



S.A.(MD).No.102 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.07.2024

PRONOUNCED ON: 28.10.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.102 of 2021

and

C.M.P.(MD)No.3298 of 2024

S.K.P.Kanniappan

... Appellant

/Vs./

P.Mariappan

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 28.11.2019, made in A.S.No.66 of 2018 on the file of the Additional District and Sessions Court (Fast Track), Tenkasi, confirming the Judgment and Decree, dated 01.03.2018, made in O.S.No.305 of 2013 on the file of the Additional Sub Court, Tenkasi.

For Appellant : Mr.Y.Prakash
For Respondent : Mr.M.P.Senthil



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JUDGMENT

The second appeal is filed by the defendant against the Judgment and Decree dated 28.11.2019, passed in A.S.No.66 of 2018 on the file of the Additional District and Sessions Court (Fast Track), Tenkasi, confirming the Judgment and Decree, dated 01.03.2018, passed in O.S.No.305 of 2013 on the file of the Additional Sub Court, Tenkasi.

2. The plaintiff is the respondent herein and the defendant is the appellant herein. For the sake of convenience, the parties are referred in the judgment as plaintiff and defendant as per the ranking stated in the suit.

3. The suit is filed for specific performance. The brief facts as stated by the plaintiff is that the defendant had agreed to sell the suit property, hence sale agreement dated 29.10.2013 was executed for sale consideration of Rs.1,15,000/- per plot and for the 6 plots it was fixed as Rs.6,90,000/-. The advance amount of Rs.5,00,000/- was paid on the date of sale agreement and balance amount payable within 10 days, i.e., before 08.11.2013. It was also agreed if there is any



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encumbrance, the defendant had to cure it. The plaintiff was always ready and willing to pay the balance amount. On 07.11.2013, the plaintiff approached the defendant to execute the sale deed by receiving the balance amount and the defendant agreed that he would come to the Kadayanallur Registrar Office at 10.30 AM on 08.11.2013. The plaintiff was waiting for the defendant from 10.30 AM till 05.30 PM along with the balance amount. But the defendant failed to appear and failed to execute the sale deed. Hence, the lawyer notice dated 09.11.2013 was issued but the defendant refused to receive the said lawyer notice. Since the defendant failed to execute the sale deed as agreed in the sale agreement, the present suit is filed for specific performance.

4. The defendant in his written statement had denied all allegations and submitted that the said sale agreement is created by the plaintiff and the same is not true / proved. The sale agreement itself was never executed at any point of time and the contents in the sale agreement are false and created. The plaintiff and the persons around him indulge in illegal activities. The contention of the plaintiff that per plot Rs.1,15,000/- was fixed and for 6 plots 6,90,000/- is mentioned but it differs in figures and letters. From this, it is evident that the plaintiff has not stated



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the truth. Further, the defendants stated that the plaintiff and the defendant never ever executed any document and the defendant had never received any amount from the plaintiff as alleged and the alleged sale agreement is created, false and forged. Any agreement over and above Rs.500/- has to be compulsorily registered, as per the Registration Act. Further, the plaintiff has not produced any receipt or any evidence to prove that he had paid Rs.5,00,000/- to the defendant. Further, there is no parent document submitted by the plaintiff and the plaintiff ought to prove that he was waiting in the Registration Office from 10.30 AM to 05.00 PM. The defendant specifically denies paragraph 6 of the plaint and submitted that the defendant used to travel to various places for his business and the said fact is known to the plaintiff. Since he is aware of the same, he had issued the lawyer notice when the plaintiff was not in the station and had created a situation that the lawyer notice was returned back without serving to the defendant. The same had been produced before the Court and the same had been shown as cause of action. The suit documents are not relevant to the present suit and the same is not pertaining to the defendant at all. The suit property is situated in the plaintiff's place in Krishnapuram Village. Hence, the plaintiff is coercing and torturing to pay some amount and has created the documents and has filed the



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WEB suit. He is also propagating that he would interfere in the peaceful possession of the defendant's property. Therefore, the suit is filed with deliberate intention to recover money illegally from the defendant. Hence, the defendant prayed to dismiss the suit.

5.After perusing the pleadings, documentary evidences and rival arguments, the Trial Court has allowed the original suit. Aggrieved over the same, the defendant has preferred an appeal and the same was dismissed. Aggrieved over the same, the present second appeal is preferred by the defendant. On the plaintiff's side PW 1 and PW2 deposed and the plaintiff has marked Ex.A1 to A5, they are sale agreement, lawyer notice, return of layer notice, two other sale deeds executed by the defendants. On the defendant's side, DW 1 and DW2 deposed and the defendant has submitted Ex.B1 and B2 and they are driving licence and Aadhar card.

6. The second appeal was admitted on the following substantial question of law:

“Whether the Courts below were right in proceeding on the presumption



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that the defendant did not deny his signature found in Ex.A1, more so when there is a specific denial in the written statement, wherein the defendant had stated as follows:

“ஏதொ பிராது தபசில் சொத்தை வாதிக்கு, பிரதிவாதி கிரையம் செய்து கொடுக்க ஒப்புக் கொண்டு வாதியும் பிரதிவாதியும் சேர்ந்து 29.10.2013 அன்று ஒரு கிரைய ஒப்பந்தம் செய்து கொண்டார்கள் என்று கூறியிருப்பது சுத்தப் பொய்யென இந்நிர் பிரதிவாதியால் மறுக்கப்படுகிறது. வாதி கூறுவது போல எந்த ஒப்பந்தமும் பிரதிவாதி, வாதிக்கு எந்தத் தேதியிலும் எழுதிக் கொடுக்கவில்லை.
””

7. The contention of the defendant that he had denied the execution of the sale agreement. But both the Trial Court and the Appellate Court had held that the defendant had not denied the signature. On perusing the contents of the written statement, the defendant had stated that “the sale agreement was never ever executed, the alleged sale agreement is forged, created one by the plaintiff and persons around him which would be evident from missing signature in the first page of the alleged sale agreement, the contents stated in the alleged sale agreement is denied, the defendant is not having any copy of the sale agreement and even according to the plaintiff only one copy of the agreement was prepared, no consideration was received by the defendant, no parent document is with the



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plaintiff'. From this it is evident that the defendant had denied the very execution of the sale agreement itself and had taken a plea of forgery and created one and has denied the execution raising various grounds. When the defendant had taken a plea of forgery then the burden is on the plaintiff to prove the genuineness of the sale agreement. Moreover, it is for the plaintiff, in the suit for the Specific Performance, to prove the genuineness of the sale agreement beyond all reasonable doubt as held in the case of ***B.Rajeswari Vs. B.Vinayagam*** reported in ***2020 (1) CTC 515***. Further when the defendant had denied the very execution of the sale agreement, then it ought to be taken that the defendant had denied the signature and execution of sale deed. Therefore, this Court is of the considered opinion that both the Courts have erred in coming to the conclusion that the defendant had not denied the signature.

8. Infact, the plaintiff ought to have filed an application to compare the signature of the defendant after the receipt of the copy of the written statement and before the Trial. But the plaintiff had failed to do so. The plaintiff had submitted that the Trial Court had accepted his case and hence he had not filed the same. Such a contention is not acceptable since the initial burden is on the



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plaintiff to prove the execution of the sale agreement, that too heavy burden is on the plaintiff when the defendant had denied the very execution of the sale deed. And when the plea of forgery taken by the defendant.

9. When the second appeal was taken for hearing, the plaintiff / respondent herein had filed C.M.P.(MD)No.3298 of 2024 to send Ex.A1, the sale agreement dated 29-10-2013 and Exs.A4 and 5, the sale deeds dated 27-04-2006 and 30-07-2010 and in order to compare the signature in Ex.A1 along with the admitted signature found in Exs.A4 and A5 both marked in O.S.No.305 of 2013 on the file of learned Additional Sub Judge, Tenkasi with proper cover and seal by this Court to the office of the Deputy Director, Regional Forensic Science, Laboratory, Collector's Office Road, Madurai through an advocate Commissioner to be appointed by this Court. Thereafter prayed to remit the case back to the Trial Court for proving his case. The defendant / appellant had filed counter stating that the plaintiff being a land broker and having acted as a Power Agent in past transactions, has a clear motive to fabricate such agreements for personal gain. During cross-examination, the plaintiff's unfamiliarity with the basic facts about the property including not having seen the property or the relevant documents

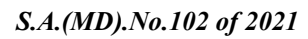


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before entering into alleged agreement raises serious doubts about the veracity of the claim and hence defendant / appellant prayed to dismiss the said Civil Miscellaneous Petition and vehemently objected to remit the case back to the Trial Court.

10. After hearing the rival submissions in the said C.M.P.(MD)No.3298 of 2024, this Court is of the considered opinion that the said petition is filed in order to cover the said lapse to compare the signature. Even if the said application is allowed in order to grant an opportunity to the plaintiff to prove his case, the plaintiff ought to face another hurdle of sale consideration. Since the plaintiff had not averred in the plaintiff the mode of payment of Rs.5,00,000/- and had not filed any document to prove the payment of sale consideration. If the plaintiff had paid the amount through bank transaction, he would have submitted the bank statements. If the plaintiff had paid in cash, he would have stated how he paid the amount either from withdrawing from the bank or his source of money. The plaint is bereft of any details. Infact the defendant had denied of receipt of sale consideration hence the burden is on the plaintiff to prove the payment of sale consideration. When there is no iota of evidence for payment of advance sale



11. Further, it is seen that the plaintiff had stated that he is ready and willing to conclude the contract, hence after informing the defendant, the plaintiff was waiting in the Kadayanallur Registrar Office on 08.11.2013 from 10.30 AM till 05.30 PM along with the balance amount. But the plaintiff had not produced an iota of evidence to prove the alleged waiting at the Registrar Office.

12. Hence, the above denial of execution of sale deed ought to be considered with the contention of the defendant that consideration was never passed on to the defendant. Further the plaintiff had not submitted any proof for the alleged waiting at Registrar Office. This is where another lapse of the plaintiff is fatal to the plaintiff. It is seen that the plaintiff claims that per plot the rate was fixed for Rs.1,50,000/-, for six plots Rs.6,90,000/-. The bare reading of the plaint would indicate there is discrepancy in the calculation of the rate of plot. If per plot is Rs.1,50,000/-, then total consideration would be Rs.9,00,000/-. But the plaintiff



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had made corrections in the plaint as if the rate of each plot is Rs.1,15,000/- and there is no explanation for the said corrections. Therefore, this lapse ought to be considered in the light of the fact that the defendant denied the very execution of the sale agreement. Hence, heavy burden is on the plaintiff to prove that sale consideration was passed on to the defendant. On perusing the plaint, it is seen the plaintiff had simply stated that he had paid Rs.5,00,000/- and had not stated whether the amount was paid through cash or through bank. When the plaintiff had simply stated the amount is paid, then it ought to be taken as cash payment. In such circumstances, the plaintiff is bound to state the source of the money. Whether cash was withdrawn from bank, if so, the bank statements. The bare statement without any evidence of payment, cannot prove the sale consideration was passed on, that too when the defendant denies the receipt of the sale consideration and hence, the alleged sale agreement itself is doubtful. Therefore, this Court is of the considered opinion that the initial burden is on the plaintiff to prove the genuineness of the sale agreement and payment of sale consideration. But the plaintiff had not discharged the said initial burden and hence the alleged sale agreement is doubtful.



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13. The defendant had relied on the judgment rendered in the case of ***Robinson Vs. Ramachandran*** reported in **2014 (6) CTC 195** it has been held that the primary burden is on the plaintiff and the relevant paragraph is extracted hereunder:

“11. Though the burden is on the plaintiff to establish the execution of Ex.A1 the defendant had taken out an application as he denied the signature in Ex.A1. For the reasons best known to him, it was not prosecuted. Merely because the defendant had taken out an application to send the document for comparison of signatures to an expert to discharge his burden, it does not absolve the burden of the plaintiff to prove the execution of the same as the burden is primarily on the plaintiff to prove. Once the plaintiff discharges his burden, then the burden shifts on the defendant.”

14. In the case of ***Thiruvengadam Pillai Vs. Navaneethammal and another*** reported in **(2008) 4 SCC 530**, the Hon’ble Supreme Court had considered and held the burden is on the plaintiff and the High Court had wrongly shifted on the defendant and the relevant portions are extracted hereunder:

“6. The Trial Court ...

(e) In spite of defendants denying the agreement (Ex.A1), the plaintiff failed to discharge his onus to prove that execution of the agreement as he did not



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seek reference to a fingerprint expert to establish that the thumb impression on the agreement was that of the first defendant.

...

The first and second appeals

7. Feeling aggrieved, the plaintiff filed an appeal before the Sub Court ...

b) The burden of proving that the agreement of sale was concocted and forged was on the defendants and they ought to have taken steps to have the document examined by a Finger Print expert, to establish that the disputed thumb mark in the agreement of sale (Ex.A1), was different from the admitted thumb mark of the first defendant in the sale deed (Ex.B2). They failed to do so.

...

8. Being aggrieved,

(i) The first appellate court had placed the onus wrongly on the defendant to prove the negative. As the first defendant denied execution of the agreement, the burden of establishing the execution of document, was on the plaintiff. The plaintiff had failed to establish by acceptable evidence that Ex.A1 was a true and valid agreement of sale. The evidence, examined as a whole, threw considerable doubt as to whether it was truly and validly executed.

...

19. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the



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execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case plaintiffs came to court alleging that the first defendant had executed an agreement of sale in favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses. But the various circumstances enumerated by the trial court and High Court referred to earlier, when taken together, rightly create a doubt about the genuineness of the agreement and dislodge the effect of the evidence of PW 1 to 3. We are therefore of the view that the decision of the High Court, reversing the decision of the first appellate court, does not call for interference.”

As held in the aforesaid judgment, the initial burden is on the plaintiff to prove the genuineness of the sale agreement, if the plaintiff had discharged the burden, then the burden would shift on the defendant. In the present case as held supra the



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plaintiff had not discharged the initial burden. Therefore, from any angle the plaintiff had not proved the case and hence the substantial question of law is held in favour of the defendant and against the plaintiff.

15. For the reasons stated supra, the second appeal is allowed and the Judgment and Decree dated 28.11.2019, passed in A.S.No.66 of 2018 on the file of the Additional District and Sessions Court (Fast Track), Tenkasi, confirming the Judgment and Decree, dated 01.03.2018, passed in O.S.No.305 of 2013 on the file of the Additional Sub Court, Tenkasi are set aside. No costs. The C.M.P. (MD)No.3298 of 2024 is dismissed.

28.10.2024

Index : Yes / No
NCC : Yes / No

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TO:

1. Additional District and Sessions Court
(Fast Track), Tenkasi
2. Additional Sub Court, Tenkasi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.102 of 2021

Dated:
28.10.2024