



A.S.NO.1020 OF 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2025

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CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.1020 OF 2012

Dhanabakyamary ... Appellant / Defendant

Vs.

Mrs.T.Dharmalakshmi ... Respondent / Plaintiff

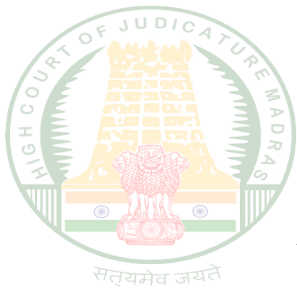
PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated July 13, 2012 passed in O.S.No.11867 of 2010 by the VI Additional City Civil Court, Chennai.

For Appellant : Mr.B.Vijay
For Respondent : Mr.Ajoy Kumar Gnanam

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated July 13, 2012 passed in O.S.No.11867 of 2010 by the 'VI Additional City Civil Court, Chennai' ['Trial Court' for brevity], the defendant therein has filed the Appeal Suit under Section 96 read with Order XLI Rule 1 of the 'Code of Civil Procedure, 1908' ['CPC' for short].

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2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit land was originally vested with the Tamil Nadu Slum Clearance Board and the same was allotted to the mother of the defendant under a Lease-cum-Sale Agreement dated September 1, 1983. The mother of the defendant had put up a superstructure over the same and upon making the entire payments as per the terms of allotment, had obtained Sale Deed dated September 3, 2001 in her favour in respect of Suit land. The mother and father of the defendant passed away on November 13, 2006 and February 25, 2000 respectively and the defendant inherited the Suit Property, which includes the Suit land and the aforesaid superstructure, as their legal-heir and was in peaceful possession of the same.

3.1. The defendant offered to sell the Suit Property for Rs.23,50,000/- to the plaintiff and they both entered into Sale Agreement dated July 24, 2008. The plaintiff paid Rs.50,000/- as advance on the same day itself and the balance consideration of Rs.23,00,000/- was to be paid



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at the time of registration of Sale Deed. It was agreed between the parties that the defendant shall deliver vacant possession of the Suit Property within a period of three months to the plaintiff, and shall register the Suit Property in the name of the plaintiff or her nominees, and in the meanwhile, the plaintiff shall be ready and willing. If the plaintiff defaults, the defendant shall return Rs.30,000/-from the advance amount after deducting Rs.20,000/-. In case, the defendant failed to handover vacant possession and to register the Suit Property in favour of the plaintiff, the defendant shall return Rs.70,000/- to the plaintiff and if the plaintiff so wishes, she can enforce Specific Performance of the Sale Agreement dated July 24, 2008.

3.2. On August 2, 2008, the defendant requested the plaintiff to give her further advance amounts stating in an Undertaking that she had obtained a loan from State Bank of India by depositing the Title Deeds of the Suit Property. Accordingly, the plaintiff paid a total sum of Rs.7,75,000/- on various dates as advance, in addition to the earlier advance of Rs.50,000/-, receipt of which have been duly acknowledged on the Sale Agreement dated July 24, 2008 itself. The dates and the corresponding additional advances are set out in the following table:

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S.No.	Date	Advance Amount
1)	July 25, 2008	Rs.1,00,000/-
2)	July 30, 2008	Rs.1,00,000/-
3)	August 2, 2008	Rs.1,00,000/-
4)	August 13, 2008	Rs.1,50,000/-
5)	August 28, 2008	Rs.2,30,000/-
6)	October 7, 2008	Rs.10,000/-
7)	November 10, 2008	Rs.75,000/-
8)	November 16, 2008	Rs.10,000/-
Total		Rs.7,75,000/-

3.3. The defendant, in order to evade from performing her part of the contract, did not handover vacant possession of the Suit Property to the plaintiff as agreed and thereby, prevented the execution of the Sale Deed. The plaintiff was ready and willing to perform her part of contract. However, the defendant has refused to fulfil her obligations under the Sale Agreement. Hence, on January 23, 2009, the plaintiff issued a legal notice to the defendant and the same was returned as 'intimation delivered'.

3.4. The defendant, as a counter-blast, filed a Suit in O.S.No.1298 of 2009 for permanent injunction restraining the plaintiff from interfering with her peaceful possession. When the plaintiff applied for the Encumbrance Certificate for the Suit Property, it came to light that the



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defendant in clear violation of the Sale Agreement dated July 24, 2008, had mortgaged the Suit Property for a sum of Rs.1,30,000/- in favour of one Selvam and subsequently discharged the same. The defendant had similarly executed another Mortgage Deed for a sum of Rs.2,00,000/- in favour of one Ravi by a registered Mortgage Deed dated May 29, 2009 without any notice to the plaintiff. Hence, the plaintiff filed the Suit for Specific Performance and permanent injunction against the defendant not to alienate or encumber the Suit Property, and alternatively sought for the relief of return of advance amount along with interest at 12% per annum from Suit Sale Agreement till realization.

DEFENDANT'S CASE

4. The defendant filed written statement denying the averments made in the plaint by the plaintiff. The Suit land was originally allotted to the mother of the defendant and after the demise of the mother and father of the defendant, the defendant was in absolute possession of the same.

4.1. The defendant's mother has mortgaged the Suit Property with the State Bank of India, Tondiarpet and availed loan. Without discharging the same, she passed away. The plaintiff is known to the defendant. For



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repayment of the loan to the State Bank of India, the defendant had sought the help of the plaintiff. The plaintiff lent money to the defendant to the tune of Rs.6 Lakhs in part payments. Whenever the plaintiff advances money, she had obtained signatures in stamp papers and informed the defendant that she had taken the papers only as a security for the sum advanced by her. However, the plaintiff created some forged documents using the signature of the defendant in the stamp papers and came with goondas threatening the defendant to execute Sale Deed in her favour in respect of the Suit Property.

4.2. Though the defendant lodged a police complaint, there was no action taken. Hence, she had filed a Suit in O.S.No.298 of 2009 before the VIII Assistant City Civil Court, Chennai, seeking permanent injunction. In the meantime, the plaintiff has filed the present Suit for Specific Performance. The defendant denies the execution of Sale Agreement and its terms.

4.3. The defendant also denied that she has executed an Undertaking on August 2, 2008. The defendant does not know the contents of the Undertaking. The Suit Property is a dwelling house and through the rents



arising therefrom, the defendant is leading the life with her minor children.

There is no other source of livelihood to the defendant. Hence, at no point of time, the defendant intended to sell the Suit Property to the plaintiff or to any third parties. The plaintiff has colluded with the Postman and got the endorsement of 'intimation delivered' for the legal notice allegedly sent to the defendant in order to get an *ex-parte* decree. Stating so, the defendant sought to dismiss the Suit.

TRIAL COURT

5. Based on the pleadings, the Trial Court framed the following issues:

- "(1) *Whether the suit agreement of sale dated 24.7.2008 was not executed by the defendant, but was brought into existence by the plaintiff by committing forgery of the signature of the defendant?*
- (2) *Whether there was a valid agreement of sale between the plaintiff and the defendant in respect of the suit schedule property?*
- (3) *Whether the plaintiff had paid a sum of Rs.8,25,000/- to the defendant as advance?*
- (4) *Whether the plaintiff was ready and willing to perform his part*



of obligations under the agreement of sale?

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- (5) *Whether the plaintiff is entitled to a decree for specific performance?*
- (6) *Whether the plaintiff is entitled alternatively to a decree for refund of the advance amount with interest, and if so, at what rate?*
- (7) *To what relief the plaintiff is entitled to?"*

6. At trial, on the side of plaintiff, Mr.T.Vinayagam, son of the plaintiff was examined as P.W.1 and one Mr.M.Kamaraj was examined as P.W.2 and Ex-A.1 to Ex-A.9 were marked. On the side of defendant, the defendant was examined as D.W.1 and marked documents in Ex-B.1 to Ex-B.12 were marked.

7. The Trial Court, after analyzing the oral and documentary evidence, held that the signatures found in Ex-A.4 - Undertaking letter dated August 2, 2008 and in other papers, tallies with the defendant's signatures in Ex-A.3 - Suit Sale Agreement dated July 24, 2008 and ultimately held that Ex-A.3 is a genuine one. Further held that the defendant was not ready and willing to perform her part of the contract. Holding so, the Trial Court has decreed the Suit for specific performance



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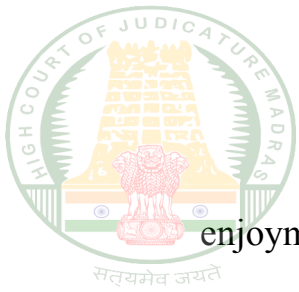
and permanent injunction as prayed for, directing the plaintiff to deposit the balance sale consideration within two months and the defendant to execute Sale Deed within one month therefrom.

8. Feeling aggrieved, the defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS:

9. Mr.B.Vijay, learned Counsel for the appellant / defendant would base his arguments on two limbs. One, Ex-A.3 is a forged document. Second, even while assuming that Ex-A.3 is a genuine one, the plaintiff was not ready and willing.

9.1. His elaborate arguments on the first limb would be that the defendant borrowed money from the plaintiff, a money lender. At the time of borrowing, the plaintiff obtained signatures in blank stamp papers as well as blank normal papers. Using the said papers, the plaintiff has later forged Ex-A.3, the alleged Sale Agreement. On the date of Ex-A.3, the Suit Property was in mortgage with a nationalised bank. The plaintiff on the strength of Ex-A.3, tried to interfere with the peaceful possession and



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enjoyment of the defendant and hence, the defendant filed Ex-B.8 -

Complaint against the plaintiff before RK Nagar Police Station, and also a Suit in O.S.No.1298 of 2009 on the file of VIII Assistant Judge, City Civil Court, Chennai.

9.2. His arguments on the second limb would be that, even while assuming that Ex-A.3 – Suit Sale Agreement is true and valid, the plaintiff has not filed any Bank Statement, Income Tax Record or other document to show that she was ready and willing to perform her part of the contract. The alleged advance payment of Rs.8,25,000/- was not proved. Only the witness to the alleged first endorsement for Rs.1,00,000/- dated June 25, 2008, namely Kamaraj has been examined as P.W.2. Witnesses to alleged other endorsements have not been examined. Further, the plaintiff has not been examined without assigning any reason; only her son, who is not competent to depose about the readiness and willingness of the plaintiff, has been examined. Further the balance sale consideration was not deposited before the Court, even after a direction to do so.

9.3. Accordingly, he would pray to allow the Appeal Suit and set

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aside the Judgment and Decree of the Trial Court.

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9.4. He would rely on the following decisions in support of his contentions:

- (i) Judgment of Hon'ble Supreme Court in ***Rajesh Kumar -vs- Anand Kumar and Others***, reported in ***2024 SCC OnLine SC 981***;
- (ii) Judgment of Hon'ble Supreme Court in ***R.Shama Naik -vs- G.Srinivasiah***, reported in ***2024 SCC OnLine SC 3586***;
- (iii) Judgment of Hon'ble Supreme Court in ***Ritu Saxena -vs- J.S.Grover and Another***, reported in ***(2019) 9 SCC 132***;
- (iv) Judgment of Hon'ble Supreme Court in ***Man Kaur (Dead) By LRs. -vs- Hartar Singh Sangha***, reported in ***(2010) 10 SCC 512***;
- (v) Judgment of Hon'ble Supreme Court in ***Thiruvengadam Pillai -vs- Navaneethammal and Another***, reported in ***(2008) 4 SCC 530***;
- (vi) Judgment of this Court in ***Saradammal alias***



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Saradambal -vs- G.S.Srinath, reported in **2012 (3)**
MWN (Civil) 449; and

(vii) Judgment of this Court in ***G.Ramalingam -vs-***
T.Vijayarangam, reported in **2007 (1) CTC 243**

10. Per contra, Mr.Ajoy Kumar Gnanam, learned Counsel for the respondent / plaintiff would argue that the plaintiff examined P.W.2, one of the witness to Ex-A.3 – Suit Sale Agreement and also to the endorsement dated June 25, 2008. The plaintiff has proved Ex-A.3 – Sale Agreement by examining P.W.2 and thereby discharged her initial burden. Now the onus of proof shifts to the defendant. The defendant denied Ex-A.3 including her signatures found in it. But did not examine any person except the defendant herself nor adduced any evidence to discharge the onus. The defendant in her cross-examination has specifically admitted the signature found in Ex-A.4 – Undertaking Letter dated August 2, 2008, wherein the vendor – vendee relationship between the parties has been recited specifically. There is no evidence available on record to show that the plaintiff was a money lender and that there were loan / money transactions between the parties. The defendant did not deny the wherewithal of the plaintiff in the written statement. The plaintiff has thus

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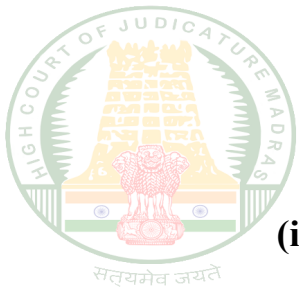


proved the execution of Ex-A.3 as well as the endorsements found therein.

As the value of the Suit Property shot up, as an afterthought the defendant filed the Suit in O.S.No.1298 of 2009 on February 16, 2009 with a view to avoid her performance of her part of the contract. The said Original Suit ended in dismissal on merits on January 22, 2010. Soon after the defendant filing the Suit, the plaintiff filed Original Suit for specific performance on July 16, 2009. There are no laches on the part of the plaintiff. The Trial Court has rightly granted the relief of specific performance. There is no need to interfere with the Judgment and Decree of the Trial Court. Accordingly, he would pray to dismiss the Appeal Suit and confirm the Judgment and Decree of the Trial Court.

10.1. He would rely on the following decisions in support of his contentions:

- (i) Judgment of Hon'ble Supreme Court in ***Laxman Tatyaba Kankate -vs- Smt. Taramati Harishchandra Dhatrak***, reported in ***2010 (7) SCC 717 : AIR 2010 SC 3025***;



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(ii) Judgment of Hon'ble Supreme Court in *Anil Rishi -vs- Gurbaksh Singh*, reported in **2006 (5) SCC 558 : AIR 2006 SC 1971**;

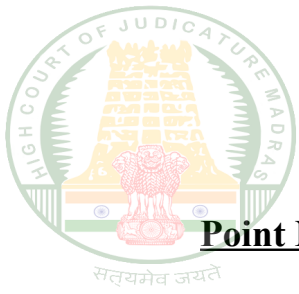
(iii) Judgment of this Court in *Seeni Ammal -vs- Veerayee Ammal*, reported in **1997 (1) CTC 360**

DISCUSSION:

11. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether Ex-A.3 – Suit Sale Agreement dated June 24, 2008 is true and valid ?
- (ii) Whether the plaintiff had paid a sum of Rs.8,25,000/- to the defendant as advance towards the purchase of Suit Property ?
- (iii) Whether the plaintiff was ready and willing to perform her part of the contract ?
- (iv) Whether the Judgment and Decree of the Trial Court is to be interfered with by this Court ?



Point Nos.(i) and (ii)

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12. The plaintiff examined P.W.2 – Kamaraj, who is one of the attesting witnesses to Ex-A.3 as well as to the endorsement for Rs.1,00,000/-. He deposed that the defendant agreed to sell the Suit Property to the plaintiff for a sale price of Rs.23,50,000/- and executed Ex-A.3 – Suit Sale Agreement and received Rs.50,000/- as advance on the day of execution of Ex-A.3 itself. Further that, the defendant affixed her signature in all the pages of Ex-A.3 in his presence. Further that, later, on July 25, 2008, the defendant received a further sum of Rs.1,00,000/- towards the sale consideration and duly endorsed the same in Ex-A.3. In his cross-examination, he denied the formal suggestions put forth by the defendant side that the signatures found in Ex-A.3 are not the defendant's and that Ex-A.3 is a forged one.

13. At this juncture, Mr.Vijay, learned Counsel for the appellant / defendant would invite the attention of this Court to Ex-A.3 as well as the deposition of P.W.2 and argue that the signatures found in Ex-A.3 and that found in P.W.2's deposition do not tally. He would go on to contend that P.W.2 is not an attesting witness to Ex-A.3 at all. To be noted, at the time of deposition, the defendant side did not put any suggestion to this effect.

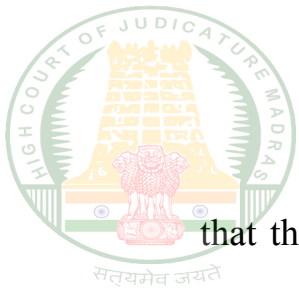


It was never suggested that P.W.2 was not an attesting witness to Ex-A.3.

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Once an attesting witness to a document appears before Court and deposes in clear terms about the execution of the document, where it was neither denied that he/she was an attestor nor any suggestion to the contrary was made, such a contention cannot be later raised in arguments. Hence, the argument of the learned Counsel deserves to be rejected.

14. It is settled law that the burden of proof always lies on the plaintiff. In this case, the plaintiff by examining P.W.2, *prima facie* proved the execution of Ex-A.3, receipt of Rs.50,000/- advance thereunder on the date of execution itself and the endorsement made therein for Rs.1,00,000/- as well. Now the onus of proof shifts to the defendant. The defendant has not established that the plaintiff is a money lender. Further she failed to take steps to send Ex-A.3 for expert opinion. Hence, this Court is of the view that the plaintiff has proved the signatures of the defendant found in Ex-A.3 to be hers. Thus, the plaintiff has proved the execution of Ex-A.3 as well as the payment of Rs.8,25,000/- as advance totally on various occasion. The Trial Court by considering the cumulative facts and circumstances and by comparing the admitted signature found in Ex-A.4 – Undertaking Letter with the signatures found in Ex-A.3, held

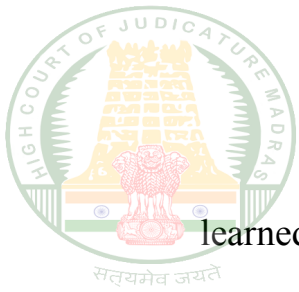


that the signatures found in the latter are also that of the defendant. The

same is justifiable. **Point Nos.(i) and (ii) is answered accordingly in favour of plaintiff and against the defendant.**

Point No.(iii)

15. As per Ex-A.3 – Suit Sale Agreement, the total sale consideration is Rs.23,50,000/-. As already decided under Point No.(ii), the plaintiff has paid a sum of Rs.8,25,000/- as advance on various occasion. The balance sale consideration is Rs.15,25,000/-. As per Section 16 (c) of the ‘Specific Relief Act, 1963’ [‘S.R. Act’ for short] should prove his readiness and willingness to perform her part of contract regardless of whether the defendant has taken such a plea or not. From the explanation under Section 16 of the S.R. Act, it is clear that the plaintiff need not mandatorily deposit the balance sale consideration unless directed by Court to do so. No doubt with that. But the plaintiff must prove the availability of funds in order to make payment in time as per the terms of Ex-A.3. In this case, as rightly contended by the learned Counsel for the appellant / defendant, the plaintiff did not file any Bank Account Statement, Income Tax Records or any other evidence to show that the plaintiff was ready and willing to perform her part of the contract. The



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learned Counsel for the respondent / plaintiff would conceded that even after the Trial Court's Decree, wherein and whereby the plaintiff was directed to deposit the balance sale consideration, the plaintiff has not deposited the balance sale consideration. He would contend that the deposit was not made as the Appeal Suit was preferred and that the plaintiff is ready to deposit the same now, if directed by this Court. To be noted, vide its Judgment and Decree dated July 13, 2012, the Trial Court had directed the plaintiff to deposit the balance sale consideration within two months *i.e.*, on or before September 13, 2012; this Appeal Suit was filed on October 17, 2012 and an Order of interim stay was granted on January 18, 2013. Before the presentation of the Appeal Suit and before the Order of stay, the time period for deposit of balance sale consideration granted by the Trial Court elapsed. In these circumstances, the argument of the learned Counsel for the respondent / plaintiff that the plaintiff did not deposit the balance sale consideration as the Appeal was filed, does not hold water. The cumulative facts and circumstances of the case would show that the plaintiff was not ready and willing to perform her part of the contract. Moreover, the plaintiff was away from the witness box without assigning any reason for the same. The plaintiff is the competent person to



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depose about her readiness and willingness. Non-examination of the plaintiff also weakens the case of the plaintiff *qua* her readiness and willingness. In short, this Court concludes that the plaintiff was not ready and willing to perform her part of the contract. **Point No.(iii) is answered accordingly in favour of defendants and against the plaintiff.**

Point No.(iv)

16. In view of the finding of this Court under Point No.(iii) that the plaintiff is not ready and willing to perform her part of the contract, the Trial Court is not right in granting the main relief of specific performance and permanent injunction. However, as held *supra* under Point No.(ii), the payment of Rs.8,25,000/- as advance is proved. Hence, the plaintiff is entitled to the alternate relief of refund of advance amount of Rs.8,25,000/- with simple interest at the rate of 12 % per annum from the date of Suit till realisation. **Point No.(iv) is answered accordingly.**

17. There is no quarrel with the rulings relied on by either side.

CONCLUSION:

18. Resultantly, the Appeal Suit stands partly-allowed. The Judgment and Decree of the Trial Court is set aside. The Suit is decreed



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for the alternate relief of refund of advance amount of Rs.8,25,000/- with

simple interest at the rate of 12 % per annum from the date of Suit till

realisation. The defendant is directed to deposit the same within four

months from today. Charge is created on the Suit Property to enable the

plaintiff to realise the said amount and interest. In view of the facts and

circumstances of this case, there shall be no order as to costs.

19 / 08 / 2025

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

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To

The VI Additional City Civil Court

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