



S.A.(MD)No.14 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.07.2024

PRONOUNCED ON: 27.09.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.14 of 2017

Xavier(died)

1. S.Anthoniammal

2. X.Ravi Prakash

3. X.Alphonse Inbaraj

: Appellants / L.Rs of the Appellant/
Defendant

Vs.

Rathinam (died)

: Respondent/Respondent/Plaintiff

2.R.Meenakshi

3.R.Jeyanthi

4.R.Meenakshi

5.R.Raja

: Respondents 2 to 5

(Respondents 2 to 5 are brought on
record as LR's of the deceased sole
respondent vide Court order dated
14.12.2023 made in C.M.P.(MD)No.
9952, 9963 and 9965 of 2023)

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil
Procedure against the judgment and decree dated 01.04.2016 rendered in



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A.S.No.11 of 2015, on the file of the First Additional District Judge, Tuticorin, confirming the decree and the judgment dated 23.12.2014 rendered in O.S.No.74 of 2012, on the file of the Subordinate Judge, Kovilpatti.

For Appellants : Mrs.P.Jessi Jeeva Priya
for Mr.G.Aravinthan

For Respondents :R.1 died steps taken
: Mr.M.Prabhu
for R.2
Mr.S.Ayyanar Prem Kumar
for R.3 to R.5

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.11 of 2015, dated 01.04.2016, on the file of I Additional District Court, Tuticorin, confirming the judgment and decree made in O.S.No.74 of 2012, dated 23.12.2014, on the file of the Subordinate Court, Kovilpatti.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.



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3. Originally, the first respondent as plaintiff has filed a suit against the sole defendant Xavier claiming the relief of specific performance of the sale agreement dated 15.06.2011. Admittedly, the suit property is owned by the original defendant. Since the sole defendant died, his wife and sons have preferred the Second Appeal. Pending Second Appeal, the plaintiff had also died and at the instance of the appellants, his wives, son and daughter were impleaded as respondents 2 to 5. The second respondent has raised an objection that she is the legally wedded wife of the deceased plaintiff, that she has already filed a suit in O.S.No.68 of 2022, before the District Munsif Court, Kovilpatti, that the third respondent is not the legally wedded wife of the deceased and the respondents 4 and 5 are not the children of the deceased plaintiff. But this Court, by observing that the impleadment of the respondents 3 to 5 will not prejudice the suit which is pending in O.S.No.68 of 2022, on the file of the District Munsif Court, Kovilpatti and that the rights of the parties is left open before that Court in the said suit, allowed the impleading petition and made the wives, son and daughter of the deceased plaintiff as respondents 2 to 5.



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4. The case of the plaintiff is that the defendant has offered to sell the suit property and the plaintiff has agreed to purchase the same, that both of them entered into a sale agreement on 15.06.2011 by fixing the sale price at Rs.1,42,000/- and the period of performance as two months till 15.08.2011, that the plaintiff has paid Rs.10,001/- as advance and the same was received by the defendant, that though the defendant has agreed to produce the original title deeds and to fix the four boundaries, despite the repeated request from the plaintiff, the defendant has been postponing the same on some pretext or the other, that since the defendant has been arranging to sell the suit property to the third parties, the plaintiff was forced to send a legal notice dated 07.09.2012, directing the defendant not to alienate or encumber the suit property and to perform his part of the contract, that the defendant having received the notice, sent a reply dated 21.09.2012 alleging that the plaintiff has created a forged agreement and the defendant has never agreed to sell the property nor executed any agreement and that since the defendant has not complied with the notice demand, the plaintiff was constrained to file the above suit claiming the relief of specific performance of the agreement dated 15.06.2011.



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5. The defence of the defendant is of total denial. The case of the defendant is that the defendant had no need or necessity to sell the suit property as the defendant has been living with his family happily with sufficient means, that the defendant has never agreed to sell the suit property nor executed any agreement in favour of the plaintiff, that the value of the suit property would be more than one Crore and as such, the question of selling the suit property for Rs.1,42,000/- does not arise at all, that the plaintiff has forged the signature of the defendant and fabricated the sale agreement and as such, the same is void, that the plaintiff having business enmity for a long time, in an attempt to grab the suit property, has created the agreement vexatiously and filed the above suit and that therefore, the suit is liable to be dismissed with exemplary costs.

6. The learned trial Judge, upon perusing the pleadings, has recasted the issues, which are as follows:

(i) Whether the Subordinate Court is having jurisdiction to try the above suit?



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(ii) Whether the sale agreement dated 15.06.2011 is a fraudulent document?

(iii) Whether the plaintiff is entitled to get the relief of specific performance?

(iv) To what other relief, the parties are entitled to?

7. During trial, the plaintiff has examined himself as P.W.1 and one Pandimuthu as P.W.2 and exhibited 9 documents as Exs.A.1 to A.9. The defendant has examined himself as D.W.1 and adduced no documentary evidence. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, by holding that Ex.A.1 sale agreement is not a fraudulent document and hence, the plaintiff is entitled to get the relief of specific performance, has granted the relief as prayed for vide judgment and decree dated 23.12.2014. Aggrieved by the judgment and decree of the trial Court, the defendant has preferred an appeal in A.S.No.11 of 2015 and the learned Additional District Judge, Tuticorin, has passed the impugned judgment and decree dated 01.04.2016, dismissing the appeal and thereby confirmed the judgment and decree passed by the trial Court. Challenging the dismissal of the appeal, since the defendant had died in



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the meanwhile, his legal representatives have preferred the present
Second Appeal.

8. At the time of admission, the following Substantial Questions of
Law came to be formulated:

“(A). In a suit for specific performance when the vendor pleads that the signature found in the agreement of sale is not of his signature and that it was a forged one, and when the plaintiff as the purchaser had not proved the signature as that of the vendor, by sending the document for comparison, scientifically, is not the finding of the lower Appellate Court, that the vendor had not chosen to send the disputed signatures for comparison, is legal?

(B) When the documents are available in evidence for comparison by the Court, without rendering any specific finding as to how, the disputed signature had been sent only by the vendor, is legal?

(C) When the very signatures could be noticed even by a naked eye, that they are totally different, is there is any obligation on the part of the vendor to send the disputed signatures for comparison?



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(D) When the decree holder has not complied with the decree of specific performance by tendering the amount as per the decree within the time allowed, under the same, whether it could be still be considered that the purchaser was ready and willing to perform the contract, and so, whether the Appellate Court is bound to take into account such a non-deposit, at the time of the disposal of the appeal?

(E) Whether the Court can grant a decree of specific performance directing the judgment debtor to execute the sale deed, in favour of the decree holder, or the person nominated by him, a third party to the suit?"

9. The learned trial Judge, by taking note of the defence of the defendant that the sale agreement itself is a forged and fraudulent document and by observing that the person who alleges fraud has to prove the alleged forgery, has placed the initial burden itself on the defendant to prove that the sale agreement is a fraudulent document, but the learned first appellate Judge has rightly placed the initial burden on the plaintiff to prove the execution of the sale agreement and after coming to a finding that the plaintiff has proved the execution of the



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document, has shifted the burden to the defendant to prove that the document was not executed by him and that the signatures found therein were not that of his signatures and that the document is a forged and fraudulent document and as such, the way in which the learned Judge has proceeded with the appeal cannot be found fault with. Since the plaintiff, by alleging that both of them have entered into a sale agreement and when the execution was specifically denied by the defendant, the burden is only on the plaintiff to prove the execution of the sale agreement.

10. The learned Counsel for the defendant would rely on the judgment of the Division Bench of this Court in ***Valliyathal and others Vs. P.P.Sakthivel reported in 2022(3) CTC 331***, wherein the Hon'ble Division Bench has referred the judgment of the Hon'ble Supreme Court in ***Arni Rish Vs. Gurbaksh Singh*** reported in 2006(5) SCC 558 and the relevant passage is extracted hereunder:

“23.To quote the Judgment of the Honourable Supreme Court of India in [Anil Rishi Vs. Gurbaksh Singh, 2006\(4\)CTC 524 \(SC\); 2006\(5\) SCC 558](#) in paragraphs Nos.8 and 9 as held as follows:-



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“8.The initial burden of proof would be on the plaintiff in view of [Section 101](#) of the Evidence Act, which reads as under:

“101. Burden of proof.-- Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

9.In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be an exception thereto.

The learned trial court and the High Court proceeded on the basis that the defendant was in a dominating position and there had been a fiduciary relationship between the parties. The appellant in his written statement denied and disputed the said averments made in the plaint.” (emphasis supplied)

24.In our view, the law is too well settled that if the defendants deny the execution of the agreement, it is for the party who propounds the document and asserts the fact about the execution of the document to prove that the signature and the left thumb impression were that of the defendants and therefore it is the plaintiff who has



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miserably failed in not resorting to such a course and therefore the findings of Trial Court in this regard is erroneous in law.”

11. The Division Bench of this Court, by observing that the very agreement itself is unbelievable and the plaintiff has miserably failed to prove the agreement and the endorsements, allowed the appeal and thereby setting aside the judgment and decree passed by the appellate Court. In a suit for specific performance, it is settled law that in case of denial of the sale agreement by the defendant, the plaintiff, who is claiming specific performance of the agreement, has to prove that the sale agreement is true and genuine.

12. In the case of ***Thiruvengadam Pillai Vs. Navaneethammal and another*** reported in ***(2008)4 SCC 530***, the Hon'ble Apex Court has specifically observed that when the 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. In that decision case, the plaintiff came to the Court alleging that the first defendant had executed an



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and that since there existed dispute between him and the defendant with regard to Ex.A.4 sale, he was deposing against the defendant to take revenge against him and that P.W.2 would deny the same.

15. The defendant in his chief examination affidavit would reiterate the contentions raised in the written statement that the plaintiff had fabricated the sale agreement by forging the signatures with the help of the witnesses to the said document, who were his close associates. D.W.1 would also say that he does not know P.W.2 and the place where he belonged. But in cross-examination, initially after admitting that he was taking a stand that he does not know P.W.2 Pandimuthu, in subsequent cross-examination, after showing photographs under Ex.A.5 series, would admit that himself and his wife had taken part in the marriage ceremonies of P.W.2 and that their names were printed in the marriage invitation. More importantly, in the subsequent cross-examination, D.W.1 would admit that P.W.2 is his foster son and would also admit the execution of the sale deed under Ex.A.4 in favour of P.W.2.



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16. As rightly observed by the learned trial Judge as well as the appellate Judges that the defendant has completely suppressed his relationship with P.W.2 and the execution of the sale deed under Ex.A.4 in favour of P.W.2 and that he has not offered any reason or explanation for concealing the above material facts.

17. As rightly observed by the Courts below, P.W.1 in his evidence would reiterate his case about the execution of Ex.A.1 sale agreement and his witness P.W.2 would also reiterate the version of P.W.1 with regard to the execution of the sale agreement. As rightly contended by the learned Counsel for the plaintiff, though both the witnesses were subjected to cross-examination, their evidence with regard to the execution of Ex.A.1 sale agreement was not at all shaken by the defence evidence during their cross-examination and nothing was elicited from the said witnesses doubting the execution of the sale agreement.

18. As already pointed out, the defendant has taken a specific stand that the value of the suit property would be more than Rupees One Crore, but according to the plaintiff, they have entered into the agreement fixing the sale price at Rs.1,42,000/- being the market value of the suit property.



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No doubt, the plaintiff has produced the guideline value maintained by the Registration Department for the suit property. But as rightly observed by the learned appellate Judge, the guideline value is different from the market value of a particular property as the guideline value is meant for the collection of stamp duty and the registration expenses by the Registration Department and hence, the guideline value cannot be taken as a market value of the suit property. Whatever it is, since the defendant has alleged that the property is worth more than Rupees One Crore, he has not produced any iota of evidence to substantiate the same.

19. The defendant has also taken a stand that he is the person of means and as such, he has no need or necessity to sell the suit property. As already pointed out, it is evident from the evidence adduced by P.W.2 and D.W.1 that the vacant site owned by the defendant was sold to P.W.2 on 17.11.2011, five months after the alleged execution of Ex.A.1 sale agreement. Moreover, it is pertinent to note that the defendant in cross-examination would admit that one Manoharan has filed a complaint under Section 138 of the Negotiable Instruments Act for dishonour of the cheque against the defendant's wife and the same was pending and that since the defendant has admitted the filing of the complaint, the copy of



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the complaint came to be marked as Ex.A.7. The defendant in the written statement has alleged that there existed business enmity between them for a very long time and even in chief examination affidavit, he would reiterate that the business enmity between them was there for a very long time. Admittedly, the defendant has not elaborated anything further. The defendant has not furnished any particulars nor produced any evidence to show as to what was the business they had and what was the enmity between them due to their business transactions. But in cross-examination, D.W.1 would say that there was no previous enmity between them.

20. As rightly contended by the learned Counsel for the plaintiff, when there is no previous enmity between them, this Court is at loss to understand as to why the plaintiff has forged and fabricated the sale agreement and filed the suit against the defendant. Admittedly, the defendant has not offered any explanation in this regard.

21. The learned Counsel for the defendant would contend that since the defendant has specifically disputed the signatures found in Ex.A.1 sale agreement, the onus of proof is only upon the plaintiff to



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show and prove that the signatures found in the sale agreement are that of the defendant and that unless and until the signatures are proved to be the signatures of the defendant, the question of shifting the onus of proof upon the defendant to lead any contra evidence, does not arise at all.

22. The learned Counsel would further submit that since the defendant has specifically denied the signatures found in the sale agreement, the plaintiff should have taken necessary steps for sending the sale agreement to the handwriting expert along with the documents containing the admitted signatures for getting expert opinion, but the plaintiff has miserably failed to take such steps. No doubt, the learned first appellate Judge in his judgment has observed that on comparing the signatures of the defendant found Ex.A.1, which is under dispute and Ex.B.4 sale deed, which came to be admitted by the defendant, both appear to be the same. But the learned Counsel for the defendant would mainly contend that the first appellate Judge has chosen to compare the signatures found in the disputed and admitted documents and while giving finding, he has to assign reasons for his conclusion, but the first appellate Judge has miserably failed to give any reasons for arriving at a decision that both the signatures appear to be the same.



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23. No doubt, as already pointed out, the defendant has denied the execution of the sale agreement and also disputed the signatures found therein. As rightly contended by the learned Counsel for the plaintiff, just because the defendant has disputed his signatures found in the sale agreement, that by itself does not cast any duty on the plaintiff to prove that the signatures in the disputed document are that of the defendant. When the plaintiff is able to prove the execution of the disputed document, then it is not necessary for the plaintiff to prove that the signatures found in the disputed document are that of the defendant. As already pointed out and as rightly observed by the appellate Judge, the plaintiff has proved the execution of Ex.A.1 sale agreement and as such, the burden gets shifted to the defendant to prove that the disputed sale agreement was not executed by him and that the signatures found therein are not that of his signatures.

24. The learned Counsel for the defendant would rely on the judgment of the Hon'ble Supreme Court in ***Thiruvengadam Pillai's case*** above referred, wherein the Hon'ble Supreme Court by referring to its two earlier decisions in ***Murali Lal Vs. State of M.P.***, reported in



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(1980)1 SCC 704 and *Lalit Popli Vs. Canara Bank* reported in (2003)3

SCC 583, has observed that the decision of the Court after comparison should contain the reasons for any conclusion based on comparison of the thumb impression and that the Court should avoid reaching conclusions based on a mere casual or routine glance or perusal and the relevant passage is extracted hereunder:

“The decision in [Muralilal](#) (supra) and [Lalit Popli](#) (supra) should not be construed as laying a proposition that the court is bound to compare the disputed and admitted finger impressions and record a finding thereon, irrespective of the condition of the disputed finger impression. When there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further even in cases where the court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The court



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should avoid reaching conclusions based on a mere casual or routine glance or perusal.”

25. The learned Counsel for the defendant would rely on the decision of this Court in ***Sankara Narayana Pillai Vs. Ignatious Selvaraj*** reported in ***2017-4-L.W.830***, wherein a learned Judge of this Court has specifically held that the Court should be careful in comparing the disputed signatures with the admitted signatures and that the Court should give reasons as to how it has come to the conclusions that the admitted and disputed signatures are either similar or dissimilar and the relevant passage is extracted hereunder:

“10. Therefore, the Court below should be careful in comparing the disputed signatures with the admitted signatures, even assuming that the Court is empowered to take up the said task by itself, in such circumstances, when the Court is suo motu taking up the role of an expert, it should clearly point out as to what are the admitted signatures with which it had compared the disputed signatures and whether the admitted signatures have been admitted by the party concerned and that apart the Court should also give the reasons in detail as to on what basis or on what aspects, it had found similarities or dissimilarities with the admitted signatures and the disputed signatures on



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readiness and willingness to pay the balance sale price and to get the sale deed executed as contemplated under Section 16(c) of the specific Relief Act. He would submit that the plaintiff has not produced any material to show that he was ever ready and willing to perform his obligations arising under Ex.A.1 sale agreement.

28. As rightly pointed out by the learned Counsel for the plaintiff, the plaintiff in his plaint has taken a specific stand that the plaintiff is always been ready and willing to pay the balance sale price and to get the sale deed executed and get it registered and that the defendant has been postponing the same on some pretext or the other. But the defendant in the written statement has nowhere disputed or denied the plaintiff's averments with regard to the readiness and willingness. Moreover, the plaintiff in his chief examination affidavit would reiterate his plaintiff's contention that he is always been ready and willing to perform his part of the contract, but the said evidence was not all subjected to cross-examination and as such, the same remains unchallenged.

29. Even the defendant in his chief examination affidavit has nowhere denied the plaintiff's case of his continuous readiness and



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willingness to perform his obligations arising under Ex.A.1 sale agreement and he has not whispered anything in this regard. It is not in dispute that though the period for performance was fixed at 2 months till 15.08.2011, Ex.A.1 sale agreement does not say anything about the consequences in case of non-compliance within the term stipulated in the agreement. The plaintiff has sent a legal notice on 07.09.2012 and filed the suit on 03.10.2012 and again represented the plaint on 15.10.2012. According to the plaintiff, he had deposited the balance sale price of Rs.1,31,999/- on 18.10.2012 within 3 days from the date of representation of the plaint before the Subordinate Court, Kovilpatti. As rightly contended by the learned Counsel for the plaintiff, the defendant for the first time, has taken a plea with regard to the readiness and willingness in the Second Appeal memorandum and in the absence of any specific stand or materials, no Substantial Questions of Law came to be formulated.

30. The learned Counsel for the plaintiff would rely on the judgment of the Hon'ble Supreme Court in **Motilal Jain Vs. Smt.Ramdasi Devi and others** reported in **2000(6) SCC 420**, wherein the Hon'ble Apex Court has observed that readiness and willingness could



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not be treated as a strait- jacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned.

31. No doubt, the learned Counsel for the defendant would rely on the judgment of the Hon'ble Division Bench of this Court in T.Janagan VS. S.Kamalakannan in A.S.No.691 of 2017, dated 04.06.2024, where the period fixed for performance got expired on 02.06.2010 and notice demanding performacne was issued on 15.05.2012 almost a year and 11 months thereafter and taking note of the finding of the trial Court that the plaintiff has not come to the Court with clean hands and has made a false claim in respect of the material aspect of consideration, confirmed the finding of the trial Court that the plaintiff therein was disentitled to get the relief of specific performacne. But the above decision cannot be made applicable to the facts of the case on hand.

32. Considering the above, the finding of the trial Court that the plaintiff is entitled to get the relief of specific performance which came to be confirmed by the appellate Court, cannot of the found fault with. Hence, the Substantial Questions of Law are answered in favour of the



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plaintiff and against the defendant. Consequently, this Court concludes that the Second Appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court is of the view that the parties are to be directed to bear their own costs.

33. In the result, the Second Appeal is dismissed, confirming the concurrent judgments made in O.S.No.74 of 2012, dated 23.12.2014, on the file of the Subordinate Court, Kovilpatti and in A.S.No.11 of 2015, dated 01.04.2016 on the file of I Additional District Court, Tuticorin. The parties are directed to bear their own costs.

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NCC : Yes:No
Index : Yes : No
Internet : Yes : No
SSL

To

1. I Additional District Court, Tuticorin.
2. The Subordinate Court, Kovilpatti
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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