.454 of 2001 by the First Additional District Munsif, Kuzhithurai.

4.Since the plaint in O.S.No.82 of 2004 would be a written statement in O.S.No.454 of 2001 and likewise the written statement in O.S.No.82 of 2004 confirms the plaint in O.S.No.454 of 2001. Therefore, the parties are also referred to in the same rank, as in the suit in O.S.No. 82 of 2004. The facts of the plaintiff and the defendant's case in O.S.No. 82 of 2004 are set out herein below.



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5.It is the case of the plaintiff that the suit property belonged to the defendants. On 07.12.1998 the defendants had executed an agreement of sale in favour of the plaintiff agreeing to sell the suit property for a total sale consideration of Rs.75,000/- and received a sum of Rs.50,000/- as advance amount and he was agreed that the balance amount will be paid on or before 20.08.2001. The defendants had handed over the title deeds in respect of the suit property and also the tax receipts. Thereafter, the plaintiff had made several request to the defendants to execute the sale deed. However, there is no response and hence, issued a legal notice dated 28.07.2001 to the defendants. After the receipt of the said notice, the defendants did not come forward to execute the sale deed and therefore, the plaintiff has come forward with the suit for specific performance.

6.The defendants had filed a written statement *inter alia* denying the execution of the agreement of sale or the receipt the advance of Rs.50,000/-. It is the case of the defendants that since the first defendant was leaving for an employment out of the country. On 07.12.1998, he



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and his wife the second defendant had approached the plaintiff to borrow a sum of Rs.35,000/- to meet the expenses of the first defendant to go to foreign country. The plaintiff instructed the first defendant to come on 07.12.1998 with blank signed Rs.10/- stamp papers along with the original title deeds. These documents were executed as a collateral security. On 07.12.1998 the first defendant approached the plaintiff as directed. However, the plaintiff requested the defendants to come on 20.01.1999. On the said dated, the first defendant had received the loan amount of Rs.35,000/- and at that point of time, he had handed over the documents. The first defendant assured that as and when the amount was paid, the documents shall be returned.

7.The defendants would further submit that thereafter the first defendant had gone to the Gulf country to eke out his livelihood his wife has remitted the monthly interest, without any default. However, the plaintiff thereafter started demanding an exorbitant interest and refused to accept the monthly interest paid at 36%. The first defendant would submit that the first defendant's wife has paid a sum of Rs.55,150/- and



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Rs.5,000/- remains to be paid. On his return from the Gulf country, he had paid further sum of Rs.5,000/- and by letter, dated 09.01.2001 the plaintiff has admitted to receive a sum of Rs.48,950/- and calculated the balance amount of Rs.5,000/-. Thereafter, negotiations were held among the mediator and the first defendant was advised to pay a sum Rs.5,000/- as full and final settlement. The plaintiff had also agreed to receive the same and the said amount was paid by the defendants. The plaintiff admitted to return the documents, but however, he did not return the title deeds and blank signed stamp papers. The first defendant issued a legal notice to the plaintiff on 27.06.2001, demanding to return the above said documents. On receiving the said notice, the plaintiff has issued a counter notice on 30.07.2001, in which, for the first time, he has pleaded that the agreement of sale was entered into between himself and the defendant. The defendants would submit that the plaintiff has made use of the blank signed papers executed by him to create the documents in question. Therefore, they sought for dismissal of the suit.



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8.The defendant in turn had filed a suit in O.S.No.454 of 2001 for the relief of mandatory injunction, directing the defendants to return the documents. The contents of the written statement in O.S.No.82 of 2004 form the crux of the pleadings in O.S.No.454 of 2001, likewise the plaint pleadings in O.S.no.82 of 2004 form the written statement of the suit in O.S.No.454 of 2001.

9.Before the trial Court, both the suits were tried together and a common judgment came to be pronounced in both the suits by the First Additional District Munsif in O.S.Nos.454 of 2001 and 82 of 2004.

10.The following issues were framed in the suits in O.S.Nos.454 of 2001 and 82 of 2004:

- 1.வாதிமிடம் ரூ.500000 / – பிரதிவாதி முன்பணமாக பெற்று தாவா கிரைய ஒப்பந்தம் செய்துக் கொண்டாரா?
- 2.வாதி கோரிய ஏற்றுதலை ஆற்றுதல் பரிகாரம் கிடைக்க கூடியதா?
- 3.வாதிக்கு என்ன பரிகாரம் கிடைக்கக் கூடியது?



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11.The additional issues were also framed in the suit in O.S.No.82 of 2004:

“Whether the first defendant has borrowed Rs. 35,000/-from the plaintiff on 20.01.1999 and executed the promissory note?”

12.Before the trial Court, on the side of the plaintiff, he himself was examined as P.W.1 and the Document Writer was examined as P.W.2 and marked 11 documents Ex.A.1 to Ex.A.11. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and 9 documents were marked Ex.R1 to Ex.R.9.

13.The trial Court, taking into consideration the fact that the despite the categorical assertion of the second defendant that she has not signed Ex.A1-agreement of sale and that her signature found therein was forged and further the signature of the first defendant was also obtained in blank papers, the onus was heavily on the plaintiff to prove the execution of the agreement of sale. The plaintiff however has failed to discharge the onus imposed against upon him.



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14. On the contrary, the plaintiff has examined the scribe as P.W.2.

The plaintiff has not even forwarded the signature of the defendants for scientific examination to the finger print expert. Since the plaintiff has failed to prove the said agreement of sale, the learned Judge had decreed the suit for mandatory injunction filed by the defendants and directed to return the documents. Challenging the said judgment and decree, appeal suits in A.S.Nos.63 and 64 of 2007 was filed by the plaintiff before the Sub-Court, Kuzhithurai. The learned Subordinate Judge also confirmed the judgment and decree of the trial Court and dismissed the appeals.

15. These Second Appeals have not been admitted.

16. Heard the learned counsels on either side.

17. The plaintiff had come to the Court seeking the relief of specific performance of an agreement of sale alleged to have been executed by both the defendants in his favour, in and by which, they have agreed to sell the suit property to the plaintiff for a total sale



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consideration of Rs.75,000/- and a sum of Rs.50,000/- has been received on the date on which the agreement of sale is alleged to have been executed ie., on 07.12.1998. For the payment of the balance sale consideration, the period of three years has been given. There is no reason given as to why such a long period has been given for paying a sum of Rs.25,000/-, more particularly, when according to the plaintiff himself, the original document of title had been handed over to him. The defendants had contended that the first defendant has borrowed a sum of Rs.35,000/- from the plaintiff on 07.12.1998 and executed a promissory note in favour of the plaintiff. This fact has not been denied by the plaintiff, on the contrary, the same has been suppressed in his plaint in O.S.No.82 2004. The defendants have clearly and categorically denied the signature in Ex.A1-agreement of sale. The plaintiff has not taken any steps whatsoever to prove the signature.

18.A perusal of the plaint and the written statement would show that the first defendant is in the habit of signing in Malayalam, whereas, Ex.A1-agreement of sale was executed in the English language. The



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second defendant has denied her signature in Ex.A1 and stated that the signature found therein does not belong to her. Despite these categorical assertion, the plaintiff has not taken any steps to prove the same. It is also seen that the first notice in the above case was sent by the defendants on 26.07.2001, in and by which, the defendants have informed the plaintiff that the loan had been repaid and therefore, called upon the plaintiff to return the documents. It is also to be noted that under Ex.A1, the plaintiff himself had stated that a sum of Rs.48,950/- has been received. The agreement of sale appears to be a concocted one for the following reasons:

(a)The signatures of the defendants have not been proved independently by the plaintiff, despite the defendants categorically denying both the execution of the agreement of sale as well as the receipt of the money.

(b)The period of three years being granted for the payment of a sum of Rs.25,000/-

(c)The letter from the plaintiff-Ex.B1 acknowledging the demand of hand loan and the receipt of money from the defendants.

This would go to show that the agreement of sale is a concocted one.



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19.The next point which has to be taken into consideration is the readiness and willingness on the part of the plaintiff. Even according to the plaintiff for extending the loan to the defendants under the promissory note-Ex.A.10 the plaintiff had to borrow from his brother and that was the reason, the defendant was made to come twice. Further the defendants have first issued a legal notice to the plaintiff calling upon him to handover the original documents. It is only after the issue of this notice, the plaintiff has proceeded to issue Ex.A.7-legal notice. Therefore, this would clearly show that the plaintiff was not ready or willing to proceed further with the agreement. Therefore, I see no reason to interfere with the concurrent judgment and decree of the Courts below and no substantial question of law has been made out.

20.In the result, these Second Appeals stand dismissed. No costs.

**30.08.2024**

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



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To

- 1.The Sub-Court,  
Kuzhithurai.
- 2.The I Additional District Munsif Court,  
Kuzhithurai.
- 3.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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P.T.ASHA, J.  
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