



A.S.No.90 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 10.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.90 of 2022

1. Rajamani
2. R.Kalyani

... Appellants

Versus

V.Munian

... Respondent

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the judgment and decree dated 27.08.2021 made in O.S.No.415 of 2018 on the file of the Additional District [Fast Track] Court, Mettur.

For Appellants : Mr.D.Sathya

For Respondent : Mr.T.S.Vijayaraghavan



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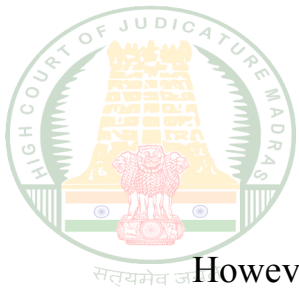
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JUDGMENT

Challenging the decree and judgment of the trial Court decreeing the suit for recovery of a sum of Rs.10,39,534/-, the present appeal has been filed by the unsuccessful defendant.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The suit has been filed by the plaintiff for recovery of a sum of Rs.10,39,534/-. According to the plaintiff, the defendants had entered into agreement with the plaintiff on 29.01.2018 to sell the property before the month of Chithirai 2018 for a total sale consideration of Rs.60,91,200/- contending that the property has been purchased by the first defendant. The defendants represented that the original document is with the bank and requested some time to release the document. Hence, another agreement has been entered on 11.05.2018 agreeing to sell the property within three months.

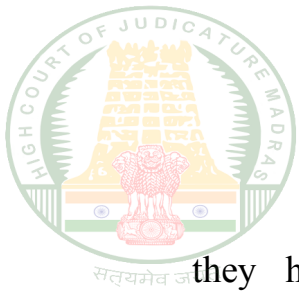


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However, the defendants have not paid the bank loan and redeemed the original document. Therefore, once again, an agreement was entered between the parties on 16.08.2018 and an advance of Rs.10,00,000/- has also been paid. It is agreed that the balance amount will be paid within a period of three months from the date of the agreement. The plaintiff was always ready and willing to perform his part of the contract. However, the defendants have not executed the sale deed and not paid the bank loan. The plaintiff issued a legal notice in this regard on 31.10.2018 calling upon the defendants to execute the sale deed after receiving the balance sale consideration. However, the defendants have not given any reply. On enquiry, the plaintiff came to know that the defendants have monetarily committed to so many persons. Therefore, the plaintiff felt that it is not advisable to purchase the property. Hence, the plaintiff has filed the suit for recovery of the advance amount paid by him.

4. It is the case of the defendants in the written statement that admitting that the suit property belongs to them, it is the stand of the defendants that



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they have no necessity to sell the property for a meager price of Rs.60,91,200/-. According to them, the previous agreements have not been filed in the suit. It is their further contention that the second defendant has not executed any sale agreement. Admitting that they had received the legal notice, it is the contention of the defendants that the plaintiff expressed apology and that the notice has been issued due to inducement of his friends, therefore, they have not sent any reply. Hence, opposed the suit.

5. On the basis of the above pleadings, the following issues have been framed by the trial Court. :

1. Whether the suit sale agreement is invalid in the eye of law and the plaintiff is not entitled to any relief under the unregistered sale agreement?

2. Whether the sale agreement is a forged one and the signature of the defendants are created by the plaintiff with the help of friends in a forged manner?



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3. Is it correct to state that the defendants agreed to sell the suit property for sale consideration of Rs.60,91,200/- and after getting advance sale consideration of Rs.10,00,000/- they executed the sale agreement?

4. Whether the reason stated by the plaintiff is correct for not purchasing the property after payment of balance sale consideration?

5. Whether the plaintiff is entitled for the reliefs claimed by him?

6. Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 have been examined and Ex.A.1 to A6 have been marked. On the side of the defendants, D.W.1 to D.W.3 have been examined and no document has been filed on the side of the defendants. The trial Court, considering the entire evidence, has decreed the suit in favour of the plaintiff. Challenging the same, the present appeal has been filed.



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7. The main contention of the learned counsel appearing for the appellants is that the agreement has been forged and created for the purpose of the suit. The evidence of D.W.1 to D.W.3 clearly prove this aspect. There are several contradictions in the evidence of P.W.1 and P.W.2 and there is no necessity for the plaintiff to file a suit for recovery of the advance amount, as the agreement has been entered between the parties for sale of the property. The same has not been considered by the trial Court. Therefore, the suit agreement has not been established in the manner known to law. Hence, it is their contention that the plaintiff is not entitled to the relief claimed in the suit.

8. Whereas, the learned counsel appearing for the respondent would submit that the suit agreement has been proved through the evidence of P.W.2, who is the attesting witness. Once execution of the document has been proved, it is for the person who claims fabrication or forgery, to establish such fabrication and forgery. It has not been done so. Therefore, it is his contention that the trial Court rightly decreed the suit.



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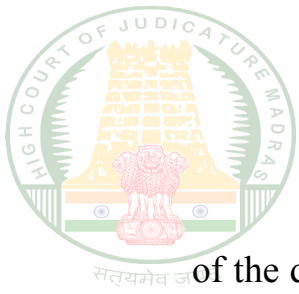
9. In the light of the above submissions, now the points that arise for consideration are :

1. Whether the execution of the suit agreement is proved?

2. Whether the defendant has discharged his burden in establishing alleged fabrication and forgery.

10. Points 1 and 2 :

I have perused entire materials. The suit for recovery of money simplicitor has been filed based on the agreement dated 11.05.2018, wherein the defendants have specifically agreed to clear the bank loan and hand over the original documents. As the bank loan has not been paid, a third agreement has also been executed between the parties, viz., the suit agreement dated 16.08.2018. In the entire written statement, except general denial of all the facts in the plaint, there is no specific denial whatsoever made. It is the stand



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of the defendant that the defendant has not produced the other two agreements in the suit. Therefore, according to them the suit agreement is a fabricated one.

11. On a perusal of the entire written statement, except a general denial, which is also evasive in nature, there is no specific denial made in the written statement explaining the circumstances under which the documents came into force. Therefore, it is well settled that as long as there is no specific denial of the facts alleged in the plaint, mere evasive denial will not be sufficient to deny the allegations in the plaint. Such evasive denial shall be deemed to be admission of the plaint averments. Be that as it may.

12. The specific case of the plaintiff is that though he has entered into an agreement for sale, there are two agreements executed prior to the suit agreement and those agreements have not been produced. Though the plaintiff has paid part of the sale consideration for purchasing the property, he has restricted his claim for recovery of the advance amount alone, as the



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defendant had committed to various other persons monetarily. Therefore, he decided to recover the advance amount alone. This specific allegation of the plaintiff that the defendants had committed to various other persons monetarily, is not even denied in the entire written statement.

13. Further, it is to be noted that to prove the document Ex.A.1 agreement, P.W.2, one of the attesting witness has been examined. The evidence of P.W.2 clearly proves the fact that the Ex.A.1 has been executed by the defendants. Once, the execution of the document has been proved in the manner known to law, then the burden shifts on to the persons who alleges fabrication or forgery, to establish such fabrication or forgery. No steps, whatsoever, has been taken by the defendant in this regard.

14. It is also relevant to note that though the defendants have received the legal notice issued by the plaintiff, it has not been replied immediately. If they really have not executed the document, when liability sought to be fastened on such document, the conduct of the person who receives such



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notice would be to reply immediately. Whereas, the defendant having received the notice, had not replied and remained silent spectator. Therefore, once, the execution is proved and the entire written statement is only evasive in nature, this Court is of the view that the finding of the trial Court that the plaintiff is entitled to recovery of money does not require any interference. The points are answered accordingly.

15. In the result, this Appeal Suit is dismissed and the judgment and decree of the trial Court in O.S.No.415 of 2018, dated 27.08.2021 is confirmed. There shall be no Order as to costs.

10.02.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order

VRC

To,

The Additional District Judge,
Additional District [Fast Track] Court,
Mettur.

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N. SATHISH KUMAR, J.

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