



S.A.No.292 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2025

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

S.A.No.292 of 2023

and C.M.P.No.8666 of 2023

M.Venkatachalam

... Appellant / Plaintiff

Vs.

1. A.Bakthavachalam

2. B.Soundarajan

3. M.Ravikumar

4. S.Munusamy

5. M.Vanitha

6. P.Vijaya Babu

7. J.Arulanandam

8. A.Raja

9. K.Seenivasan

... Respondents / Defendants

PRAYER:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the judgment and decree passed by I-Additional District Judge, Salem in A.S.No.29 of 2017 dated 10.12.2018 confirming judgment and decree made in O.S.No.89 of 2011 on the file of the Sub-Ordinate Judge of Mettur dated 24.02.2017 and to allow the appeal.



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For Appellant : Mr.K.S.Shangar Murali
For R1 : Mr.S.Mukunth
Senior Counsel
for M/s.Sarvabhauman Associates
For R2 to R9 : Mr.Mohamed Abdul Rasiq

JUDGMENT

The sole plaintiff in O.S.No.89 of 2011 before the Sub Court, Mettur, who lost his case before the trial Court as well as the First Appellate Court – I-Additional District Court, Salem (A.S.No.29 of 2017) has preferred this Second Appeal against the judgment and decree dated 10.12.2018 passed in A.S.No.29 of 2017.

2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff, he is the absolute owner of the suit property by virtue of partition deed dated 16.06.1999 registered in Document No.1941 of 1999 of Sub Registrar Office, Omalur. He is an illiterate person. In the year 2001, he was in need of money and one Selvam and Nagaraj introduced the 1st defendant who is doing money lending business. He borrowed a sum of Rs.1,00,000/- on 06.09.2001 and executed promissory

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note, signed in blank stamp papers and cheques in favour of the 1st defendant. The 1st defendant demanded to execute a loan document and accordingly, the plaintiff was asked to come to Registrar Office to execute the document. The 1st defendant obtained thumb impression of the plaintiff in a deed and he put his thumb impression under the impression that the same was a loan document. Thereafter, within 5 or 6 months, he repaid the loan to the 1st defendant. The defendant returned the promissory note and stamp papers to the plaintiff. The plaintiff asked the 1st defendant to cancel the loan document. The 1st defendant told him that the said document need not be cancelled.

3.1. In the month of January, 2011, some land brokers visited the suit property. On enquiry, he was told by the brokers that the 1st defendant is going to sell the property as he is the owner of the suit property. Upon obtaining the encumbrance certificate, the plaintiff found out that the 1st defendant fraudulently got sale deed in his favour on 07.09.2001 from the plaintiff. The sale consideration mentioned in the document is false. He did not receive any amount towards sale consideration. The sale never come into force and the possession was still with the plaintiff. Hence, the suit was laid for the relief of declaration that the sale deed executed by the plaintiff in



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favour of the 1st defendant on 07.09.2001 is null and void and for permanent injunction restraining the 1st defendant and his men not to create any encumbrance in respect of the suit property.

4. The purchaser-1st defendant would inter-alia contend that the plaintiff is an illiterate person and he does not know read and write, is a concocted story. The plaintiff has got the knowledge about the worldly affairs. All other details put forth by the plaintiff are totally incorrect and he did not get any signature of the plaintiff in the promissory note and the other papers. The 1st defendant purchased the suit property in S.No.28/1A, 0.45½ cents for sale consideration of Rs.1,02,500/- through registered Sale Deed on 07.09.2001 in Document No.2776 of 2001. The respondents no.2 to 9 are the purchasers of the suit property.

5. The trial Court framed the relevant issues. At trial, to substantiate the plaint details, plaintiff has examined himself as P.W.1 and twelve documents were marked. Impugned sale deed dated 07.09.2001 is Ex.A1. On the defendants' side, 1st defendant examined himself as D.W.1 and attesor to Ex.A1 sale deed one P.M.Krishnan has been examined as D.W.2 and thirty documents were marked.



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6. The following substantial question of law arise for consideration:-

“Whether the burden of proof is not on the appellant in a suit filed by the appellant who is an illiterate and affixed his thumb impression in Ex.B9 sale deed in favour of the 1st respondent?”

7. The learned counsel for the appellant would vehemently argue that as the plaintiff is an illiterate person and does not have any knowledge about the worldly affairs, the 1st defendant who was a police official and a dominant person has to prove that Ex.A1- sale deed was executed and registered in the manner known to law. To buttress his arguments, the following judgment was referred to:

i. Pratima Chowdhury Vs. Kalpana Mukherjee and another reported in 2014 (4) SCC 196.

8. Whereas, the learned counsel for the respondents would strenuously contend that though burden is not upon the 1st defendant, Ex.A1- sale deed has been examined in order to prove the fact that the impugned sale deed was executed in the manner known to law and not as



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pleaded by the plaintiff.

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9. In fact, the learned counsel for the appellant was advancing his argument based on legal maxim *non est factum*, which means “*it is not my deed*”. This legal maxim would apply if the vendor is a unlettered person and when he denies the execution of a document. In such circumstances, the burden of proving the impugned document lies upon the person in whose favour the document is executed.

10. In this regard, it is relevant to refer to Section 111 of the Indian Evidence Act, 1872. For better understanding, the said provision is extracted hereunder:-

“111. Proof of good faith in transactions where one party is in relation of active confidence.

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations:



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(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.”

11. When a person challenges the credibility of a transaction on the grounds of undue influence, fraud, etc., burden lies upon the person who alleges has to prove under Section 101 of the Evidence Act. Whereas, Section 111 is an exception to this rule, in cases when a person who stands in the position of active confidence to the other. The principle embodied in this Section is called “*The Great Rule of the Court*”. Therefore, on account of the position of the plaintiff, the law is reversed to its usual rule of evidence in matters of persons who stand in the position of active confidence to the other.

12. The object behind Section 111 of the Indian Evidence Act, 1872 is that whenever a party complains of that he has been cheated by fraud, undue influence or misrepresentation etc., and if the party complains against a dominant person, then Section 111 of Indian Evidence Act, 1872 comes



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into play. All that required is that the party on whom the burden of proof is laid should have been in a position of active confidence where fraud is alleged. In this regard, the age or capacity of the person conferring the benefit and the nature of the benefit are all of great significance. Therefore, it is obligatory for the beneficiary under a document, in such cases, to prove as to due execution of the document in accordance with law, irrespective of the fact that whether such party is the defendant or plaintiff before the Court. Similar principles are contained in Clause 3 of Section 16 of Indian Contract Act, 1872.

13. In this regard, it is relevant to refer to the observations made by the Hon'ble Supreme Court in *Krishna Mohan Kul and others Vs. Pratima Maity and others* reported in 2004 (9) SCC 468. In the said case, the deed of settlement purported to have been executed by the Dasu Charan Kul was void and an invalid document and it was alleged that the deed of settlement was created by Krishna Mohan Kul (defendant no.1) with oblique motive. The defendants took the stand that the deed was perfectly in order and no illegality was attached thereto. It was contended before the Trial Court that the executant was more than 100 years of age at the time of alleged execution of settlement deed in question. He was not in a good physical and



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mental condition. The trial Court disbelieved the plea and dismissed the suit. The First Appellate Court also confirmed the finding of the trial Court and dismissed the appeal preferred by the plaintiffs. Whereas, the High Court in the Second Appeal held that the executant was an illiterate person and was not in a proper physical and mental state and the impugned settlement deed was declared as void and invalid and consequently, permanent injunction to not disturb the possession of the plaintiff in the suit property was granted.

13.1. In the given background, the Apex Court observed that, “... *But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence, the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position. He has to prove that there was fair play in the transaction and that the apparent is the real, in other words that the transaction is genuine and bona fide. In such a case, the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence.*” Based on the aforesaid observations, the Apex Court dismissed the appeal confirming the judgment of the High Court.

14. In the present case, the plaintiff alone has examined himself as



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P.W.1. He has filed his proof affidavit in line with the plaint details.

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15. Whereas, the 1st defendant has examined himself as D.W.1 and attesor to the impugned sale deed has been examined as D.W.2. D.W.2 has duly spoken about the execution of Ex.A1-sale deed. By examining D.W2 one of the attesor to Ex.A1, the defendant has discharged the burden placed on him as per Section 111 of Indian Evidence Act, 1872.

16. It is the evidence of P.W.1/plaintiff that he obtained loan amount of Rs.1,00,000/- from the 1st defendant on 06.09.2001 and the 1st defendant obtained thumb impression of the plaintiff in the plain paper and unfilled promissory notes. The 1st defendant also demanded him to execute a document in respect of the loan obtained by the plaintiff and prepared a document on 07.09.2001 by stating that he had prepared a loan document and told him to come to the Sub Registrar Office to affix his thumb impression. The plaintiff would further state that believing his words, he affixed his thumb impression on the papers with the belief that it was a loan document and 1st defendant A.Bakthavachalam took him to the Sub Registrar and got his thumb impression outside the Sub Registrar Office. He did not go to the Sub Registrar Office at all and did not file any document.



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The 1st defendant returned the principal amount along with interest within six months and a document was shown to him by the 1st defendant stating that it is a loan document. The plaintiff was told that it is not necessary to get back the documents in which he affixed his thumb impression. Only in the month of January 2011, suit property was visited by brokers and the brokers told him that the property belongs to the 1st defendant A.Bakthavachalam. Thereafter, he applied for encumbrance certificate and was shocked to know that a sale deed has been created on 07.09.2001 in Document No. 2776/2001. He was deceived by playing fraud upon him; Ex.A1 sale deed was created.

17. It is relevant to refer to the documents marked by the 1st defendant side. Ex.B1 to Ex.B7 have been marked during the cross examination of P.W.1/ plaintiff. Ex.B1 dated 03.05.2000 is the registered sale agreement executed by the plaintiff in favour of one Nagarajan. Ex.B2 dated 18.07.2001 is the cancellation deed of Ex.A1 sale agreement. Ex.B3 dated 18.07.2001 is another sale agreement executed by the plaintiff in favour of one Angamuthu and the same was cancelled by the plaintiff in Ex.B4 dated 07.09.2001. Ex.B5 dated 23.01.2006 is the sale deed executed by the plaintiff in favour of one Thamarai. Ex.B8 dated 21.07.2010 is the sale deed



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executed by the plaintiff and the 1st defendant in favour of 7th defendant in respect of 0.15 cents in the suit survey number. Impugned sale deed is Ex.A1/Ex.B9.

18. Moving further, on 21.07.2010 as per Ex.B8, the plaintiff has executed a sale deed in favour of the 7th defendant along with the 1st defendant, though the property belonged to him which explicates that he was in good terms with the 1st defendant. The plaintiff claims that he is an illiterate, he does not know worldly affairs and he was deceived by the 1st defendant and thereby, he executed Ex.A1-sale deed in favour of the 1st defendant.

19. More so, the plaintiff states that he acquired knowledge in respect of the impugned sale deed only in the year 2010 and therefore, he laid the suit in the year 2010 against the 1st defendant. From the available records, it is made clear that the plaintiff has executed very many documents at the registration office such as sale deeds, sale agreements, cancellation of sale agreements, etc. In the light of the above said circumstances, as stated in his case that he acquired knowledge in respect of the impugned sale deed only in the year 2010 is believable or not is the core question to be adverted



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20. As regards the consideration details, the plaintiff has not obtained any guideline value and marked the same in respect of the suit property. It is not the case of the plaintiff that as the property is undervalued and Ex.A1- sale deed was returned as undervalued. On a careful perusal of Ex.B9- sale deed (Ex.A1- copy of sale deed dated 07.09.2001), the said sale deed was executed on 07.09.2001 and on the same day, it has been registered before the Sub Registrar, Omalur. As deposed by D.W.2, plaintiff's brother, one V.M.Kandhasamy S/o.Manika Gounder has attested at the time of execution as well as he has also signed at the time of registration. In fact the attestation made by the brother of the plaintiff would strengthen the case of the 1st defendant.

21. On a careful perusal of Ex.A1/Ex.B9 sale deed, it appears that the sale deed was executed by the vendor/ P.W.1 with an intention to sell the property. After the sale in the year 2004 in Ex.B10 dated 22.01.2004 by Tahsildar, Omalur, patta transfer order has been passed. Patta has been transferred in the name of the 1st defendant in the year 2010 (12.10.2010). In Ex.A1/ Ex.B9 sale deed, it has been stated that the said property fell to his share as per the partition deed dated 16.06.1999 in Document No.



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1941/1999. These details have been imported from the partition deed relating to the family of the plaintiff. These details could only be taken from the partition deed. In the given circumstances, the plaintiff contention that he was deceived by the 1st defendant and he did not enter into the Sub-Registrar Office at all is highly improbable and not acceptable.

22. The illustration namely Section 114 (e) Indian Evidence Act, 1872 flows from the legal maxim *omnia praesumuntur rite et solemniter esse acta*, which means *all acts are presumed to have been rightly and regularly done*. It is based on the disposition that in the Court of justice to uphold official, judicial and other acts rather than to render them inoperative.

23. As per Section 114 (e) of the Indian Evidence Act, 1872, it means, if an official act is proved to have been done, it will be presumed to have been regularly done. Evidence of D.W.2 explicates that Registrar had read out the Sale Deed and explained the contents of the document to the parties at the time of its registration. D.W2- P.M.Krishnan has also deposed that on receipt of the sale consideration, the vendor having understood the facts and in the presence of his brother V.M.Kandhasamy, affixed his thumb impression in the Sale Deed- Ex.A1. Before the Sub Registrar also, the



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plaintiff affixed his thumb impression and thereafter, the 1st defendant and the witnesses, namely D.W.2- P.M.Krishnan and the plaintiff's brother V.M.Kandhasamy attested before the Sub Registrar. These details of the evidence of D.W.2 is not impeached by the plaintiff. From the evidence of D.W.1 and D.W.2, a strong presumption arises in favour of the 1st defendant that the official act is presumed to have been done and regularly done. The said presumption is rebuttable one. It is pertinent to note that, apart from D.W.2, plaintiff's own brother V.M.Kandhasamy has attested at the time of execution and before the Sub Registrar. The plaintiff did not choose to examine his brother V.M.Kandhasamy. Therefore, based on the evidence of D.W.1 and D.W.2, presumption arose in favour of D.W.1 remained unrebutted. In such circumstances, it should not lie in the mouth of the plaintiff that he did not go to the Sub Registrar Office and he did not affix his thumb impression.

24. Proceeding further, the 1st defendant has discharged his burden by examining himself as D.W.1 and by examining D.W.2 attester to the impugned sale deed Ex.A1/ Ex.B9. No answer was elicited from D.W.2 during his cross examination disadvantageous to the 1st defendant. The above said documents, namely, Ex.B1, Ex.B2, Ex.B3, Ex.B4, Ex.B5 and



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Ex.B8 would unequivocally reflect the fact that the plaintiff is not a person who does not know worldly affairs and his stand to this effect is totally belied by execution of the above said documents by the plaintiff herein.

25. Though the 1st defendant purchased under Ex.A1 for an extent of 0.45½ cents in the suit property, he was granted patta in Ex.B10 for an extent of 0.60 cents. For that reason, plaintiff has ingeniously filed the suit after a period of 9 years. Recourse should have been taken by the plaintiff for the correction of extent in the patta which is granted to the 1st defendant, rather plaintiff filed this vexatious suit without any cause of action.

26. Though the plaintiff claims that he is an illiterate person, he does not know the worldly affairs, is not acceptable for the reason that he has executed Exs.B1 to B4 and Ex.B8, all are registered documents which would go to establish in clear terms that his stand to the effect that he does not know the worldly affairs is not acceptable.

27. Another important factor is that the plaintiff claims that he came to know about Ex.A1-sale deed only in the year 2010. After the execution of the sale deed, namely, Ex.A1 by the plaintiff, the title to the suit property has



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passed on the 1st defendant and he has started to deal with the property.

Therefore, in order to save the limitation, the plaintiff's contentions that he came to know about the Ex.A1-sale deed only in the year 2010 cannot be acceptable and the suit is clearly hit by law of limitation.

28. In view of the above narrative, the substantial question of law is answered against the appellant/ plaintiff herein.

29. Above being the position, this Court is justified in holding that the judgment of the First Appellate Court is perfectly valid and there is no scope for interference with the impugned judgment. Therefore, this Second Appeal stands dismissed. Sequel to this, the judgment and decree dated 10.12.2018 passed in A.S.No.29 of 2017 on the file of the I-Additional District Court, Salem stands confirmed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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R.KALAIMATHI, J.

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Copy to

1. The I-Additional District Court, Salem
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