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SA(MD)No.41 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	30/07/2024
Date of Pronounced	30/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.41 of 2021

S.Rajaram : Appellant/Respondent/
Plaintiff

Vs.

A.Rajalakshmi : Respondent/Appellant/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment, dated 26/02/2019 passed in AS No.45 of 2016 on the file of the Additional District Judge, Dindigul, by reversing the decree and judgment dated 02/03/2016 passed in OS No.295 of 2013 by the Principal Subordinate Judge, Dindigul.

For Appellant : Mr.B.Saravanan

For Respondent : Mr.T.Vadivelan



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JUDGMENT

This second appeal is filed against the decree and judgment, dated 26/02/2019 passed in AS No.45 of 2016 by the Additional District Judge, Dindigul, by reversing the decree and judgment dated 02/03/2016 passed in OS No.295 of 2013 by the Principal Subordinate Judge, Dindigul.

2.The plaint averments:-

The defendant offered to sell the property to the plaintiff stating that it belonged to her by sale deed dated 04/11/1994. The plaintiff agreed for the proposal. They entered into a sale agreement dated 01/10/2011. The total sale price was fixed at Rs.5,50,000/-. An agreement was entered in the presence of the witnesses and the childrens of the defendant. On the date of the agreement, the plaintiff paid amount of Rs.5,00,000/- as advance. The balance amount was Rs.50,000/-. The time for performance of the contract is two years. The plaintiff was willing and ready to perform his part of the contract. But the defendant refused and evading. After sometime, the plaintiff issued a notice dated 10/07/2013 asking the defendant to execute the sale deed within 15 days. It was acknowledged by the defendant and issued a reply notice on 18/07/2013 containing false allegations. Rejoinder was issued by the plaintiff on



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23/07/2013. Seeking the relief of specific performance,
the suit was filed.

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3. During the pendency of the second appeal, CMP(MD)No.15973 of 2023 was filed by the plaintiff to amend the plaint. That was allowed, the plaintiff was permitted to incorporate the alternative prayer for refund of the advance amount with interest.

4. The defendant filed written statement with the following averments:-

The suit property absolutely belonged to the defendant. It is false to state the defendant agreed to sell the property for Rs.5,50,000/- to the plaintiff. It is equally false to state that there was an agreement on 01/10/2011 between the defendant and the plaintiff in respect of the suit property in the presence of the third parties. It is also false to state that sale price was fixed at Rs.5,50,000/- and on the date of the agreement, the defendant received Rs.5,00,000/- as advance. It is false to state that after receiving the balance sale consideration of Rs.50,000/-, the defendant should execute a sale deed and the time for performance of the contract is two years. It is false to state that the plaintiff was willing and ready to perform his part of



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the contract, but the defendant refused and evasive. On 25/06/2011, the defendant asked the loan amount of Rs.1,00,000/- from the plaintiff, for which, the plaintiff demanded defendant's signature in two empty stamp papers. After that, the defendant borrowed a sum of Rs.1,00,000/- from the plaintiff. Again on 01/10/2021, the defendant requested loan amount of Rs.1,00,000/- from the plaintiff. The defendant's son Poornachandran gave two cheques, one filled with Rs.50,000/- and another filled with Rs.65,000/- to the plaintiff. After getting the same, the plaintiff gave Rs.1,00,000/- to the defendant. Totally, the defendant received loan of Rs.2,00,000/- from the plaintiff. That was repaid on 12/02/2013 to the plaintiff by the defendant. Thereafter, the defendant asked the plaintiff to return two empty bond papers and two cheques, for which the plaintiff delayed. The defendant needed Rs.3,00,000/- for his grand daughter's marriage. So, on 15/06/2013, he approached the plaintiff for a loan amount of Rs. 3,00,000/-. The plaintiff asked the original deed of the suit property belonged to the defendant, for which, he accepted and gave the original document and his son and his wife's immovable property documents to the plaintiff. For getting the documents, the plaintiff issued receipts. The plaintiff told that he will give amount to the



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defendant by pledging two sale deeds. But he did not give. And the plaintiff filled the two empty bonds to his favour. The defendant denied that he did borrow Rs.5,00,000/- on 01/10/2011 from the plaintiff. He did not agree for any sale of the property and prays for dismissal of the suit.

5.During trial, on the side of the plaintiff, 2 witnesses were examined and 7 documents marked. On the side of the defendant, 2 witnesses were examined and 8 documents were marked.

6.The trial court has framed the following issues:-

(1)Whether the sale agreement, dated 01/10/2021 is true and valid?

(2)Whether the plaintiff was ready and willing to perform his part of contract?

(3)Whether the plaintiff is entitled to the relief of specific performance as prayed for?

(4)Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?



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(5) To what other reliefs, the plaintiff is entitled to?

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7. At the conclusion of the trial process, the trial court decreed suit as prayed for.

8. Against which, the defendant preferred appeal in AS No.45 of 2016 on the file of the Additional District Court, Dindigul. It reversed the judgment and decree of the trial court, by judgment, dated 26/02/2019.

9. Aggrieved over the same, this second appeal is preferred by the plaintiff as appellant.

10. At the time of admission, the following question of law was framed:-

Whether the lower appellate court was right in dismissing the suit for specific performance on the ground that the suit agreement is not registered?

11. Heard both sides.

12. Judgement of reversal.



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13.Now, we will go to the judgment of the trial to see whether any ground was made out by the appellate court to interfere into the decree and judgment of the trial court.

14.The signature in the disputed document is not denied and disputed by the defendant. What was stated by her before the trial court is that at the time of borrowing loan, the plaintiff obtained the signature in empty bond papers and it has been misused, created a sale agreement and foisted this case. Since only the signature is admitted by the defendant, it is the duty of the plaintiff to prove that the agreement was entered into between the parties for valid consideration.

15.Now, according to the trial court, the scribe of the disputed document was examined on the side of the plaintiff as PW2. The sons and the daughter-in-law of the defendant signed as witnesses in the document. So, the contention on the part of the defendant that it is a created document and she signed in the empty stamp papers was rejected.

16.Having found that the document is a valid one, the trial court went on to the finding of readiness and



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willingness; The case on the part of the plaintiff was established under 16(c) of the Specific Relief Act. So, on the circumstantial evidence, the trial court came to the conclusion that the readiness and willingness on the part of the plaintiff was established and the consideration mentioned in the document was accepted to be fair consideration and decreed the suit.

17.Now, we will go to the judgment of the first appellate court.

18.The document is an unregistered document. PW2 has signed as scribe in the document. Apart from that, it is also found that since on the date of the disputed document, the property was already under mortgage with the Dindigul SBI Employees and Public Service Cooperative Housing Society Limited. The original document was available with the mortgagee during the relevant time. In all those circumstances, the first appellate court recorded a finding that Ex.A2 is not a valid document and differed from the judgment of the trial court and recorded a finding against the plaintiff and allowed the appeal.



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19.Since it is a judgment of reversal, regarding substantial question of law, it may not arise. It is a clear finding by the trial court to the effect that Tamil Nadu Amendment Act came into force only subsequent to Ex.A2. I can briefly refer to that finding. Amendment to the Registration Act passed by the Tamil Nadu Government came into effect on 01/12/2012. But Ex.A2 is dated 01/10/2011. So, there is no necessity for registering the sale agreement prior to coming into force of the Tamil Nadu Act.

20.As stated above, the first appellate court recorded a finding that it is an unregistered document probably on the ground that Ex.A2 was not validly entered between the parties. So, we will go back to the the facts and circumstances of the case to re-appreciate the evidence in view of the reversal judgement.

21.As mentioned above, the defendant has not denied and disputed her signature in Ex.A2. What was denied is due execution of the document. According to the defendant, only such document never intended to be acted upon as a document of sale agreement.



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22.Before we go into the oral evidence, we can peruse Ex.A2.

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23.Bare perusal of Ex.A2 does not inspire any confidence at all to the effect that it is validly entered between the parties. The reason being that the document is a typewritten document. The signature of the parties namely the plaintiff and the defendant and the witnesses are in bottom. In between there is space containing huge space. The document writer name is mentioned as Thangapandian-PW2, which is typewritten in the last portion of the page. So, this itself does indicate that the document was not prepared at the time of making the signature by the parties. After making the signature, it appears that the above said document has been prepared.

24.As pointed out by the first appellate court, PW2 has not signed in the document showing that he has scribed the same. The reason for not signing the document was not explained by him. That was the main reason for the first appellate court to doubt with regard to the genuineness.

25.Now, let us see whether any circumstance is



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available to support the above said conclusion reached by the first appellate court.

26.As pointed out by me, PW1 says that Ex.A1 was handed over to him at the time of Ex.A2. This was objected by the defendant stating that the original document was not handed over to the plaintiff at the time of signing the document. She would say that on the date of creating the document namely Ex.A2, the original document was mortgaged by her with the Dindigul SBI Employees and Public Service Cooperative Housing Society Limited. Later, the original document was handed over to the plaintiff on 15/06/2013, when he requested the loan amount of Rs.3,00,000/- from the plaintiff. This was pointed out by the first appellate court stating that there is no probability for handing over the original document at the time of signing the document in Ex.A2.

27.Now, we will see whether the above said finding of the first appellate court is correct on record.

28.We will straightaway go the evidence of DW1 on this aspect, before we go into the evidence of PW2. She would say that on 01/10/2011, she borrowed a sum of Rs.1,25,000/- by mortgaging the property with Dindigul SBI Employees and Public Service Co-operative Housing



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Society Limited. The mortgage was created on 27/08/2003. That mortgage was redeemed on 28/03/2013. Till that time, it was under the custody of the Society. Again, she borrowed a sum of Rs.5,00,000/- with the Sriram City Union Finance Limited, on 28/05/2013. The document was deposited with the above said Finance Company. That amount was discharged on 13/06/2013. Only on that date, the original document namely Ex.A1 was returned to her by the Finance Company. Again, on 15/06/2013, she approached the plaintiff for a hand loan amount of Rs.3,00,000/-. At that time, handed over Ex.A1 and other documents. Ex.B1 is, dated 27/08/2003, the mortgage deed. It is only a simple mortgage deed. Nowhere it is stated that the original document was handed over to the Society at the time of creating a simple mortgage. It is not a mortgage deed by deposit of title deed. Even in Ex.B1, we find no endorsement by the mortgagee in this regard. In the discharge receipt under Ex.B3 also, there is no reference to the handing over of Ex.B1 to the Society and returned the same to the defendant at that time of Ex.B3. Similar is the case in respect of Ex.B4, the simple mortgage created in favour of Sriram City Union Finance Limited. But in Ex.B5 discharge certificate, we find no reference to the title document. Even if we find no endorsement to the effect in Ex.B1, from the documentary evidence, it is



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seen that Ex.B1 was not handed over to the plaintiff at the time of signing the document. But in the custody of the Sriram City Union Finance Company Limited on 28/05/2013.

29.Now it is stated by the defendant that when she approached the plaintiff in the year 2013, she handed over the original document, It is without any evidence. How Ex.A1 came into the custody of the plaintiff is not clear on record. The contention that it was handed over at the time of Ex.A2 has to be disbelieved. So also the contention of the defendant that it was handed over to the plaintiff on 15/06/2003 has to be disbelieved.

30.Now coming back to the validity of the document, it is contended by the appellant that since Ex.A2 is a written document, the defendant is not permitted to plea and prove that it was intended to be acted upon as a sale agreement. For that purpose, the appellant would rely upon the following judgments:-

1.S.Saktivel (Dead) By Lrs Vs. M.Venugopal Pillai and others [(2000) 7 SCC 104;

2.Alex Joseph Vs. Madhavan Nair [(2005) 12 SCC 378]; and



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(3)Mangala Waman Karandikar (D)
TR.LRs Vs. Prakash Damodar Ranade (Civil
Appeal No.10827 of 2010, dated
07/05/2021)

31.Section 92 proviso (1) of the Evidence Act is
extracted herein:-

Proviso(1).-Any fact may be proved
which would invalidate any document, or
which would entitle any person to any
decree or order relating thereto; such
as fraud, intimidation, illegality, want
of due execution, want of capacity in
any contracting party, (want or failure)
of consideration, or mistake in fact or
law."

32.So, the contention on the part of the appellant
that no oral evidence is permissible against the written
document is not available, as proviso(1) makes the
position very clear to the effect that the defendant is
at liberty to plea and prove, in fact, it may invalid
document, more particularly, in the subject matter, the
defendant is protected under that proviso. Here, she
disputed the due execution of the document. So, the
contention on the part of the appellant is not available



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to him and rightly the first appellate court has relied upon the circumstantial evidence to show that the Ex.A2 was not validly entered into between the parties.

33.Now the other important aspect is that according to the plaintiff, the total sale consideration was fixed at Rs.5,50,000/-. Out of that amount, Rs.5,00,000/- was paid on the date of Ex.A2 execution itself. The remaining amount was only Rs.50,000/-. For payment of Rs.50,000/-, he got the sale deed executed. According to the plaintiff, two years period was fixed. What was the reason for two years period not only the mortgage amount remains to be paid by the plaintiff is neither explained in the document, nor stated by the plaintiff himself in the course of evidence. This important aspect was not taken into account by the trial court.

34.In that aspect, now we will go to the evidence of PW1. Nothing was extracted from PW1 on this time period, either during the course of examination or during the course of cross examination. If really Ex.A2 was validly entered into between the parties and if really the parties were interested in the conclusion of the sale process, such a long time would not have been mentioned. So, this is the another factor, which weighs much upon



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the mind of this court against the validity of Ex.A2.

Probably Ex.A1 would have been handed over to the plaintiff subsequent to the discharge of the mortgage by the defendant with Sriram City Union Finance Limited.

35.As mentioned above, now we will go to the evidence of PW2 on that aspect. During the chief examination, he has stated that in his presence, Rs.5,00,000/- was given by the plaintiff to the defendant and in his presence, all the parties signed, so also the witnesses. But he has not stated anything about the handing over of Ex.A1. But during the course of cross examination, he would say that he perused the original sale deed after handing over. He would further say that he has not perused the original document. But only perused the Xerox copy subsequently. He would say that after perusing the original document, he prepared the sale agreement. Now he is going on contradicting himself with regard to the original document. When he has not signed as scribe in Ex.A2 his evidence was rightly discarded by the first appellate court. Absolutely, there is no endorsement in the document that it was prepared by him, as mentioned above. As to the perusal of the original document pertaining to the suit property, he makes contradictory statement. So his evidence is



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completely unreliable on the availability of Ex.A1 also.

So, I am of the considered view that circumstantial evidence goes against the validity of Ex.A2. As contended by the defendant, the defendant would have signed in the empty paper at the time of borrowing the loan from the plaintiff. So, this cannot be completely ruled out because of the above said circumstance. So I am in full agreement with the conclusion reached by the first appellate court.

36.Now at the time of appeal, as mentioned above the plaint was amended to incorporate the alternative prayer.

37.Now the question which arises for consideration is when Ex.A2 is not proved to the satisfaction of the court, whether the plaintiff is entitled for the alternative relief is the point to be answered.

38.The defendant has not filed any additional written statement after the plaint amended before this court.

39.Clarification was sought from the learned counsel for the defendant in this regard. He has stated that the defendant has not filed any additional written statement.



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But as mentioned above, when Ex.A2 is found to be not a valid document, the plaintiff is not entitled for the alternative relief based upon that document. But here, the defendant has admitted that he borrowed Rs.2,00,000/- . Rs.1,00,000/- on 25/06/2011, another one lakh on 01/10/2011. She would further say that Rs.2,00,000/- was repaid on 12/02/2013, for which absolutely there is no documentary evidence. Again, she would say that on 15/06/2013, she requested Rs.3,00,000/- towards the marriage expenses of her grand-daughter. Now this is also not established by her when she says that the document which was given to the plaintiff at the time of earlier borrowal was not returned to him. After discharge without insisting upon the return of the document, she demanded Rs.3,00,000/- on 15/06/2013. At that time, she handed over the present original document and another document to his son Palpandi and daughter Shanthi, for which the plaintiff issued a receipt. But that receipt was not produced by the defendant. So, her evidence is also unbelievable.

40.As mentioned above, the plaintiff has not established that he gave Rs.5,00,000/- on the date of Ex.A2. So, he is not entitled for refund of that amount. But he is entitled the admitted amount of Rs.2,00,000/-.



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So, the defendant is directed to pay Rs.2,00,000/-, which was borrowed by her from the plaintiff with 12% interest from the date of Ex.A2 till the plaint and thereafter 6% till realization.

41.For that purpose, the judgment and decree of the trial court as well as the first appellate court are set aside and there shall be a decree and judgment in favour of the appellant herein, directing the defendant to pay Rs.2,00,000/- with 12% from the date of Ex.A2 and till the date of plaint and thereafter, 6% till realization. The plaintiff is entitled to pro-costs.

42.With the above said, this **second appeal is allowed** to that extent as indicated above.

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To,

- 1.The Principal Sub Judge,
Dindigul.
- 2.The Additional District Judge,
Dindigul.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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