



S.A.(MD).No.491 of 2022

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.491 of 2022

and

C.M.P.(MD)Nos.6314 and 10137 of 2022

Ayyanal Ammal (Died)

Kamatchi Gounder (Died)

- 1.Selvi
- 2.Palaniammal
- 3.Saroja
- 4.Meenakshi
- 5.Suthanthiradevi

... Appellants

/Vs./

- 1.A.Thangasamy
- 2.R.Rajendran
- 3.P.Mayil

...Respondents

(Respondents 2 and 3 are impleaded vide Court order dated 19.04.2023 made in CMP(MD)No. 1030 of 2023 in SA(MD)No.491 of 2022)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 30.08.2019 passed in the Appeal in



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A.S.No.9 of 2006 on the file of the First Additional Subordinate Court, Madurai, reversing the Judgment and Decree, dated 30.08.2005, passed in the suit in O.S.No.640 of 2004 on the file of the District Munsif Court, Madurai Taluk at Madurai.

For Appellants : Mr.J.Barathan
For R1 : M/s.B.Bhuvanesvari
for Mr.A.Ganesan
For R2 and R3 : Mr.K.Guhan

JUDGMENT

The present second appeal is filed by the legal heirs of the defendant in the suit against the Judgment and Decree dated 30.08.2019 passed in the Appeal in A.S.No.9 of 2006 on the file of the First Additional Subordinate Court, Madurai, reversing the Judgment and Decree, dated 30.08.2005, passed in the suit in O.S.No.640 of 2004 on the file of the District Munsif Court, Madurai Taluk at Madurai.

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



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3. The brief facts stated in the plaint is that the plaintiff and the defendant are brother and sister. The suit property belongs to the defendant sister. The defendant has agreed to sell the property to the plaintiff and the plaintiff has also agreed to purchase the same. The sale consideration was fixed as Rs.35,000/- and it has also been reduced into writing on 06.02.1994. The defendant had received a sum of Rs.15,000/- as advance on 06.02.1994 and the balance Rs.20,000/- has to be paid within three months and the defendant has to execute sale deed within three months from the date of agreement. The plaintiff has also paid Rs.10,000/- another part of sale agreement on 10.02.1994 and the necessary endorsement was made in the agreement itself. Subsequently, the plaintiff has purchased necessary stamp papers on 28.03.1994 for the purpose of writing the sale deed. The plaintiff has sent a letter dated 04.04.1994 intimating the purchase of stamp papers and requesting the defendant to come to Alanganallur and execute sale deed on receipt of the balance sale consideration. But the defendant failed to appear nor sent any reply. The plaintiff has gone to Ayyapatty and requested the defendant to come and execute the sale deed but there was no response from the defendant side. Hence, the plaintiff sent another letter, dated 02.05.1994, to come to Alanganallur Sub Registrar Office and execute the sale deed. Again, there was no response



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from the defendant. Then, the plaintiff has sent a lawyer notice, dated 21.07.1994 and the defendant refused to receive the same returned the lawyer notice. Though all these steps taken by the plaintiff, the defendant has assured to come and execute the sale deed in the presence of friends and relatives but she has not turned up nor chosen to reply. The plaintiff has sent a telegram on 03.08.1994 to the defendant. The defendant has sent a reply denying the execution of sale agreement and stated the defendant had borrowed Rs.5,000/- from one Muniyandi, Kovilpatty on 17.11.1993 and delivered the possession of the suit property to the said Muniyandi allowing him to enjoy the same in lieu of interest. The said Muniyandi has also made over the pro note, dated 17.11.1993, in favour of the plaintiff on receipt of the principal amount of Rs.5,000/-, delivered the possession of the property to the plaintiff on 05.10.1994 itself. The dispute has also been referred to the Sub Inspector of Police, Alanganallur. The defendant has sent a lawyer notice, dated 04.10.1994, to the plaintiff and also sent the notice to the Sub Inspector of Police denying the execution of sale agreement. The very existence of sale agreement was denied and requested the Sub Inspector not to take action against the defendant as the dispute is in civil nature. The plaintiff has sent a reply notice setting out the facts. Since the defendant happened to be the sister of the



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plaintiff, negotiations were going on through mediators and relatives. But the defendant is now demanding a higher amount and refused to execute the sale deed for the original sale consideration. The defendant is not entitled even to single pie more than the agreed amount, since she is bound to receive the balance of sale consideration, i.e., Rs.10,000/- and execute the sale deed in favour of the plaintiff. The plaintiff was always ready and willing but the defendant was not ready and chose to deny the sale agreement, dated 06.02.1994. Now, it appears that the defendant is trying to dispose of the suit property to the Anubhav Group of Companies. The plaintiff has sent a letter to the company intimating the existence of sale agreement. Hence, the suit is filed inter alia praying for a direction against the defendant to execute a registered sale deed and to direct the defendant to put the plaintiff in possession of the scheduled property with a clear title without any threat or hindrance and also to direct the defendant to execute and register the sale deed within a specific time failing which the sale deed may be executed as per the provisions of law and pass an order of permanent injunction restraining the defendant from alienating the suit property to any person except the plaintiff.

4. The defendant has filed a written statement wherein it is stated that the



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plaintiff is one of the two brothers of the defendant and it is true that the suit property belongs to the defendant but it is absolutely false to allege that the defendant had agreed to sell the suit property to the plaintiff for Rs.35,000/- and it is false to state that the sale agreement was reduced to writing on 06.02.1994 and the defendant had received Rs.15,000/- in advance. The suit property formerly belonged to the father of the plaintiff and defendant. The father had executed a registered settlement deed in favour of the defendant on 23.10.1958. The defendant had difficulties in personal cultivation so she had arranged one Muniyandi belonging to Kovilpatty to cultivate the suit property. The defendant and her husband jointly executed a promissory note in favour of Muniyandi on 17.11.1993 and received a sum of Rs.5,000/-. Then, the defendant and her husband entered into an agreement with the said Muniyandi under which the defendant permitted the Muniyandi to take possession of the land in lieu of payment of interest. The plaintiff had fraudulently deceived the defendant and had got the sale agreement as if the defendant agreed to sell the suit property to the plaintiff for Rs.35,000/- and had received Rs.15,000/- as advance. The plaintiff had previously obtained a bank loan on the security of the defendant's property. For the purpose of that loan, the plaintiff used to get signature of the defendant in



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blank paper as well as in filled up documents. The defendant is an illiterate village woman and she has learnt only to sign her name recently. The plaintiff has also asked the defendant to sign in a white paper at the point marked by him. The defendant has entrusted her jewels to her brother plaintiff for the purpose of remaking but he did not hand over the same to the defendant. The plaintiff promised to one Pappathi Ammal, a relative that he would return Rs.15,000/- towards the value of the jewels which he had utilized for some other purpose on or about 06.02.1994. The plaintiff gave the defendant Rs.15,000/- stating that it is for the discharge of the liability to pay Rs.15,000/- in lieu of the jewels. The plaintiff wanted a receipt for the sale. The defendant believed the representation of the plaintiff and affixed her signature on the revenue stamps affixed by the plaintiff on the blank paper. Thereafter, the defendant learned that the plaintiff had fraudulently made the alleged sale agreement utilizing the blank paper in which she had affixed her signature on the revenue stamps. At the time when the defendant affixed her signature, there was no other writing in the said paper either on the stamp or otherwise. It is absolutely false to allege that the defendant is demanding higher amount for executing the sale deed. The defendant does not want to sell her property and the land is required for her maintenance in her old



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age. It is false to state that the defendant is trying to dispose the property. The suit property is worth much more. There is no cause of action and the plaintiff is not entitled to the relief of specific performance.

5. The plaintiff had marked Ex.A1 and Ex.A21 as documents and produced 4 witnesses. The defendant had marked Ex.B1 to B14 as documents and produced 3 witnesses. The Court documents are marked as Ex.X1 and Ex.X2. Trial Court had dismissed the suit. Aggrieved over the plaintiff had preferred Appeal Suit and the same was allowed. Aggrieved over the defendant had filed the present second appeal.

6. The second appeal is admitted on the following substantial questions of law:

“i. Whether a sale agreement which requires to be stamped under Article 5(j) of the Indian Stamp Act, 1899 can be stamped with adhesive stamps, when Section 11 does not enable the same?

ii. When the alleged sale agreement dated 06.02.1994 (Ex.A1) consists of two pages and when the first page does not have the signatures of both



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parties, can it be said to duly executed as per Section 2(12) of the Indian Stamp Act, 1899?

iii. When the respondent/plaintiff sends letters dated 04.04.1994 and 02.05.1994 (Ex.A4 and A5), lawyer notice dated 21.07.1994 (Ex.A6) and telegram dated 03.08.1994 (Ex.A8) demanding execution of sale deed and threatening civil and criminal action, and when the defendant sends reply telegram dated 05.08.1994 (Ex.A9) and reply lawyer notice dated 04.10.1994 (Ex.A10) denying execution of sale agreement, whether the respondent/plaintiff can be said to be ready and willing to perform his part of the contract under Section 16(c) of the Specific Relief Act, 1963 when he had filed the suit about 1½ years later on 01.02.1996?

iv. Whether the lower appellate Court committed an illegality by thrusting and relying upon its own personal notions that it is a normal practice that the sale agreement requires signature in the last page alone and that there is normal practice of preparing one copy only and giving it to the purchaser alone, when no evidence was let in on those practices?"

7. The first substantial question of law is whether the sale agreement can be stamped with adhesive stamps when section 11 does not enable the same. In order to consider this the section 11 of Indian Stamp Act is extracted hereunder:



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11. Use of adhesive stamps. The following instruments may be stamped with adhesive stamps, namely:

- (a) instruments chargeable⁷ [with a duty not exceeding ten naye paise], except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) bills of exchange,⁸*** and promissory notes drawn or made out of⁹ [India];
- (c) entry as an advocate, vakil or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

Section 11 permits to affix adhesive stamps for the instruments chargeable with duty not exceeding ten paise, bills of exchange, entry as an advocate etc., notarial acts, transfer of shares. In the said list of instruments, sale agreement is not covered. Therefore, this Court is of the considered opinion that the adhesive stamps affixed in the sale agreement cannot be legal sustained and the said sale agreement is not valid in the eye of law.



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8. In the present case, the contention of the plaintiff is the defendant agreed to sell the property and it was reduced into writing in a white paper. But the contention of the defendant is that she had signed in a white paper and there was no content in the white paper. When it was a blank paper, the defendant was under the impression that she is affixing her signature in lieu to the earlier transaction between the plaintiff and the defendant wherein the plaintiff had obtained bank loan for which the defendant had given her property as security. Hence, the sale agreement itself is questioned by the defendant. In such circumstances, the affixture of adhesive stamps in the said alleged sale agreement becomes an illegal document.

9. As per Indian Stamp Act, 1899, sale agreement ought to be executed in a non-judicial stamp paper and it cannot be executed in a white paper and adhesive stamps cannot be affixed. The Trial Court has taken the same into consideration and had allowed the plaintiff to pay penalty for not executing in a proper non judicial stamp paper. But the payment of penalty would not prove the case of the plaintiff. The penalty is only for accepting the alleged sale agreement to mark as evidence. The plaintiff ought to independently prove the sale agreement was



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executed by the defendant and there was consensus in the contract. In other words, the alleged sale agreement cannot be taken into consideration and grant the relief of specific performance to the plaintiff and the plaintiff ought to establish the execution of the alleged sale agreement as per law. Especially, when the defendant denies the very execution of the sale agreement and there is no consensus in the contract at all. The subsequent payment of penalty will not cure the defect when the Indian Stamp Act specifically directing the parties to execute in the non-judicial stamp paper. Therefore, the very agreement itself is in violation of Indian Stamp Act, coupled with the fact that there is no consensus in the contract entered between the parties. Hence the alleged sale agreement is not proved by the plaintiff. Therefore, the 1st substantial question of law is answered in favour of the deceased defendant.

10. The 2nd substantial question of law is since there is no signature on the first page, can it be stated it was truly executed and the 4th substantial question of law whether the personal notions can be thrust on the defendant. Generally, all sale agreements will be signed by the parties in each and every page. And in final page after the signature the witness would have signed. In the present case, the



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sale agreement was signed only in the last page alone. The Trial Court has considered the same and has rejected the contention of the plaintiff and dismissed the suit. However, the Appellate Court has considered the same and held even though the sale agreement marked as Ex.A1 is of two pages, it has to be construed as a single page since the agreement is a single folded sheet and not two separate sheets and has also held that both plaintiff and defendant had signed at the end of the recital. Further held three revenue stamps have been affixed in a row and not one by one. Within the said revenue stamps, both the parties have signed one after the other. Since there is no gap, the Appellate Court has construed the said agreement as a valid agreement. The reasoning stated by the Appellate Court is assumption and presumption besides being absurd.

11. Further when the defendant had denied the execution of sale agreement and has stated that the plaintiff had obtained the signature in a blank paper for the loan transaction entered in the bank the same ought to be considered. If it is loan transaction, that too when the property of the defendant was given as a guarantee, the signatures would be obtained in white paper and adhesive stamps would be used. If it is loan transaction non-judicial stamp paper is not necessary. When the



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plaintiff had obtained signature in white paper with adhesive stamps affixed on the same, then the plaintiff is well aware the same is only loan transaction and that is why he had affixed adhesive stamps. Therefore, the case of the defendant is believable and it would be evident that the plaintiff is blatantly lying. The reasoning stated by the Appellate Court is presumption besides being perverse.

12. The Indian Stamp Act under Section 2 (12) states that it can be construed as executed, if the parties signed the documents, which means it has to be signed in each and every page. Moreover, when the other side denies the execution of sale agreement, the execution should be strictly considered as per law and any deviation ought to be considered in favour of the person who is denying the execution. Therefore, the 2nd and 4th substantial questions of law are also held in favour of the defendant / appellants herein.

13. The 3rd substantial question of law is whether the plaintiff had proved his readiness and willingness when the suit is filed after 1½ years. The plaintiff had filed the suit for specific performance, the person who is seeking specific performance ought to show readiness and willingness to perform his part of the



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contract. In the present case, the date of sale agreement Ex.A1 is 06.02.1994 and as per the sale agreement, the parties should execute it within three months. Of course, the plaintiff has sent letters on 04.04.1994 and 02.05.1994 followed by a lawyer notice, dated 21.07.1994 and a telegram, dated 03.08.1994, which are marked as Ex.A4, Ex.A5, Ex.A6 and Ex.A8. But the defendant had denied the execution of sale agreement Ex.A1 and also denied receiving two letters Ex.A4, Ex.A5, but admitted lawyer notice and telegram Ex.A6 and Ex.A8 and had suitably replied by denying the execution of the sale deed through telegram, dated 05.08.1994 and lawyer notice, dated 04.10.1994, which are marked as Ex.A9 and Ex.A10. However, it is seen that the suit is filed on 01.02.1996 which is after 1½ years delay. Then the question arises when there is a delay of 1½ years in filing the suit, can it be stated the defendant is ready and willing. This Court is of the considered opinion that even though the limitation prescribed for preferring a suit is three years and the suit is filed within the period of limitation, the delay of 1½ years for filing the suit from the date of suit notice was not explained by the plaintiff. When there is a delay, it has to be construed that the plaintiff is not ready and willing. Initially, the plaintiff was ready and willing, subsequently, the plaintiff had delayed the process of filing the suit and the suit is filed after 1½



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years, therefore it has to be held that there is no readiness and willingness on the part of the plaintiff.

14. Even though the plaintiff claims that he had paid certain amount subsequently to the defendant, according to the defendant, it was paid in lieu of another transaction wherein the defendant had handed over jewels for remaking. When such plea was taken, the burden is on the plaintiff to prove that the same is paid in lieu of sale agreement. In the present case, there is an endorsement in the alleged sale agreement but this Court has held it is not a sale agreement at all. Therefore, the receipt of Rs.15,000/- which is endorsed in the agreement cannot be taken as advance and the same cannot be taken as readiness and willingness of plaintiff. Therefore, 3rd substantial question of law is held against plaintiff.

15. Further the Trial Court had discussed the plea of the plaintiff that he was ready with the stamp papers for executing the sale deed. The sale consideration was fixed as Rs.35,000/-, the plaintiff had claimed he had purchased the stamps papers for Rs.6220/-. But the 11% stamp duty for Rs.35,000/- is only Rs.3815/-, hence the claim of the plaintiff who was a retired government officer



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that he had purchased Rs.6220/- is not for the executing the present sale deed.

Further the land in question is situated near main road and hence the valuation stated by the plaintiff is much low price. As per Ex.B13 the value of the land in the year 2003 is Rs.320/- per cent. Ex.B14 is of the year 1993 and it works out to be Rs.250/- per cent. Suit property situated near main road and its value as house site about 10 years ago was Rs.500/- per cent. As on the date of the suit judgment it was Rs.1500/-. Hence the sale for Rs.35,000/- for more than 3½ acres is much lower and the alleged sale agreement is fraud. This Court is fully concurring with the Trial Court regarding the value stated supra and also the finding of the Trial Court that the alleged sale agreement is a fraud.

16. Therefore, all the substantial questions of law are held in favour of the defendant / appellants herein and against the plaintiff / respondents herein. Therefore, the judgment and decree rendered by the Appellate Court is set aside and the judgment and decree rendered by the Trial Court is upheld and confirmed.



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17. Hence, the second appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

NCC : Yes / No

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To:

1. First Additioanl Subordinate Court,
Madurai.
2. District Munsif Court,
Madurai Taluk at Madurai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
S.A.(MD)No.491 of 2022

Dated:
28.10.2024