



AS(MD).No.130 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 23.10.2024

CORAM:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**
AND
THE HON'BLE **MR.JUSTICE K.K.RAMAKRISHNAN**

A.S(MD).No.130 of 2015

M.Rajendran

... Appellant/appellant

Vs.

Leoni Jeyakantha Joy @ Kanthajoy

... Respondent/Defendant

PRAYER: Appeal Suit has been filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 31.07.2014 passed in O.S.No.78 of 2010 on the file of the II Additional District Judge (Fast Track Court II), Thoothukudi and set aside the same.

For Appellant : Mr.I.Robert Chandrakumar

For Respondent : Mr.S.Subbiah
Senior Counsel for
Mr.G.Aravindhan



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JUDGMENT

P.VELMURUGAN,J.

The appellant/plaintiff has filed a suit in O.S.No.78 of 2010 on the file of the learned II Additional District Judge, Thoothukudi, seeking for specific performance. After the trial, the said suit was dismissed on 31.07.2014. Challenging the said judgment and decree, the appellant has filed the present appeal.

2. The brief facts of the case as averred in the plaint by the appellant before the trial Court are that the appellant was doing real estate business and also running a hotel in Thoothukudi. The suit property originally belonged to one Joseph Maria Pravi Roche. On 15.09.1993, he executed a registered Will in favour of his daughter, namely, Miss.Maria Prema Roche, who was spinster. The said Joseph Maria Pravi Roche died on 02.08.1996. After his demise, his daughter was enjoying the property. Thereafter, she executed a sale agreement in favour of the appellant on 22.11.2007 for valuable consideration of Rs. 29,00,000/- (Rupees Twenty Nine Lakhs only). She received a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) as advance and subsequently, on 04.03.2008, she received a sum of Rs.4,13,000/- (Rupees Four Lakhs and



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Thirteen Thousand only) and another sum of Rs.3,00,000/- (Rupees Three Lakhs only) on 27.05.2008. She totally received a sum of Rs.9,13,000/- (Rupees Nine Lakhs and Thirteen Thousand only) as part consideration. The said payments were also acknowledged by the vendor/Maria Prema Roche in the agreement itself. She also handed over the copies of the original title deeds to the appellant. In the meanwhile, she died intestate on 17.03.2009. Since she was a spinster, her sister/the respondent herein/defendant is only her legal heir. Except the respondent, no other legal heir is available to the vendor of the appellant. After demise of the vendor, the appellant approached the respondent herein to complete the sale deed and he was also ready and willing to perform his part of the contract. Since the respondent was evading to execute the sale deed, the appellant sent a legal notice to her on 22.10.2010. The said notice was duly received by the respondent on 23.10.2010. But, she did not send any reply and also she did not come forward to execute the sale deed in favour of the appellant. As the legal heir of the vendor, the respondent is liable to execute the sale deed based on the agreement executed by her deceased sister Maria Prema Roche. Since the respondent did not come forward to execute the sale deed and perform her sister's contract, the appellant was constrained to file the present suit.



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3. The brief facts of the written statement filed by the respondent herein before the trial Court are as follows:

3.1 The appellant had never approached the respondent prior to sending the pre-suit notice dated 22.10.2010. In fact, though her sister died on 17.03.2009, till 22.10.2010, the appellant had never approached the respondent. As a matter of fact, for the first time, the appellant approached the respondent only through the legal notice dated 22.10.2010 and the same was received by the respondent on 23.10.2010 and the same was also duly replied by the respondent on 27.10.2010 and that was also received by the learned counsel for the appellant on 01.11.2010. In fact, in the reply notice, the respondent demanded the copies of the documents set up by the appellant in his notice to enable the respondent to make a detailed reply, but the appellant did not send any documents as sought for by the respondent. The said facts were suppressed by the appellant and also he made a false allegation in the suit. Therefore, the respondent got genuine duty to prove that the appellant forged the documents. The appellant has also not deposited the balance sale consideration before the Court at the time of filing the suit. If at all, the appellant was *bona fide* agreement holder, he could have deposited the balance amount at the time of filing the suit itself. The respondent also denied the alleged agreement said to have been executed by her deceased sister and she also



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alleged that till the death of her sister, the appellant did not take action and there was no communication. Taking advantage of the demise of the vendor, after one year, the appellant created those documents and without approaching the respondent personally, he only sent legal notice. When the respondent asked the documents, because her sister was no more and her sister never revealed to the respondent regarding the agreement, in order to give a suitable reply to the legal notice, the appellant did not produce the document dated 15.11.2007 and hence, it is not supported by any consideration and it is void. The suit property is also vague and incorrect. One acre of land cannot be segregated based on the description given in the plaint. The property identification given in the boundaries is also not proper. The alleged agreement said to have been entered on 15.11.2007, whereas the vendor signed only on 22.11.2007 and the suit was filed only in the month of November 2010. After expiry of three years from the date of alleged agreement, there is no explanation as to why, there was a delay on the part of the appellant in filing the suit.

3.2. The appellant has filed the suit by creating and fabricating the alleged agreement just to harass the respondent taking advantage that the sister of the respondent died and therefore, there is no cause of action against the respondent and the suit is liable to be dismissed with compensatory costs.



4. Based on the pleading and documents, the trial Court framed the following issues:

(i) Whether the sale agreement dated 21.11.2007 executed by Maria Prema Roche in favour of the appellant/appellant in respect of suit schedule property is genuine?

(ii) Whether the appellant is always ready and willing to perform his part of contract?

(iii) Whether the appellant is entitled to get specific performance as prayed for? and

(iv) Whether the appellant is entitled to get any other reliefs?

5. During the trial, on the side of the appellant/plaintiff, three witnesses were examined as P.W.1 to P.W.3 and seven documents were marked as Ex.A1 to Ex.A7. On the side of the respondent/defendant, five witnesses were examined as D.W.1 to D.W.5 and five documents were marked as Ex.B1 to Ex.B.5.

6. After the trial and hearing the arguments advanced on either side and considering the materials placed before the trial Court, the trial Court found that the appellant was not entitled to get decree for specific performance and therefore, the suit was dismissed with cost. Aggrieved over the same, the plaintiff has filed the present appeal before this Court.



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7. The learned counsel for the appellant would submit that the appellant was always ready and willing to perform his part of the contract and also paid the part consideration of Rs.9,13,000/- (Rupees Nine Lakhs and Thirteen Thousand only) and in order to prove the sale agreement said to have been executed by the deceased Maria Prema Roche in favour of the appellant, the witness to the said agreement was examined as P.W.2. Further, he would submit that the deceased vendor was alone in their house and no one was taking care of her even the present respondent and there was no talking terms between the deceased vendor and the respondent. The vendor was alone in the house and even she did not have any income for her day-to-day needs. Therefore, she approached the appellant and also she agreed to sell the suit property on 15.11.2007 for valuable consideration of Rs.29,00,000/- (Rupees Twenty Nine Lakhs only) and as agreed by her, she also received a sum of Rs.9,13,000/-(Rupees Nine Lakhs and Thirteen Thousand only) as part consideration of the suit property and in the meanwhile, the deceased was murdered on 17.03.2009 and the present respondent as the only legal heir, is entitled to the property of the deceased vendor. Therefore, she was called upon to execute the sale deed as legal representatives of the deceased vendor. Since the respondent did not come forward to execute the sale deed, the appellant filed a suit.



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8. In order to prove the appellant's case, the agreement dated 15.11.2007 was marked as Ex.A1 and at the time of agreement and receiving part consideration, the vendor also handed over certain documents. In order to prove the same, the patta standing in the name of the vendor was marked as Ex.A.2 and the legal notice sent by the appellant to the respondent dated 22.10.2010 was marked as Ex.A.3 and acknowledgement of receipt of the notice was marked as Ex.A4 and the reply notice sent by the respondent was marked as Ex.A.5. The statement of the bank account of the appellant was marked as Ex.A6. Since the respondent denied the execution of sale agreement and also the signature of the vendor, the disputed signature with admitted signature were sent to forensic expert for comparing the signature. The expert sent a reply and that report was also marked as Ex.A7. Further, in order to substantiate his case, the appellant examined himself as P.W.1; the witness to the sale agreement, namely, Perumal, was examined as P.W.2 and the expert, who compared the signature was examined as P.W.3.

9. In view of the above, according to the learned counsel for the appellant, they have proved execution of the agreement /Ex.A.1, payment of part consideration of Rs.9,13,000/- and also proved the readiness and willingness. The learned counsel for the appellant would submit that in order to prove the



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readiness, the appellant also marked Ex.A6, which is the statement of bank account of the appellant, which disclosed that the appellant has got sufficient funds in his bank account and during the relevant point of time, he also withdrew the huge amount, which shows that the appellant out of his source, paid the part consideration and also had sufficient means during the relevant time. It is contended that the vendor deceased Maria Prema Roche only postponed the execution of sale deed. Therefore, under these circumstances, he is entitled to get the decree for the specific performance.

10. The learned counsel for the respondent would submit that the sale agreement, Ex.A.1, itself is the forged one and the signature found in Ex.A1 is not that of the deceased vendor. All the signatures are different with each other and even Ex.A.7, report of the handwriting expert, shows that it is not conclusive proof. The evidence of P.W.3 also shows that Ex.A.1 - agreement, is not genuine. The signatures of the deceased vendor have also not tallied with each other. Further, the font of the agreement also differs from first page to second page. He would further submit that in the agreement, the vendor alone signed it and the appellant has not signed. Since it is the unilateral agreement, the vendor and the purchaser both have to sign it. Further, Ex.A1 is said to have been executed, that means, typed on 15.11.2007, whereas the alleged signature of the vendor was



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only made on 22.11.2007 and further, the other signature was also not duly attested by the witness. Admittedly, the deceased vendor was living alone and she died unnaturally and taking advantage of the same, the appellant created the forged documents and even the appellant has not established that he approached the deceased vendor during her lifetime, after so called alleged third payment and no material shows that he approached the deceased vendor. In the document, time was fixed for execution of sale deed as only three months. The appellant has not proved or stated as to why they have not executed sale deed within the stipulated time. He would submit that the appellant approached the respondent just prior to send notice to the respondent. But, the appellant stated that after the death of the deceased vendor, on several occasions, he approached the respondent and requested her to execute the sale deed, but the same was not proved in the manner known to law. The respondent also sent a reply notice to the appellant, but the same was suppressed by the appellant. Therefore, the appellant has not come to the Court with clean hands and also he is not entitled for the discretionary decree for specific performance.

11. First of all, when the agreement itself was denied by the respondent, the appellant has to prove the same in the manner known to law and also he has to prove his readiness and willingness, whereas in this case, the evidence of P.W.3



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and Ex.A.7 itself clearly show that Ex.A.1 is not genuine one. Therefore, the trial Court rightly appreciated all the evidence and dismissed the suit. Hence, the respondent seeks dismissal of this appeal.

12. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court of India in the case of Chennadi Jalapathi Reddy Vs., Baddam Pratapa Reddy (Dead)Thr Lrs. & Anr reported in 2020- 4-LW.532. He also relied upon the judgment of this Court in the case of K.M.Balasubramanian Vs., S.Shanmugam (Deceased) and others reported in 2017-3-LW.378. Further, in the case of Aloka Bose nad Parmatma Devi and others reported in (2009) 2 SCC 582.

13. Heard both sides and perused the materials available on record.

14. Considering the facts and circumstances of the case, since this Court is First Appellate Court as a fact finding Court, it has to re-appreciate the entire evidence independently and arrive at an independent conclusion. Therefore, this Court has carefully gone through the pleadings, oral and documentary evidence adduced on either side. Accordingly, this Court formulates the following points for consideration:



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- (i) Whether Ex.A1-sale agreement is genuine?
- (ii) Whether the appellant proved that he was ready and willing to perform his part of the contract?
- (iii) Whether the appellant is entitled to get the refund of the advance alleged to have been paid by him to the vendor?
- (iv) Whether the appellant is entitled for the relief of specific performance?
- (iv) Whether the appellant is entitled for any other relief?

15. As far as the first point is concerned, according to the appellant, the suit property originally belongs to one Joseph Maria Pravi Roche. During his lifetime, he executed a Will in favour of his unmarried daughter Maria Prema Roche on 15.09.1993. The said Joseph Maria Pravi Roche died on 02.08.1996. Thereafter, his daughter was enjoying the property and she agreed to sell the property on 15.11.2007 for a sum of Rs.29,00,000/- and she received advance of Rs.2,00,000/- from the appellant and executed the sale agreement in favour of the appellant on 22.11.2007. Subsequently, on 04.03.2008, she received a sum of Rs. 4,13,000/- and also she received another sum of Rs.3,00,000/- on 27.05.2008. All the amounts were acknowledged by the Maria Prema Roche in the agreement. she also produced the copies of the original title deed. Thereafter, the appellant's vendor died intestate on 17.03.2009. Since she was a spinster, her sister, the



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respondent herein is her only legal heir. Thereafter, the appellant approached the present respondent on several times and demanded for execution of sale deed. Since the respondent was evading to execute the sale deed, the appellant sent a notice and filed a suit. According to the respondent, except the relationship, all other facts are denied and she denied Ex.A.1-sale agreement and also receipt of the part of sale consideration and also taken defence that the property worth about more than Rs.60,00,000/-, whereas the consideration for alleged agreement is only Rs.29,00,000/-. Further, the deceased was residing alone and she never executed a sale agreement and never received any sale consideration and signatures found in Ex.A.1 is not that of the deceased vendor. The vendor had no necessity to sell the property and property has not been properly identified. Though the respondent sent the reply, the appellant suppressed the same. The respondent asked the appellant to furnish the documents and other particulars, but he did not give. The appellant was also not ready and willing to perform his part of the contract, even expert opinion-Ex.A7 and the evidence of P.W.3 have not supported the case of the appellant and the evidence of P.W.2 is not believable and therefore, the appellant as the plaintiff has to prove his case and he cannot take advantage of the weakness of the case of the respondent. In this case, the appellant has not proved his case.



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16. A bare perusal of Ex.A1 itself shows that it is not a genuine document and it was concocted one and it is not executed by the deceased vendor. Taking advantage of the death of the vendor, the appellant making false claim against the respondent and filed a suit. On a combined reading of the evidence of P.W.3 and also Ex.P7, it is seen that there is a material contradiction and discrepancies and further, it is the settled proposition of law that expert opinion is not a conclusive proof. It is the piece of evidence and the same has to be corroborated with other materials. Therefore, the Court cannot pass the decree only based on the expert opinion alone. If the expert opinion is unchallenged and there is no discrepancy and contradictions, then it can be relied on by the Court, whereas in this case, the respondent stoutly denied the execution of the agreement itself and also denied the signatures and therefore, the reading of both the evidence of P.W.3 and Ex.A.7 and some of the signatures are identical and some of the signatures are difference and therefore, this Court, on a bare looking of the signatures in page No.2 of the agreement, the vendor alleged to have signed in three places, finds that all the three signatures are not match with each other and though the Court is not expert, but still the Court can invoke Section 73 of the Indian Evidence Act and further, from the evidence of P.W.3 and Ex.A.7 and the perusal of the alleged signature of the deceased vendor, the execution itself is in doubtful. Though the document is said to have executed on 15.11.2007, whereas the vendor signed the document



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only on 22.11.2007. The one of the witnesses to the Ex.A.1 was examined as P.W.2 and his evidence is also not reliable. On a combined reading of the evidence of P.W.2 and P.W.3, this Court finds that the evidence of P.W.2 is also not reliable and therefore, under these circumstances, this Court finds that the agreement alleged to have executed by the vendor is not a genuine one.

17. Though the learned counsel for the respondent has raised one of the questions of law that the agreement has to be signed by both the vendor and purchaser and also placed reliance on the judgment reported in (2009) 2 SCC 582, the contention of the learned counsel for the respondent is not acceptable for the reason that even agreement can be oral, but however if it is reduced into writing and bilateral agreement, both the parties have to sign it and unilaterally cancellation is also not permissible and cancellation is also not valid. However, it is mandate that the vendor who is willing to transfer his property or agreed to sell the property has to sign it and signature of the purchaser is not mandatory. The relevant paragraph 18 of the aforesaid judgment reads as follows:

“18. In any agreement of sale, the terms are always negotiated and thereafter, reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the



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purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale. “

18. In view of the above, the contention of the learned Counsel for the respondent is not acceptable. However, a bare perusal of the agreement, it is found that the agreement is alleged to have executed on 15.11.2007 and admittedly, no signature was found on 15.11.2007. Even the language of the agreement is also quite unnatural. Under these circumstances, the sale agreement-Ex.A1 is not a genuine one. This point is answered accordingly.

19. As far as the readiness and willingness is concerned, the appellant in order to prove his readiness, marked Ex.A.6, the statement of his bank account, so that, he had the sufficient funds and he had also withdrawn during the relevant point of time. Therefore, he proved the readiness. However, in the alleged agreement, the time period for execution of sale deed was stipulated as three months. The appellant has not given any explanation as to why he postponed the execution and even he has not explained anything about the same. Even assuming that the agreement is genuine, however, he filed suit only after the demise of the



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vendor on 17.03.2009. The appellant has stated in the plaint and also the proof affidavit for chief examination that he approached the respondent on several times to execute sale deed, whereas in his evidence he has stated that just prior to three months of issuance of legal notice, he came to know that the respondent was the sister of the deceased vendor and notice was sent only on 20.02.2010. From the evidence of the appellant, he was aware of the death of the vendor only in the month of June or July, however, the deceased vendor died in the month of March-2009 unnaturally and she was alleged to have been murdered. Therefore, from 17.03.2009 till June or July 2010, the appellant has not proved that, he had taken steps to find out the legal heirs of the vendor.

20. It is seen that after giving complaint by the respondent regarding the suspicious death of her sister, the appellant came to know about the respondent. Till 22.10.2010, he had not taken any steps and the appellant has not proved that soon after the death of the deceased vendor, the appellant approached the respondent. Except Ex.A.2-legal notice and ExA3 acknowledgement, no other document was produced. Though the respondent stated that she sent reply, the appellant also received and the reply was also marked as Ex.A4. However, the appellant has not given any explanation as to whether he has given any response to the reply notice sent by her regarding the production of the particulars or any



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documents, though the appellant has stated that at the time of the agreement, he produced copy of the original document that was also marked herein. Therefore, under these circumstances, though the appellant has got sufficient means and even assuming that he was ready to perform his part of the contract, but he has not proved by producing sufficient materials that he was willing to perform his part of the contract. Mere readiness alone is not sufficient and the appellant has to prove the willingness also. Therefore, he has not proved that he was always ready and willing to perform his part of the contract from the date of agreement till the date of filing of the suit, even though the period for execution was stipulated in the agreement as three months. Though the time is ordinarily not an essence of the contract unless it is contrary proved the same otherwise, however, as the plaintiff, the appellant has to prove that he was ready and willing to perform his part of the contract. Therefore, this Court finds that the appellant has also not proved the willingness. This point is answered accordingly.

21. As far as (iv) point is concerned, as already discussed in both the above two points that the execution of document itself is doubtful and the genuineness is also in question, the appellant has not proved that Ex.A.1 is a genuine document and also this Court already held that the appellant has not proved that he was ready and willing to perform his part of the contract and therefore, in the



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absence of the same, the appellant is not entitled to get the discretionary relief of specific performance. This point is answered accordingly.

22. As far as the refund of amount is concerned, this Court has already held that the genuineness of the agreement itself is doubtful and the appellant has not proved that the amount mentioned in the agreement Rs,9,13,000/- was paid to the deceased vendor. Further, the appellant has not pleaded for any alternative relief of refund of advance amount, even otherwise, the Court can grant the relief if at all the Court finds that the agreement is true and valid, but however, in this case, part payment of sale consideration has not been proved by the appellant. Though the appellant need not prove his case as criminal case beyond all reasonable doubt, however, the appellant has to prove his case by preponderance of probabilities. The plaintiff has to prove his case on his own strength and he cannot take any advantage of the loop holes left by the defendant. In this case, admittedly, the vendor died and also agreement was said to have executed in the month of Nov-2007, but the vendor died only on 17.03.2009. Even the endorsements made in the agreement is also quite unnatural and therefore, considering the facts and circumstances of the case, this Court does not find reason to believe that the appellant has paid the advance amount to the respondent and in the absence of the same, the appellant is not entitled even to the



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alternative relief of refund of advance amount said to have paid by the appellant.

Therefore, this Court finds that the appellant has not proved his case and he is not entitled to the relief as sought for. The trial Court has elaborately discussed it and dismissed the suit.

23. In view of the above, since all the points are answered against the appellant. That apart, on receipt of notice Ex.P.2, the respondent issued reply under Ex.P.4 and the same was received by the appellant also, who if at all, is genuine, he could have immediately sent the rejoinder or gave the explanation regarding the query raised by the respondent. Since the appellant has not immediately responded to the query raised in the reply notice and further, he went to the extent of the suppressing reply notice, even assuming that he received reply notice after filing the suit even in proof affidavit filed by him during the trial also, he has stated that the reply was not sent by the respondent and therefore, even while filing proof affidavit, the appellant did not verify the records and he reiterated simply the averments made in the plaint. Therefore, under these circumstances, the evidence of the appellant is also only mechanical and therefore, this Court finds that the appellant has not proved the case and hence, there is no reason to interfere with the judgment and decree of the trial Court and there is no merit in the appeal and the same is liable to be dismissed.



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24. Accordingly, this Appeal Suit stands dismissed. However, considering the facts and circumstances of the case, there shall be no order as to costs.

(P.V.,J.) (K.K.R.K.,J.)
23.10.2024

NCC : Yes/No
Index : Yes / No
Rmk

To

1.II Additional District Judge (Fast Track Court II), Thoothukudi.

2.The Section Office,

VR Section, Madurai Bench of Madras High Court,
Madurai.



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