



SA No. 381 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.381 of 2018

Madanraj

.. Appellant

Versus

Gnanamba Ammal

.. Respondent

Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 27.07.2017 passed in A.S. No. 9 of 2013 on the file of the learned III Additional District Judge, Tiruppattur, confirming the judgment and decree dated 25.07.2012 made in O.S.No.102 of 2010 on the file of the Subordinate Judge, Tiruppattur.

For Appellant	:	Mr. R. Shanmugham for M/s.Shanmugha Associates
For Respondent	:	Mrs. V. Srimathi

JUDGMENT

This Second Appeal is filed challenging the judgment and decree dated 27.07.2017 passed in A.S. No. 9 of 2013 on the file of the learned III Additional District Judge, Tiruppattur, dismissing the appeal and confirming the judgment and decree dated 25.07.2012 made in O.S. No. 102 of 2010 on the file of the Subordinate Judge, Tiruppattur.

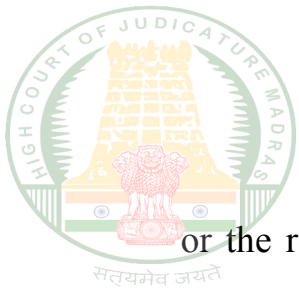


SA No. 381 of 2018

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The Plaintiff in O.S. No. 102 of 2010 before the learned Sub Judge, Tirupattur, Vellore District is the Appellant in A.S. No. 9 of 2013 on the file of the learned III Additional District Judge, Vellore District and in the present Second Appeal.

3. It is the contention of the Plaintiff that he had entered into agreement of Sale dated 23.04.2001 with the Defendant. After entering into the Agreement of Sale, the entire sale consideration was paid and an endorsement was made on the Sale Agreement. After the execution of the Sale Agreement and the payment of the entire sale consideration, the Defendant did not come forward to execute the sale deed. Therefore, the Plaintiff issued a notice dated 20.10.2001 calling upon the Defendant to come before the Sub Registrar concerned to execute the sale deed. In fact, the Defendant executed a General Power of Attorney Deed on 26.04.2001 in favour of the Plaintiff to execute the sale deed. After execution of Ex.A-1 to Ex.A-3, the Defendant has not come forward to execute the sale deed. After receipt of lawyer notice, the Defendant sent a reply in which, for the first time, she claimed that the General Power of Attorney Deed executed in favour of the Plaintiff was cancelled. However, the Defendant has not denied the execution of the Sale Agreement



SA No. 381 of 2018

or the receipt of the entire sale consideration. The name of the Defendant is Gnanamba Ammal. The lawyer notice issued by the Plaintiff under was addressed to Gnanamba Ammal, in the Acknowledgement Card the name was mentioned as Gnanamba Mohan.

4. On notice, a written statement was filed repudiating the various averments made in the plaint and sought for dismissal of the suit.

5. Before the trial court, the Plaintiff examined himself as P.W-1 and three other witnesses were examined as P.W-2 to P.W-4. Ex.A-1 to Ex.A-13 were marked on his side. On the side of the Defendant, one Mr. Mohan Kumar was examined as D.W-1 along with three other witnesses as Dws 2 to 4. Exs. B1 to B13 were marked on the side of the Defendant.

6. The trial court as well as the appellate Court dismissed the suit and therefore the present second appeal is filed.

7. The learned Counsel for the Appellant submitted that the Defendant signed in the written statement as Gnanamba Mohan, but in the heading, it was stated as “written statement filed by Gnanammal”. In para 4 of



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the written statement, she claims that she had never met the Plaintiff. In para 5, she contradicts the statement made in para 4 and claimed that the Plaintiff approached her for developing the property for which she had executed a Power of Attorney Deed. Therefore, it is the contention of the learned Counsel for the Appellant that the Defendant had filed a written statement with contradictory version. Further it is the contention of the learned Counsel for the Plaintiff that the Plaintiff had adduced evidence as P.W-1 and marked documents under Ex.A-1 to Ex.A-13 and also examined witness to the Sale Agreement as well as the endorsement under Ex.A-2 as P.W-2 to P.W-4. On the side of the Defendant, the Defendant did not enter the witness box. She wantonly avoided the witness box and her husband was examined as D.W-1 along with three witnesses as D.W-2 to D.W-4 and documents were marked under Ex.B-1 to B-13. The learned Counsel for the Appellant invited the attention of this Court to the discussion of the evidence by the learned Sub Judge, Tirupattur, Vellore District, in paras 9, 10 11, 13 and 14, which according to him are contrary to the provisions of the Indian Evidence Act. The learned Trial Judge failed to consider that the Defendant having filed a written statement denying execution of the sale deed and alleging fraud on the part of the Plaintiff had wantonly avoided the witness box. This fact was not considered by the learned Sub Judge, Tirupattur, Vellore District, and based on



the evidence, the learned Trial Judge dismissed the suit.

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8. The learned Counsel for the Appellant also invited the attention of this Court to the discussion of evidence by the learned Appellate Judge in paras 10 to 12 of the Appeal and submitted that the learned Appellate Judge also failed to consider the fact that the Defendant, who has a duty to stick on to the averments in the written statement, wantonly avoided the witness box. Instead of considering the same and recording the discharge of the burden of proof, the learned Appellate Judge dismissed the suit for specific performance.

9. In support of his contentions, the Learned Counsel for the Appellant placed reliance on the following rulings:

9.1. ***AIR 1999 SC 1441 (Vidhyadhar Vs. Mankikrao and another)***,

wherein the Hon'ble Supreme Court held as follows:

“15. It was Defendant 1 who contended that the sale deed executed by Defendant 2 in favour of the Plaintiff was fictitious and the whole transaction was a bogus transaction as only Rs 500 were paid as sale consideration to Defendant 2. He further claimed that payment of Rs 4500 to Defendant 2 at his home before the registration of the deed was wholly incorrect. This plea was not supported by Defendant 1 as he did not enter the witness-box. He did not state the facts pleaded in the written statement on oath in the trial court and avoided the witness-box so that he may not be cross-examined. This, by itself, is enough to reject the claim that the transaction of sale between Defendant 2 and the Plaintiff was a bogus transaction.



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16. *Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in Sardar Gurbakhsh Singh case [AIR 1927 PC 230 : 32 CWN 119] . The Allahabad High Court in Arjun Singh v. Virendra Nath [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.”*

9.2. MANU/TN/2088/2002 (Balammal and others Vs. Velayutham

(deceased) and others), wherein this Court held as follows:

“24. Where a party to the suit does not appear into the witness box and states her own case on oath and does not offer herself to be cross-examined by the other side, a presumption would arise that the case pleaded by her or on behalf of her is not correct and the Court can draw a presumption under Section 114 of the Evidence Act against the party who did not enter into the witness box as has been held in VIDHYADHAR v. MANIKAO MANU/SC/0172/1999.”

9.3. 2007 (1) CTC 449 (Jayalakshmi Ammal and 8 others Vs.

Chinnasamy Gounder and another), wherein this Court held as follows:

“13. Question No.1: As per the Plaintiff's case, there was an unregistered agreement on 14.7.1984. Such agreement was scribed by P.W.2 and was signed by Defendant No.1 after understanding the contents thereof. The plea of Defendant No.1 on this score is that,



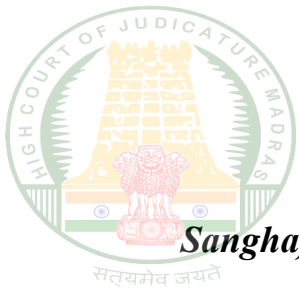
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being pressurised by Velu and Kannan he had given signatures on few blank papers which have been converted into an agreement in favour of the Plaintiff and no amount had been paid by the Plaintiff to Defendant No.1. Defendant No.1 in his evidence as D.W.1 had admitted that Velu was his own brother-in-law and Kannan was his co-brother. Even though he has specifically taken the plea of coercion, except his bald statement that being pressurized by Velu and Kannan he had given signatures on blank papers, there is no other material on record to substantiate such a stand. There is no material on record to show as to why Velu and Kannan, who were related to Defendant No.1 himself, had forced him to sign in blank papers for creating an agreement in favour of the Plaintiff. It is of course true that the Plaintiff has stated while deposing as P.W.1 in his cross-examination that Defendant No.1 has signed in one or two places in a blank paper. This by itself cannot be held sufficient to come to a conclusion that in fact Defendant No.1 had signed separately in three blank papers, two of which were on stamp papers, which were subsequently converted into agreement dated 14.7.1984. Even though it is for the Plaintiff to prove that there was an agreement duly executed by Defendant No.1 for sale of the property in favour of the Plaintiff, burden of proving the specific plea that signatures had been obtained by coercion on blank papers, which were subsequently converted into an agreement, was obviously on Defendant No.1. The mere uncorroborated testimony of Defendant No.1 is not sufficient to come to a conclusion that in fact Defendant No.1 has been forced to put his signatures on blank stamp papers which have been subsequently converted into agreement.”

9.4. (2009) 1 MLJ 67 (Prabhakaran and Others Vs. Ranganathan and Others), wherein this Court held as follows:

“(A) Hindu Law – Partition – Plaintiff filed suit for partition of several items of which one stood in the name of one of the Defendants – Totality of the evidences show that the said Defendant had no separate income of his own to buy property – On the other hand evidence of Plaintiff would show that the said property was purchased in his name out of joint family funds – Held, Trial Court right in granting partition of all the items.”

9.5. (2010) 10 SCC 512 (Man Kaur (dead) by LRS. Vs. Hartar Singh



SA No. 381 of 2018

Sangha), wherein the Hon'ble Supreme Court held as follows:

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“B.Evidence Act, 1872 – Ss.101, 106, 145 and 114 III (g) – Adverse presumption – Reiterated, where a party to the suit does not appear in witness box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that case set up by him is not correct – Specific Relief Act, 1963, Ss.5 and 16(c).”

10. By placing reliance on the above decisions, the learned Counsel for the Appellant submitted that a party to the suit having pleaded a specific case and wantonly avoids the witness box, the Court shall draw adverse inference against such a party. This fact was not considered by the courts below and therefore, the learned Counsel for the Appellant seeks to set aside the judgment of both the Courts below and to grant a decree for specific performance or in the alternative direct the Defendant to return the amount paid by the Plaintiff under Ex.A-1 and Ex.A-2.

11. The learned Counsel for the Appellant also submits that the Plaintiff had disputed the written statement filed by third party when the notice was issued to Gnanamba Ammal. The reply by Ex.B-13 was from Gnanam Mohan. The written statement was filed by Gnanamba Ammal but signed as Gnanam Mohan. Therefore, it is the case of the Plaintiff that the third party to the proceedings had filed written statement and not the original party to the Sale Agreement.



12. Opposing the submissions of the learned Counsel for the

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Appellant, the learned Counsel for the Respondent submitted that the suit was filed by the Plaintiff seeking specific performance of contract for purchase of the property. It is the case of the Plaintiff that the Defendant executed sale agreement on receipt of advance of Rs.1,00,000/- for the property worth Rs.5,00,000/-. The Defendant filed written statement disputing the claim of the Plaintiff in the suit. The learned Counsel for the Respondent invited the attention of this Court to the contentions raised by the Defendant in paragraph 3 of the written statement. Also, the learned Counsel for the Respondent invited the attention of this Court to the discussion of evidence by the learned Sub Judge, Tiruppattur in paragraphs 9 to 14 whereby the learned Sub Judge, Tiruppattur had on proper appreciation of evidence rejected the evidence of the Plaintiff by reaching a conclusion that the Plaintiff has not proved the claim of the Plaintiff through cogent and acceptable evidence.

13. According to the learned Counsel for the Respondent, the learned III Additional District Judge, Tiruppattur on re-appreciation of evidence, in paragraphs 10 to 12 confirmed the judgment of the learned Sub Judge, Tiruppattur by stating that the Plaintiff failed to prove his claim. It is the further contention of the learned Counsel for the Respondent/Defendant that



SA No. 381 of 2018

the possession is still with the Defendant. The property is worth more than Rs.5,00,000/-. The Plaintiff had not entered into sale agreement with the Defendant but with the brothers of the Defendant and that is why, the confusion has been made in signing in the name as Gnanambal Mohan. Thus, the Plaintiff has not approached the Court with clean hands. Both the Courts below have, taking note of the above misrepresentation on the part of the Plaintiff, had rightly dismissed the suit. The trial Court as well as the first Appellate Court on independent assessment of evidence arrived at the same conclusion that the Plaintiff had not proved the claim of the Plaintiff through proper evidence and such a finding does not warrant interference by this Court.

14. The learned Counsel for the Respondent further stated that the suit property is a vacant site and possession was not handed over to the Plaintiff, as alleged. The sale agreement itself is a fraudulent one and the Defendant has not received any amount. The Plaintiff has to prove under what circumstance within three days the Power of Attorney deed was executed. Ex.A-1 is the sale agreement and Ex.A-2 is the alleged endorsement. Ex.A-3 is the General Power of Attorney dated 26.04.2001.



15. In this context, the learned Counsel for the Respondent referred to paragraph 11 of the Judgment of the Trial Court, wherein it was stated as follows:-

“11. It is an admitted fact that the Defendant had not entered into the witness box and on her behalf her husband had deposed evidence as D.W-1. No cross examination was done on the illness of the Defendant and no suggestion was put to the witness to that effect that the Defendant is wantonly abstaining from appearing before the Court. In the absence of cross examination and suggestion by the Plaintiffs Counsel no adverse inference shall be drawn against the Defendant. D.W-1 the husband of the Defendant is found to be competent witness knowing the facts of the case. Therefore, he had given evidence on behalf of his wife. He had reiterated the facts stated in the written statement and contended that the Defendant had no intention to sell the property and now a building was put up and running a resort in the suit property. There was no cross examination regarding the construction of building in the suit property by the Defendant and the Plaintiff had implied by conceded the fact that the Defendant is in occupation of the suit property which is against the recital of the Sale agreement. D.W-2, D.W-3 and D.W-4 has also give evidence in support of the Defendant's case affirming the fact that the Defendant had put up construction in the suit property and the resort is run by her paying by electricity consumption charges, tax. P.W-4 the Village Administrative Officer had also deposed evidence by producing chitta and Adangal extract to prove possession of the suit property. There is no cross examination on the side of the Plaintiff challenging the fact alleged by the Defendant regarding possession of the suit property. It is not explained by the Plaintiff how the Defendant came into possession of the suit property when it is alleged by him that he is in possession of the property in compliance of the Sale agreement. By reading the evidence of P.Ws and D.Ws and from the documents filed on the side of either parties it is not proved by the Plaintiff that the sale agreement Ex.A-1 and Ex.A-2 endorsement was signed by the Defendant and the recital in the documents were not proved by the Plaintiff to that effect possession that has handed over on the basis of the recital of sale agreement and originals were handed over to the Plaintiff. Therefore, this Court finds that no significance could be attached to the sale agreement and as well as the endorsement Ex.A-2.”

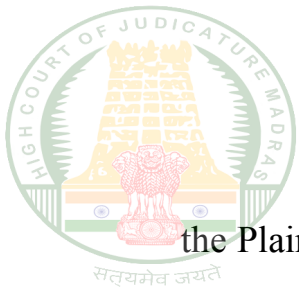


SA No. 381 of 2018

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16. Therefore, the learned Counsel for the Respondent submitted that non-examination of the Defendant cannot be taken advantage by the Appellant in the Second Appeal. The learned Sub Judge, on appreciation of evidence, also found that the witnesses to the sale agreement P.W-2 to P.W-4 claim that they had signed the sale agreement in the shop of the Plaintiff. Whereas the Plaintiff claims that the sale agreement was entered in his house. Ex.A-3 is the Power of Attorney dated 26.04.2001 executed within three days after execution of sale agreement on 23.04.2001. It is not known as to what was the necessity for execution of the Power of Attorney deed within three days of the sale agreement. If at all the sale agreement is executed in favour of the Plaintiff, the same would be mentioned in the Power of Attorney but no such reference was made in the Power of Attorney Deed and it creates suspicion regarding execution of alleged sale agreement as well as execution of Power of Attorney deed.

17. According to the learned Counsel for Respondent, the reason stated by the Plaintiff is that as power agent, he want to sell the properties to third parties. In other words, even before execution of sale deed in favour of



the Plaintiff, only on the basis of agreement of sale, he intended to alienate the property to third parties. Therefore, the concurrent finding of the trial Court and the first Appellate Court to reject the suit is well reasoned and that does not warrant any interference by this Court in exercise of power under Section 100 of Civil Procedure Code. There is no substantial question of law involved in this appeal. The Second Appeal lacks merit and it has to be dismissed.

18. When this Second Appeal was listed on 30.03.2021, this Court framed the following substantial questions of law for consideration and they are:-

“i) When the admitted signatures of Defendant in Ex.A-3 (power document) and the disputed signatures of Defendant as found in Ex.A-1 (Agreement of Sale) and Ex.A-2 (endorsement on Ex.A-1) have been found as 'by one and the same person' as concluded by the Handwriting Expert (CW.1) appointed by the lower appellate court, whether the rejection of such valuable piece of evidence by the lower appellate court, that too, without assigning any reason therefor, is sustainable in law?

ii) When the suit was filed by Appellant as against Gnanambal Ammal when Vakalat in the suit filed by the Defendant shows as "Gnanamba" and when the Defendant has admitted her signature in Ex.A-3 (power document), whether the courts below were right in accepting and acting upon such written statement filed by a third party to suit by name, 'Gnanamba Mohan'?

iii) When the Defendant had wantonly abandoned the witness box to establish her case which is purely within her personal knowledge and when the Defendant had failed to submit herself for enabling the Plaintiff to cross examine her, thereby presuming the Defendant's case as false, as held by the Hon'ble Supreme Court, Whether the Courts below were right in ignoring such serious lapse and omission committed by the Defendant?

iv) When the Defendant alone had personal knowledge as to



SA No. 381 of 2018

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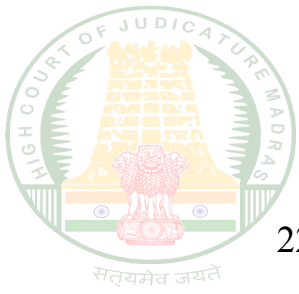
the suit transaction under Exs.A1 & A2 and when the Defendant shuns the witness box to establish her case but chose to examine DWs.1 to 4, on her side, who had no personal knowledge as to the suit transaction, whether the Courts below were right in placing reliance on the evidence of DWs, 1 to 4?

19. Heard the learned Counsel for the Appellant Mr. R. Shanmugham and the learned Counsel for the Respondent Mrs. V. Srimathi.

20. Perused the original records in O.S. No. 102 of 2010 on the file of the learned Sub Judge, Tiruppattur and A.S.No.9 of 2013 on the file of the learned III Additional District Judge, Vellore at Tiruppattur. Perused the judgment of the learned Sub Judge, Tiruppattur in O.S.No.102 of 2010 dated 25.07.2012 and the learned Third Additional District Judge, Vellore at Tiruppattur in A.S.No.9 of 2013, dated 27.07.2017.

Question of Law No.1

21. When the Appellate Court had referred Ex.A-1 and Ex.A-3 to hand writing expert, it was concluded that the hand writing/signature in Ex.A-3 and A-1 are by one and the same person. Therefore, it was contended on behalf of the Appellant that the rejection of the opinion of the hand writing expert is not proper.



22. The Appellate Court examined one Azhagesan, hand writing

expert, who had sent his report under Ex.C-1 and his reasonings under Ex.C-2.

The learned Appellate Court Judge, in the course of the discussion of evidence in paragraphs 11, had stated that Ex.C-1 and Ex.C-2 Report and evidence of C.W-1 that signature found in Ex.A-1 and Ex.A-3 as Gnanambal was signed by one and the same person cannot be accepted, as neither Ex.C-1 and C-2 nor the evidence of C.W-1 would help to prove the execution of Ex.A-1 and Ex.A-

2. The Defendant had stated that in the suit property there is a well, building and E.B. connection. But nothing is stated in the description of property found in Ex.A-1. The evidence of P.W-1 reveals that he did not even know the existence of the above said well, E.B. Connection and building in the property.

If really as per Ex.A-1 and Ex.A-2 the Plaintiff had paid the entire sale consideration to the Defendant, he would have issued notice to the Defendant calling upon her to execute the registered sale deed in his favour long prior to the notice of the Defendant containing intimation about the cancellation of the general power of Attorney. After receipt of notice of the Defendant only, the Plaintiff had issued notice. The conduct of the Plaintiff is also not seem to be natural of an ordinary prudent man. Nobody would keep quiet even after giving full consideration amount without compelling the vendor to execute the sale deed in his favour.



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23. The learned Counsel for the Appellant argued that since the Defendant has not come to the witness box and examined herself as one of the witnesses, adverse inference had to be drawn. To this, the learned Counsel for the Respondent (Defendant) relied on the decision in *AIR 1983 Calcutta 337 [Traders Syndicate and Union of India]* in which it is held that the examination in chief of the Plaintiff in witness on point of dispute or when there is no cross-examination preferred on the point, the Court can hold that the Defendant accepts the Plaintiff's case on the point in entirety and no dispute on the point can be raised in argument. Here, before the learned First Appellate Court D.W-1 was not cross-examined. No suggestion was put to the witness to that effect. Therefore, the argument of the learned Counsel for the Respondent was accepted by the first Appellate Court. The learned III Additional District Judge, Tiruppattur had in the discussion clearly rejected the expert opinion under Ex.C-1 and Ex.C-2 on the ground that D.W-1 was not cross-examined by the Plaintiff regarding her illness in not coming to the Court and avoiding the witness box. Therefore, what are all let in by P.W-1 in his evidence was accepted by the learned III Additional District Judge, Thriuppathur. Therefore, the argument of the learned Counsel for the Plaintiff that the adverse inference had to be drawn against the witness in not entering



the witness box is not a significant point for consideration in this case. The suit was filed for specific performance which is required to be proved by the Plaintiff independently without pointing out the weakness or lapses of the Defendant.

24. The application for referring the disputed signature to the handwriting expert was opposed by the Plaintiff. The learned Additional District Judge, notwithstanding such objection allowed the application on the ground that allowing the application will only enable the court to adjudicate the issues effectively. In fact, the Plaintiff ought to have taken out an application especially when he alleges that different names were mentioned in different documents by the Defendant. However, the Plaintiff did not file a Petition to compare the signatures in Ex.A-1 to Ex.A-3. Therefore, after a finding of fact was rendered by the learned Sub Judge in the first appeal, now in the second Appeal, the Plaintiff cannot contend that the opinion of the handwriting experts ought not to have been obtained. The learned Additional District Judge allowed the Petition by granting an opportunity to the Plaintiff to discharge his burden.

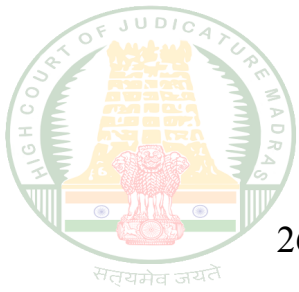
25. The Handwriting Expert had addressed the Court stating that the



SA No. 381 of 2018

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admitted signatures of the person who disputed the signature on the document had to be obtained, not less than 10 numbers. Therefore, the Court had directed the Defendant to furnish documents admitting the signature of the Defendant. In spite of several chances, the Defendant had not furnished such document. Therefore, the learned Additional District Judge on the basis of representation of the learned Counsel for the Plaintiff insisted the Handwriting Expert to find out the Signature found in Ex.A-1 to Ex.A-3 and to give his finding based on the opinion of the Handwriting Expert. Accordingly, the Handwriting Expert, Assistant Director of Forensic Science evaluated and compared the signatures under Ex.A-1 to Ex.A-3 and rendered his opinion that it was written by the same person. The Handwriting Expert, Assistant Director of Forensic Science was examined as Court Witness. He had also given his reason that after magnifying the signatures found in the documents and comparing them, he found out that the signatures in Ex.A-1 to Ex.A-3 were made by one and the same person with reference to the style, writing characters, space between two letters and characters of each letter. The name Gnanambal is the same in all documents under Ex.A-1 to Ex.A-3 and therefore, the contention of the Plaintiff that different signatures were made to defeat his claim was rejected on the basis of the expert evidence.



26. In the place of Gnanambal, the Defendant, her husband Mohan

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Kumar was examined as D.W-1. He in his proof affidavit clearly stated that they are residing in Bangalore whereas the property is situated at Ambur. They wanted to develop the property and therefore, the Defendant executed the Power of Attorney Deed in favour of the Plaintiff to develop the property. After execution of the Power of Attorney deed, the Plaintiff, who is an acquaintance of the brother of the Defendant had created a document by obtaining signatures on the blank papers. Therefore, as per the affidavit filed by the husband of the Defendant, the signatures are not disputed under Ex.A-1 to Ex.A-3. Further, he had stated that on coming to know about the attempt of the Plaintiff to convert the Power of Attorney deed for sale of the property, the intention of the Plaintiff was known to the Defendant and immediately, she revoked the Power of Attorney by approaching the Sub Registrar concerned and by filing a separate executing document and cancelled the Power of Attorney. Also, the Plaintiff was informed that the Power of Attorney deed executed in favour of the Plaintiff was cancelled. It is the clear case of the husband of the Defendant that they have no intention to create encumbrance in the property and they never accepted money from the Plaintiff. It was also stated that the power of attorney deed was executed immediately after the sale agreement, under Ex.A-1. He also stated that the sale agreement is not



registered. In the cross-examination of D.W-1 by the learned Counsel for the Plaintiff, questions had not been raised regarding the claim of the Plaintiff.

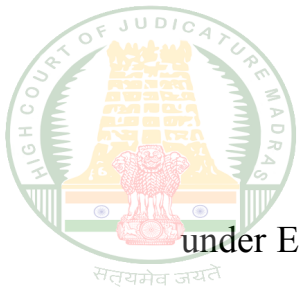
But D.W-1 was not cross-examined regarding documents under Ex.A-1 to Ex.A-3 and it indicates that they admit what had been stated in the written statement. The husband of the Defendant admits that Power of Attorney was executed in favour of the Plaintiff. However, the Plaintiff attempted to play fraud on the Defendant which prompted her to cancel the Power of Attorney deed executed in favour of the Plaintiff. D.W-1 is the husband of the Defendant and he is a competent witness in the civil dispute and therefore, there is nothing to show that for non-examination of the Defendant by stepping into the witness box, adverse inference has to be drawn. The reasons stated by D.W-1 for non-appearance of the Defendant is that she was ailing from disease and she could not travel and appear before the Court. In this context, the Plaintiff had not even put any questions regarding the health of the Defendant to dispute the claim of D.W-1. In any event, D.W-1 had clearly stated that they had handed over the documents of the property to the Plaintiff at the time of execution of Power of Attorney deed by reposing faith and confidence towards him, but their trust and confidence was misused by the Plaintiff. D.W-1 further stated that when the Plaintiff called upon the Defendant to come to Ambur, the Defendant and her husband were at



SA No. 381 of 2018

Bengaluru, Karnataka to perform the religious rites relating to the death anniversary of the father-in-law of the Defendant. On that day, both the Defendant and her husband were in Bangalore providing food to inmates of an Ashram.

27. D.W-1 is not a illiterate and he is a person holding Ph.D. degree when a suggestion was put to D.W-1 by the learned Counsel for the Plaintiff that Ex.A-1 to Ex.A-3 were duly executed, it was stoutly denied by him. The signature in Ex.A-1 and Ex.A-2 is not disputed. Ex.A-3 is not disputed. The dispute is regarding Ex.A-1 and Ex.A-2. On perusing the evidence, it is found that the learned Counsel for the Defendant had suggested to the witnesses/ P.W-1 to P.W-4 that Ex.A-1 and Ex.A-2 had been created based on the signatures obtained in blank papers and subsequently creating a document by typing in the blank papers. When there is oral agreement between parties to develop the property and one of the parties to the contract subsequently contravene the oral agreement by creating document, it is also fraud. That does not mean the Defendant had disputed her signatures. What transpired between the Plaintiff and Defendant had been clearly stated by the husband of the Defendant as D.W-1 and therefore, the competence of D.W-1 cannot be doubted. The evidence of the Handwriting Expert that the signature found



SA No. 381 of 2018

under Ex.A-1 to Ex.A-3 in all the pages are written by the same individual will not hold the Plaintiff to seek or obtain a decree in his favour.

28. It is claimed that the brother of the Defendant Srinivasan is also an attesting witness and another brother of Defendant/Rajesh and friend of the brothers of the Defendant/Babu a professional broker and land agent had signed the documents. The fact that they claim that the Defendant had signed after typing all the documents does not help the Plaintiff. After executing of Power of Attorney deed under Ex.A-3, the Plaintiff contravened the contract which prompted the Defendant to cancel the power of attorney. The Defendant also issued notice to the Plaintiff intimating the revocation of Power of Attorney granted to him for which the Plaintiff had issued reply notice under Ex.B13. Therefore, prior to filing of the Suit, there had been exchange of notice between the parties. In cases of Suit for specific performance, the valuable stand of the Plaintiff is that on the date of execution of sale agreement deed original documents of the property were handed over to the Plaintiff and possession also handed over. Here, there are similar circumstances stated by the Plaintiff in the Plaint and affidavit filed by him. The original sale deed for the property is found in possession of the Plaintiff and it was marked as Ex.A6. Further, the parental deed and also certified



SA No. 381 of 2018

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copies produced before the trial court shows that there had been some agreement between the Plaintiff and the Defendant. The fact that the Defendant cancelled the Power of Attorney deed under Ex.A-3 after short period of time indicates that there had been breach of the oral agreement between the parties by the Plaintiff.

29. It is the contention of the Defendant that the Plaintiff played fraud on the Defendant by misusing the documents executed in his favour. Even though the Defendant witness D.W-1 raised issue that right from the date of filing of the suit fraud has been played, the Plaintiff had not confronted D.W-1 in that aspect. On the date of filing of written statement, D.W-1 claims that there was construction going on in the Suit property whose value was Rs.75,00,000/-. When those facts were disseminated by D.W-1, he was not confronted by the Counsel for the Plaintiff. In such event, it is for the Plaintiff to explain how the possession of the suit property came into his hands when the Defendant claims that the property was developed by the Defendant by putting up construction as a house and subsequently converted it into a lodge. From the evidence of the parties, it is found that P.W-1 to P.W-3 colluded in creating Ex.A-1 and Ex.A-2 whereas Ex.A-3 came into existence bonafide in the form of power of attorney deed and it was also subsequently cancelled



SA No. 381 of 2018

when the Plaintiff attempted to grab the property on the strength of Ex.A-1

WEB COPY sale agreement.

30. From the suggestions put to P.W-1 by the learned Counsel for the Defendant, it is found that there had been dispute between the Defendant and her brothers Srinivasa and Rajesh. Srinivasan alias Babu is the brother of the Defendant and classmate and close friend of the Plaintiff. He had introduced the Plaintiff to the Defendant. The said Srinivasan is a trader dealing in Coconuts. He used to get Coconut from the farm belonging to the Plaintiff which accounts are duly scrutinised by Srinivasan, who is an Accountant. He had cleverly stated that he appeared as witness on summons. He also stated that earlier he worked as an accountant of the Defendant for two years prior to letting in evidence as P.W-3 but he had stopped from attending the job with Srinivasan. He is an acquaintance of the Plaintiff also. From the cross-examination of P.W-1 by way of suggestions by the Defendant's Counsel and evidence of D.W-1 in the cross-examination by the learned Counsel for the Plaintiff, it is found that they are acquaintance. On the basis of such proximity of relationship, the Defendant executed Power of Attorney deed in favour of the Plaintiff. Therefore, the claim of fraud by the Defendant in the written statement is not with regard to the signature of Defendant under Ex.A-1 to

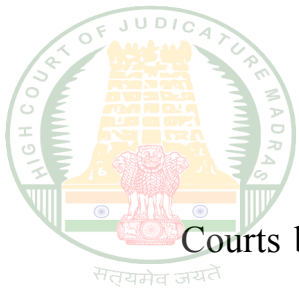


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Ex.A-3. On the other hand, the signature, though admitted, does not help the Plaintiff to establish his case. On the other hand, D.W-1 husband of the Defendant clearly stated fraud was played by the Plaintiff and he was confronted with Ex.A-1 to Ex.A-3 regarding the signature of his wife, he feigned ignorance of the same. But the fact is that the Defendant had not received money from the Plaintiff either as advance or part amount and it was disputed by D.W-1.

31. The observation of the learned Sub Judge in Paragraph No.11 of the Judgment is found well-reasoned. Even the Appellate Court arrives at a conclusion affirming the views of the learned trial Judge. The learned trial Judge had opportunity of watching the demeanour of witnesses which advantage is not available to the Appellate Court. In spite of the same, the Appellate Court, on proper appreciation of the evidence confirmed the judgment of the trial Court.

32. It is an admitted fact that D.W-1 was not cross-examined regarding the materials in dispute between the parties. As per the ruling of the Hon'ble Calcutta High Court mentioned supra, such a lapse has to be treated as abandoning the claim made by the Plaintiff in the plaint. Therefore, both the

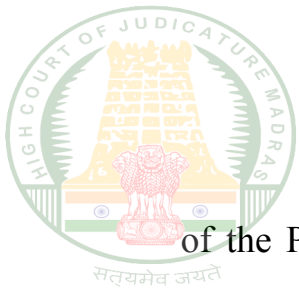


SA No. 381 of 2018

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Courts below have concluded that the Plaintiff has not proved his case. The suspicious circumstances raised by the Defendant regarding the attempt of the Plaintiff to alienate the property and cancellation of Ex.A-3, Power of Attorney deed only disprove the claim of the Plaintiff. The Plaintiff had created sale agreement deed, three days prior to the date of execution of Ex.A-3. The power of attorney deed is dated 26.04.2001 whereas the sale agreement deed is dated 23.04.2001 and if the sale agreement come into existence on 23.04.2001, it should have been reflected in Ex.A-3/Power of Attorney deed but it was not so.

33. In the light of the above discussion, when the admitted signatures of Defendant in Ex.A-3 (power of attorney document) and the disputed signatures of Defendant as found in Ex.A-1 (Agreement of Sale) and Ex.A-2 (endorsement on Ex.A-1) have been found as 'by one and the same person' as concluded by the Handwriting Expert (CW.1) appointed by the first appellate court, the rejection of such valuable piece of evidence by the lower Appellate Court, is found proper because the learned trial Judge as well as the first Appellate Judge had found that the documents under Ex.A-1 to Ex.A-3 was by the same person “Gnanamba” “Gnanambal Ammal” and “Gnanamba Mohan” are all one and the same person. Still the learned trial Judge rejected the claim



SA No. 381 of 2018

WEB COPY

of the Plaintiff regarding the sale agreement on the ground that the Plaintiff had misused the signature of the Defendant that she gave on blank paper for protecting the property purchased by her under Ex.A-8 dated 17.02.1997. The Plaintiff is a friend of the brother of the Defendant. As per the evidence by the husband of the Defendant as D.W-1. Since the Defendant and her husband are residing in Bengaluru, the property is within the territorial jurisdiction of Sub Court, Tirupattur they wanted to develop the property with the help of the Plaintiff. Instead the Plaintiff created the sale agreement deed and attempted to encumber the property which made the Defendant to cancel the power of attorney given to the Plaintiff and issuing legal notice to the Plaintiff under Ex.B-13 dated 11.10.2002. Therefore, the learned trial Judge as well as the first Appellate Court Judge had rejected the claim of the Plaintiff regarding sale agreement deed. The finding of the first Appellate Court found proper on appreciation of evidence under Ex.A-1 to Ex.A-3 based on Ex.C-1 and Ex.C-2 based on handwriting expert C.W-1 will not help the case of the Plaintiff. Therefore, the finding of the first Appellate Court rejecting the evidence of Plaintiff on the ground that the Defendant had issued legal notice under Ex.B-13 dated 11.10.2002. Only subsequent to this background, the Plaintiff was forced to file the suit for specific performance of contract. Therefore, the finding of the learned first Appellate Judge is on strong reasoning. The



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learned Judge had rejected the evidence of the Plaintiff on proper appreciation of the evidence based on the analysis of evidence of Plaintiff as well as the Defendant. The finding of fact based on the handwriting expert C.W-1 evidence and under Ex.C-1 and Ex.C-2 regarding Ex.A-1 to Ex.A-3 will not help the Plaintiff to enforce the contract for specific performance of contract on the ground that the Defendant had already cancelled the power of attorney executed in favour of the Plaintiff under Ex.A-3 dated 26.04.2001 which was cancelled on notice issued on 11.10.2002. Only then, the Plaintiff had caused a notice under Ex.A-4, dated 20.10.2002. Therefore, the finding given by the learned first Appellate Judge on appreciation of evidence that the handwriting expert's (C.W-1) opinion under Ex.C-1 and Ex.C-2 will not help the plaintiff to enforce the contract is found proper.

34. In the light of the above discussion from paragraphs 24 to 33, **the substantial question of law -1 is answered against the Appellant and in favour of the Respondents.**

Question of Law No.2

35. When the suit was filed by Appellant as against Gnanambal Ammal when Vakalat in the suit filed by the Defendant shows as



SA No. 381 of 2018

"Gnanamba" and when the Defendant has admitted her signature in Ex.A-3 (power document) as Gnanamba, whether the courts below were right in accepting and acting upon such written statement filed by a third party to suit by name, 'Gnanamba Mohan'? Gnanamba Mohan is not a third person as claimed by the learned Counsel for the Appellant in the Second Appeal. The Defendant's identity was admitted by her husband D.W-1 Mohan Kumar who is a Ph.D., Degree holder working and settled in Bengaluru. He had in his evidence clearly stated that they had executed power of attorney in favour of the Plaintiff only to protect the property. The Plaintiff being a friend of the Defendant's brother and believing him they had given signatures of the Defendant in a blank papers for use in appropriate cases. Misusing the same, the Plaintiff had created sale agreement deed. On coming to know about the same, the Defendant had caused notice to the Plaintiff under Ex.B-4 cancelling the power of attorney deed in favour of the Plaintiff under Ex.A-3, dated 26.04.2001. Therefore, both the Courts were right in accepting and acting upon such written statement filed by the Defendant. The claim that the Defendant is a third party, made by the learned Counsel for the Appellant before this Court is rejected on the ground that since the husband of the Defendant had accepted the identity of the Defendant.



36. In the light of the above discussion, **the Substantial Question of**

Law-2 is also answered against the Appellant and in favour of the Respondent.

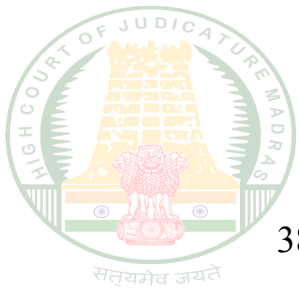
Substantial Questions of Law No.3 and 4

37. The Appellant had filed the suit against the Defendant Gnanamba Ammal. The Defendant filed vakalat as “Gnanamba”. The Defendant admitted her signature in registered Power of Attorney deed marked as Ex.A-3 wherein her signature is made as “Gnanamba”. In the written statement, the Defendant claimed that the Plaintiff played fraud on her and therefore, the Defendant had cancelled the Power of Attorney deed. In the written statement, it is stated as follows:

“...வழக்குரை 3ம் பத்தி சங்கதிகள் சுத்தப்பொய், கற்பனை. மேற்படி சங்கதிகளை இந்த எதிர்வாதி வன்மையாக மறுதலிக்ககிறார். மேற்படி ஒப்பந்த உடன்படிக்கை ஆவணம் போலியானது, மோசவிதமானது, இந்த எதிர்வாதியை ஏமாற்ற திட்டமிட்டு வாதியால் தயாரிக்கப்பட்டுள்ளது. அவ்வாவணம் இந்த எதிர்வாதியை எவ்விதத்திலும் கட்டுப்படுத்தாது.

...இந்த எதிர்வாதி வழக்குச் சொத்தை வாதிக்கு எக்காலத்திலும் சுவாதீனம் செய்யவில்லை, சுவாதீனம் செய்யவேண்டிய அவசியமில்லை. இந்த எதிர்வாதி எவ்வித மேற்குறிப்பும் செய்யவில்லை, அந்த மேற்குறிப்பில் இந்த எதிர்வாதி கையொத்தும் செய்யவில்லை. அம்மேற்குறிப்பில் இந்த எதிர்வாதியை ஏமாற்ற திட்டமிட்டு தயாரிக்கப்பட்டுள்ளது. வழக்குச் சொத்து வாதி குறிப்பிடும் தேதியிலும், அதற்கு முன்பும், பின்பும் தற்போதும் இந்த எதிர்வாதியின் சுவாதீன அனுபவத்திலேயே இருந்து வருகிறது.

வாதி இந்த எதிர்வாதியை அணுகி கேட்டுக் கொண்டதின்பெயரில் இந்த எதிர்வாதிக்கு பாத்தியப்பட்ட வழக்குச் சொத்தில் கட்டுமானப் பகுதியினை அமைத்துக் கொடுக்க வேண்டியும், பராமரிக்க வேண்டியும் வாதியை முகவராக எதிர்வாதி நியமித்து 26/04/2001 தேதியன்று பொது அதிகார முகவர் ஆவணத்தினை இந்த எதிர்வாதி வாதி பெயருக்கு எழுதிக்கொடுத்தார்.”



38. In support of the written statement, the Husband of the Defendant was examined as D.W-1. In Para 4 of the affidavit it was mentioned that the Plaintiff is an acquaintance of her brother Babu @ Srinivasan and therefore, on 26.04.2001 the Defendant executed a Power of Attorney deed in favour of the Plaintiff. However, by misusing the Power of Attorney deed, he created an agreement of sale. Sensing trouble and legal consequences, the Defendant cancelled the Power of Attorney deed and it was also informed to the Plaintiff by a notice. In the cross examination, the husband of the Defendant admitted that the documents came into existence through Babu @ Srinivasan, the brother of Defendant. When the Power of Attorney was created for better management of the property, the Plaintiff misused the power of Attorney deed to create agreement of sale, three days prior to execution of registered power of attorney deed, as though the Defendant entered into sale agreement deed. When the Defendant claimed in the written statement that the Plaintiff played fraud and approached the Court with unclean hands, the Plaintiff had not taken steps to compare the signatures of the Defendant in Ex.A-1 and Ex.A-3. After trial, when the learned Sub Judge, Tirupattur dismissed the suit, the Plaintiff filed an Appeal. Pending Appeal, the Plaintiff as Appellant filed an application to refer the documents under Ex.A-1 to Ex.A-3 to the forensic expert. This petition was objected by the Defendant on the ground that the



SA No. 381 of 2018

signature of the Defendant is not disputed. Still the learned Additional District Judge, Tirupattur allowed the petition and referred Ex.A-1 to Ex.A-3 to the handwriting expert. The handwriting expert sought admitted signature of the person who disputed the signature under Ex.A-1 to Ex.A-3. Since it was not furnished, the learned Counsel appearing for the Plaintiff insisted the Court to compare the signature available in every page under Ex.A-1 and Ex.A-3 by the expert and to give opinion. Accordingly, the Assistant Director, Forensic Science Department given opinion that the signature of Gnanamba found in Ex.A-1 to Ex.A-3 was by the same person. The Assistant Director of the Forensic Science Department was also examined as Court witness in the Appeal in A.S. Still the learned Additional District Judge rejected the claim of Plaintiff and dismissed the Appeal.

39. It is the contention of the learned Counsel for the Plaintiff/Appellant that the person who is a party to the suit himself or herself had avoided the witness box which gives a strong presumption that she is scared of entering witness box as she will be forced to accept in cross examination the document under Ex.A-1 to Ex.A-3. Considering the evidence of D.W-1 in the cross examination, it is found that the claim of the Defendant that she had not entered into sale agreement with an intention to sell the



SA No. 381 of 2018

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property is clear. Instead, the brothers of the Defendant and particularly the brother by name Babu @ Srinivasan was a friend and classmate of the Plaintiff and he sells coconut from his coconut grove. Believing his words only, the Defendant entered into Power of Attorney deed with the Plaintiff. But by misusing the Power of Attorney deed, the Plaintiff created sale agreement deed in which the brother of the Defendant was also a party. To the pointed question why no Police action was initiated and why no complaint was given to the Police Officials, the husband of the Defendant claims that his brother in law was unavailable and he had only sought for return of the original documents from the Plaintiff. Therefore, from the cross examination of D.W-1 it is found that if the claim made by the Plaintiff is true that there was a sale agreement, the person who is known as Gnanamba Ammal is the same person as Gnanamba Ammal Mohan is clear from the evidence available before the trial Court. When the Defendant, called as Gnanamba Ammal or Gnanamba Ammal Mohan as the case may be executes power of Attorney deed in favour of the Plaintiff to manage the properties better by putting it up to use for construction of buildings, the Plaintiff attempted to create a document as sale agreement deed. When D.W-1, the Husband of the Defendant Mohan Kumar who holds Ph.d degree was confronted regarding the signatures found under Ex.A-1, Ex.A-2 and Ex.A-3 which is a registered Power of attorney deed, he



claims ignorance of the signature of his wife which is found unacceptable.

Section 120 of the Indian Evidence Act reads thus:-

“In all civil proceedings, the parties to the suit, and the husband or wife of any party to the suit shall be competent witnesses. In criminal proceedings, against any person, the husband or wife of such person, respectively shall be a competent witness.

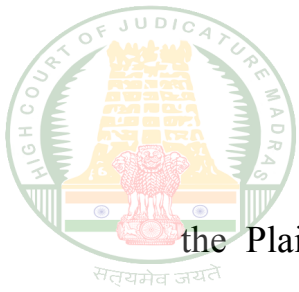
40. In civil suits, the wife of a party to the civil dispute is a competent witness. Similarly the husband of a woman who is a party to the civil dispute is also a competent witness. Therefore, the claim that the persons having personal knowledge alone is a competent witness in civil proceedings has some exceptions. When a woman is a party to the civil suit, the husband invariably do have the knowledge of the transactions regarding civil dispute. Therefore, the evidence of D.W-1 Mohan kumar in this case is found acceptable. At the same time, when he was confronted with Ex.A-1, Ex.A-2 and Ex.A-3, he claims that he does not know the signature of his wife which is found to be a wanton denial of signature. In the light of the forensic experts opinion which was recorded before the learned Appellate Judge the signature under Ex.A-1, Ex.A-2 and Ex.A-3 were found to be that of the same individual. Whether it is Gnanamba or Gnanamba Ammal Mohan, it refers to the same person. Therefore, the written statement has been filed by a different person is not true. The Defendant admitted in the written statement that she



SA No. 381 of 2018

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had executed the Power of Attorney deed in favour of the Plaintiff. At the same time, she claims that the Power of Attorney deed was cancelled subsequently. The Defendant herself avoiding the witness box had to be considered as a vital part in this case as it is to be observed that she was scared of entering the witness box. The Husband of the Defendant had stated that she will become nervous when she enters witness box indicates that she had been scared of entering witness box as she has something to hide from the Court. When the Defendant in the written statement claimed that Ex.A-1 came into existence by playing fraud on the Defendant, the burden is on the Plaintiff to disprove the fraud said to have been played by him. The Plaintiff had examined witnesses P.W-1 to P.W-4 including the scribe of the document. They are found cogent regarding execution of the sale agreement whereas the Defendant avoided the witness box. The husband of the Defendant was able to state from his personal knowledge that the Defendant never intended to sell the property and she had not received any amount from the Plaintiff. The Husband of the Defendant claimed that the brothers of the Defendant owed money to the Plaintiff for which the original sale deed of the Defendant was given in custody of Babu @ Srinivasan, but he evaded to return the same and when repeatedly persisted his demand, he stated that he had handed it over to the Plaintiff. Therefore, the custody of the original documents in the hands of



the Plaintiff is found natural. To prove the claim of the Defendant, the Defendant ought to have summoned her brother Rajesh and Babu @ Srinivasan as witnesses. She had not done so. The Plaintiff had claimed that the possession of the suit property was handed over to the Plaintiff on 15.06.2002 upon execution of Ex.A-2 after payment of Rs.4,00,000/-, being the balance of sale consideration. If that had been the case, the Plaintiff ought to have issued notice calling upon the Defendant to execute the sale deed. If Ex.A-1 was executed on 23.04.2001, naturally the Power of Attorney deed should have contained reference to the sale agreement entered into with Plaintiff but it was not stated in Ex.A-3. Ex.A-3 is the registered Power of Attorney deed and it has validity in the eyes of law. It can be presumed to have come into existence as stated by the parties to the document under Ex.A-3. When Ex.A-3 was admitted by the Defendant naturally the signature on Ex.A-1 and Ex.A-2 were also to be admitted. Thus, Ex.A-1 and Ex.A-2 were created by the Plaintiff was the allegation by the Defendant which prompted the Defendant to cancel the Power of Attorney deed.

41. The evidence of C.W-1 in Appeal has to be accepted regarding the signature found in Ex.A-1 to Ex.A-3. When Ex.A-3 is registered deed where the witness signed as Gnanamba, it will not help the Plaintiff to enforce



SA No. 381 of 2018

the agreement of sale as the claim of the Defendant it it is a fraudulent deed.

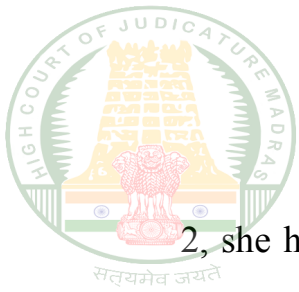
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Even if the signature is bona fide the way it was created had led the Defendant to cancel the Power of Attorney granted to the Plaintiff and issuing the notice to him informing that the Power of Attorney deed shall not be put into use. The claim of the Plaintiff that he Plaintiff is in possession had not been established by him in the light of the documents marked under Ex.B-1 to Ex.B-8. Also as per the evidence of D.W-3 and D.W-4, there is a building in the suit property. When the Plaintiff was cross examined regarding the existence of the building in the suit property, he claims ignorance and it shows that possession is not with the Plaintiff. As per the claim of the Plaintiff under Ex.A-2 dated 15.06.2002, the sale deed in the name of the Defendant was handed over to the Plaintiff and possession was also handed over. That part of the claim of the Plaintiff is found to be not proved from the witnesses examined on the side of the Plaintiff. Therefore, on assessment of the evidence through Ex.A-1 to Ex.A-8, and Ex.B-1 to Ex.B-13, it is found that the claim made by the Plaintiff was not proved regarding payment of Rs.4,00,000/- on 15.06.2002 as the Defendant had found out that the Plaintiff misused the Power of Attorney deed in creating the documents under Ex.A-1 and Ex.A-2. That is why the sale agreement was not mentioned in the Power of Attorney deed dated 26.04.2001 even though sale agreement was dated



23.04.2001. The Plaintiff was not successful in proving his claim regarding the execution of sale deed through P.W-1 to P.W-4.

42. P.W-3 was the Scribe of the document. From the cross examination of P.W-3, it is found that it was typed as dictated by him. P.W-2 and P.W-4 are acquittance of the Plaintiff and P.W-2 is a professional real estate broker. Their evidence was not accepted by the learned Sub Judge as well as the learned Additional District Judge. The reasoning given by the Additional District Judge in paragraph 11 is found acceptable regarding the conduct of the Plaintiff in not issuing notice immediately after Ex.A-2 dated 15.06.2002. He had caused notice only after receipt of the notice dated 11.10.2002 under Ex.B-13 from the Defendant. Only then he issued the notice dated 20.10.2002 under Ex.A-4 seeking the Defendant to come and execute the sale deed. From the evidence of Plaintiff and Defendant, it is found that the defence of the Defendant is more probable than that of the Plaintiff. If the Power of Attorney deed was registered, what prevented the Plaintiff from registering the sale agreement also. What prevented the Plaintiff from mentioning the sale agreement in the Power of Attorney deed. It gives rise to a suspicious conduct. The Defendant coming to know that her brothers Rajesh and Babu @ Srinivasan were aiding the Plaintiff in creating Ex.A-1 and Ex.A-



SA No. 381 of 2018

2, she had issued notice calling upon the Plaintiff not to invoke the Power of

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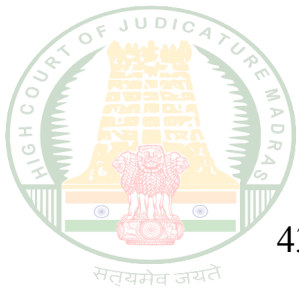
Attorney Deed and directing him to return the originals documents. Under those circumstances, the evidence of P.W-2 to P.W-4 will not help the Plaintiff to enforce the contract for sale of immovable property. As observed by the learned Sub Judge, when the Scribe mentions that the sale agreement was typed as dictated by him and it was not handwritten, it gives an impression that after obtaining signature in blank papers, Ex.A-1 and Ex.A-2 were typed and created. That is why P.W-4 had stated he had signed blank paper. P.W-2 had stated that Ex.A-1 and Ex.A-2 were executed in the Office of the Registrar at Ambur whereas the Plaintiff claims that it was executed in his house. P.W-3 claims it was executed in the shop of P.W-1 Therefore, those contradictions are considered to be suspicious circumstances. When the Defendant clearly stated that there was no intention to sell the property and the conduct of the Defendant in cancelling the Power of Attorney granted to P.W-1 and informing him of having cancelled the Power of Attorney deed through notice dated 11.10.2002 it is an acceptable defence. If what had been stated by the Plaintiff had been proved that he had parted with the entire sale consideration as per the endorsements under Ex.A-2 dated 15.06.2002, he ought to have issued notice without waiting till 20.10.2002. Therefore from the probabilities of the case, from the admission in cross examination of D.W-1 that there is a



SA No. 381 of 2018

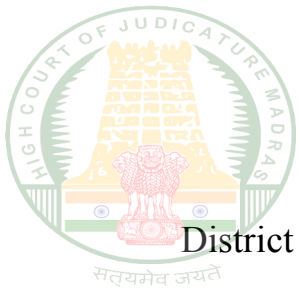
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building put up by the Defendant in the suit property it shows the Plaintiff is not in possession of the suit property, whereas it is his case that on 15.06.2002, possession was handed over to him. When Plaintiff has not come to Court with full particulars, when there are suspicious circumstances arising from the claim of the Defendant, the claim of the Plaintiff that the written statement was filed by Gnanamba Ammal Mohan who is a third party to the dispute but only Gnanamba Ammal had entered into sale agreement cannot be accepted. Gnanamba as well as Gnanamba Ammal Mohan is one and the same as per the evidence of the C.W-1, the Assistant Director of Forensic Science Department who had compared the signature in Ex.A-1 to Ex.A-3 and arrived at a conclusion that all the signatures found in Ex.A-1 to Ex.A-3 in all the pages were signed by one and the same person. The claim of the Defendant that she had not entered into sale agreement and she has no intention to sell the property was made clear by her husband as D.W-1 who has personal knowledge of the transactions and therefore he is a competent witness. The fact that the Defendant Gnanamba or Gnanamba Ammal Mohan did not enter the witness box will not help the Plaintiff to seek relief in the case for suit for specific performance of contract as the Defendant had claimed that the Plaintiff played fraud on the Defendant.



43. To the pointed question in cross examination to D.W-1, the

husband of the Defendant as to why no criminal case was preferred he had stated that brothers of the Defendant were also party to the document. The reason for cancellation of the power of attorney deed is mentioned in the notice dated 11.10.2002 marked as Ex.B-13. Therefore only after issuance of notice under Ex.B-13, the Plaintiff caused notice under Ex.A-4 dated 20.10.2002. Under those circumstances, the concurrent finding of the Courts below are found proper. Merely taking adverse inference against the Defendant will not help the Plaintiffs' case. The Plaintiff has a burden to prove his case when he claims that on 15.10.2002 on marking of Ex.A-2, the original deeds had been handed over and he was put in possession of the suit property. Whereas as on the date of the filing of the suit, there is a structure in the suit property as per the evidence of D.W-2 to D.W-4 under Ex.B-1 to Ex.B-9, Ex.B-12 and Ex.B13, which goes to show that the Plaintiff is not in possession of the property. Above all, D.W-1 claimed that his wife is not in good health. Therefore, he had let in evidence which is permissible as per the Section 120 of the Indian evidence Act. At the same time, when the Husband of the Defendant was cross examined, the Plaintiff had not chosen to cross examine him regarding the illness of his wife. Under those circumstances, the Court has to draw adverse inference as relied by the learned Additional



SA No. 381 of 2018

District Judge in paragraph 11 of the judgment *AIR 1983 Calcutta 337*
[*Traders Syndicate and Union of India*]. Even though D.W-1 was cross

examined exhaustively, the cross examination regarding the disability or inability of the Defendant was not put to him. Therefore what was stated by D.W-1 had been accepted or presumed to have been accepted by the courts below. Considering the relationship between the Defendant's Brothers and the Plaintiff, the claim of the Defendant that they have revoked the Power of Attorney deed is found more probable. The Plaintiff ought to have issued notice at the earliest point of time immediately after 15.10.2002. He had waited till he received notice under Ex.B-13 and only then he issued notice dated 20.10.2002 under Ex.A-4. This part of the deposition of D.W-1 goes against the Plaintiff. Therefore, the dismissal of the suit by the learned Sub Judge and the dismissal by the learned Additional District Judge is also found proper.

44. The evidence of Forensic Expert, Additional Director of Forensic Science Department as C.W-1 in the appeal will not help the Plaintiff. The signatures in the written statement and other documents are admitted as that of the same person whether by name Gnanambal, Gnanamba Ammal or Gnanamba Mohan. They are one and the same person. Still the Plaintiff cannot



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succeed in this case as he had not specifically stated and proved that he had been given possession of the property. If on 15.10.2002, the entire sale consideration had been paid without waiting till 20.10.2002, he ought to have issued notice within a reasonable time after 15.06.2002. Those circumstances goes against the Plaintiff. Therefore the dismissal of the suit by the learned Sub Judge Tirupattur and the dismissal of the Appeal by the learned Additional District and Sessions Judge, Tirupattur are found proper.

45. The learned Counsel for the Appellant relied on the decision in (i) *Vidhyadhar vs. Mankikrao and another* reported in *AIR 1999 Supreme Court 1441*, Paragraph Nos. 15 and 16 (ii) *Man Kaur (Dead) by LRs vs. Hartar Singh Sangha* reported in *(2010) 10 Supreme Court Cases 512* and (iii) *Jayalakshmi Ammal and 8 others vs. Chinnasamy Gounder and another* reported in *2007 (1) CTC 449 (DB)* of this Court to contend that when the Defendant did not enter into the witness box to depose about her own case, an adverse inference ought to have been drawn by the courts below. Instead, the Defendant's husband Mohan Kumar/D.W-1 had deposed as witness on behalf of the Defendant. The learned trial Judge as well as the learned Appellate Judge failed to draw adverse inference against the Defendant and reject the claim made by the Defendant.



SA No. 381 of 2018

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to prove his case through cogent, oral and documentary evidence. Here in this case, the Plaintiff was unable to prove that there was a sale agreement between the Plaintiff and the Defendant. The fact that Plaintiff had entered into agreement on 23.04.2001 with the Defendant fixing the sale price as Rs.5,00,000/- and paid Rs.1,00,000/- on 23.04.2001. The time to execute the sale deed was mentioned as six months for the Defendant to execute the sale deed after receipt of the balance sale consideration. While so, the Plaintiff claims that on 15.06.2002, the Defendant extended the period for execution of the sale deed, after receipt of Rs.4,00,000/- towards balance sale consideration. This is a claim of the Plaintiff was not proved. The learned trial Judge as well as the learned Appellate Judge found the endorsement under Ex.A-2 had not been executed by the Defendant. If that be the case, the Plaintiff ought to have issued notice calling upon the Defendant to execute the sale deed, but only after the Defendant revoked Ex.A-3 and issued notice calling upon the Plaintiff to return the original document and the original power of attorney deed, the Plaintiff sent a reply. If what is stated under Ex.A-2-endorsement was true, what prevented the Plaintiff from issuing notice calling upon the Defendant to come and execute the sale deed earlier.

47. As per the submission of the learned Counsel for the Respondent,



SA No. 381 of 2018

the learned Counsel for the Plaintiff had not put suggestions on the Defendant/ husband/Mohan Kumar regarding the ailment of the Defendant to avoid the witness box. When that had not been challenged, the Plaintiff cannot rely on the lack of evidence on the Defendant on the strength and seek for a decree in his favour. It is settled position of law that the Plaintiff has to stand or fall on the strength of his/her evidence. The Plaintiff examined Babu as P.W-2, P.W-3-Maheswaran, document writer and P.W-4-Srinivasan where the witnesses P.W-2 to P.W-4 were unable to state when and where the sale agreement deed was signed by the witnesses. As per P.W-3, he does not remember having affixed signature in a booklet typed document. He had affixed the signature only in blank papers. P.W-2 claims that sale agreement deed was entered in the shop of the Plaintiff whereas the Plaintiff himself as P.W-1, stated that he executed the sale agreement through the Defendant at his house. Therefore, the inconsistent stand by each of the witnesses regarding the place where Ex.A-1 was written itself is found creating suspicion in the mind of the Court.

48. It is the contention of the Defendant that the Plaintiff played fraud on the Defendant. What was the fraud had been stated by the husband of the Defendant that transpired between the Plaintiff and the Defendant. To the pointed question why any Police complaint was not given, D.W-1 states that



SA No. 381 of 2018

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they are his wife's brothers and therefore, she had not given any Complaint to the Police. When the Plaintiff failed to establish his case regarding execution of sale agreement or retaining possession of the property, he cannot seek for a decree for specific performance. P.W-1, in his cross-examination claims ignorance of the fact that the Defendants are in possession of property by putting up construction and leasing out the same as tourist home. The documents under Ex.B-1, Ex.B-8 and Ex.B-9 indicates that the Defendants were in enjoyment of the property on the date of filing of Suit. Under those circumstances, the presumption has to be held against the Plaintiff. When there is suppression from both Plaintiff and Defendant, the person who had approached the Court is duty bound to prove his case under Section 101 of the Indian Evidence Act. Here, the claim of the Defendant is Plaintiff played fraud on the Defendant by creating sale agreement based on power of attorney given by her. The execution of the power of attorney deed is accepted. The existence of a contract for sale of the property under Ex.A-1 is disputed as it is a fraudulent deed.

49. The fraudulent deed does not indicate that the signature is fraud or forged. In the application filed at the stage of appeal, the Plaintiff/Appellant sought for obtaining expert opinion regarding the



SA No. 381 of 2018

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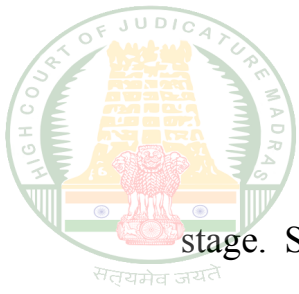
signatures of the Defendant in which the Defendant stated that a fraud is committed by misusing his signature. It is the clear case of the Defendant that there was no intention to sell the property. Here, the Suit was filed by the Plaintiff only after the Defendant issued notice calling upon the Plaintiff that the power of attorney deed executed on 26.04.2001, which is a registered power of attorney deed, had been cancelled on 08.10.2002 which is subsequent to 15.06.2002 on which date, Ex.A-2 said to have been executed. The lawyer's notice was marked under Ex.B-13 dated 11.10.2002. In the same notice, the Defendant had directed the Plaintiff to handover the documents in his custody. Only after this legal notice, the Plaintiff caused a legal notice dated 20.10.2002 under Ex.A-4 seeking the Defendant to execute the sale deed. If what had been stated by the Plaintiff and his witnesses are true, the Plaintiff ought to have issued lawyer's notice before receiving the notice under Ex.B-13 or immediately after Ex.A-2 dated 15.06.2002. When the sale agreement deed dated 23.04.2001 stipulates six months time for execution of sale deed, the Plaintiff claiming that the Defendant executed an endorsement on 15.06.2002 on receiving Rs.4,00,000/- and the entire sale consideration has been paid, ought to have issued a notice for execution of sale deed earlier. This is found suspicious from the ordinary course of contact of an ordinary prudent man. When Plaintiff was cross-examined regarding the non-mentioning of the sale



SA No. 381 of 2018

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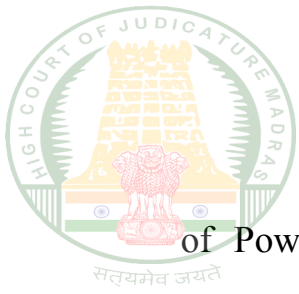
agreement deed dated 23.04.2001, in the power of attorney deed dated 26.04.2001 his reply was that it need not be mentioned but the suspicion created by the Plaintiff by that conduct is found to be a strong circumstance against him. The scribe of Ex.A-1 and Ex.A-2/P.W-3 stated that after typing the letter in the agreement, the signatures were obtained. It is the specific case of the Plaintiff that the documents were handed over to her brother/Babu Srinivasan who is the classmate and friend of the Plaintiff and through him, the Plaintiff was introduced to the Defendant. Further, the documents were handed over with an intention to develop the property. Instead the Plaintiff misused the power of attorney and created the sale agreement. Therefore, it is fraud, as per the Defendant. Fraud does not mean that signatures of the Defendant in the document are forged signatures. That much of evidence from the evidence of the Expert who was examined as Court Witness in the Appeal stage before the Appellate Court and through whom, the documents were marked as Exhibit "C" series are available. He had clearly stated that the signatures found on Ex.A-1 to Ex.A-3 are from one and the same person. Therefore, whether it is Gnanamba, Gnanambal or Gnanambal Mohan Kumar is one and the same person. The Court can draw adverse inference against the Defendant from the evidence of Court Witness/Assistant Director of the Forensic Department who was examined as Court Witness in the Appeal



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stage. Still, the Plaintiff cannot overcome the allegation that he committed fraud on the Defendant as the Plaintiff witnesses had claimed that the document under Ex.A-1 was executed in the shop of the Plaintiff, whereas P.W-4 Srinivasan claims that when he signed the document, he did not find any writings on the document. The Plaintiff claims that the document under Ex.A-1 was executed in his house whereas P.W-2/Babu/real-estate broker claims, it was executed in the shop of the Plaintiff. Therefore, when there is difference of evidence regarding same fact, the learned Judge had rejected the evidence of the Plaintiff. Above all, the Plaintiff was cross-examined regarding the possession in the hands of the Defendant and their property was developed by putting up construction and it was let out as lodge for tourist. He claims ignorance of it. Further, the documents under Ex.B-1 to Ex.B-9 clearly proves that the possession is with the Defendant.

50. As per the plaint averments, evidence of the Plaintiff as P.W-1, Defendant had handed over documents of title to him and put him in possession of the suit property. If that be the case, he ought to have issued lawyer's notice immediately after 15.06.2002, within a reasonable period of one month. It is not the case here. Only after the Defendant cancelled the power of attorney, the registered power of attorney, by executing cancellation

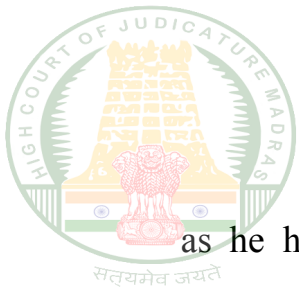


SA No. 381 of 2018

of Power of attorney and registered it with the same Sub Registrar on 08.10.2002 and issuing notice on 11.10.2002 under Ex.B-13, the Plaintiff issued reply notice under Ex.A-4 dated 20.10.2002 calling upon the Defendant to execute the sale deed. Therefore, the circumstances probablised the case against the Plaintiff.

51. The ruling cited above only helps the Plaintiff to draw adverse inference against the Defendant. Here, instead of the Defendant/Gnanambal, documents were signed as Gnanamba. The husband of the Defendant clearly deposed that they did not have intention to sell the property. He admitted the execution of power of attorney under Ex.A-3 but disputed signature in Ex.A-1 and Ex.A-2. As per the evidence of the husband of the Defendant, the property fetches more than Rs.5,00,000/- and along with that building put up in the property it fetches Rs.75,00,000/-. Therefore, the claim of the Plaintiff who is the professional real-estate dealer seeking to enforce a contract for sale of property when the party to the sale agreement disputes the entire sale agreement is found improper.

52. As per Section 120 of the Indian Evidence Act, in the place of a woman who is a party to the civil dispute, the husband is a competent witness



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as he has personal knowledge of all the transactions in which his wife is involved. Similar is the case when the husband had entered into a civil dispute and husband had been prevented or restrained beyond his control, the wife of the party in dispute is a competent witness. The decisions cited by the learned Counsel for the Appellant will not help the Appellant to get a decree in his favour. Also as pointed out by the learned Counsel for the Defendant, husband of the Defendant was examined as D.W-1 but he was not at all cross-examined regarding the inability of the wife, the Defendant, to appear before the court. Therefore, the non-examination of defendnat, on that ground also had to be considered against the Plaintiff.

53. In *AIR 1983 Calcutta 377 [Traders Syndicate and Union of India]* it is held on point of dispute where, if no cross -examination is preferred on a particular point, the Court can hold that the opposite party accepts the case. Thus, the assessment of evidence by the learned Sub Judge is found proper. The assessment of evidence by the learned Additional District Judge, Vellore at Tirupattur in dismissing the Appeal is also found proper. Even if there is adverse inference drawn by the Courts against the Defendant for not stepping into the witness box, it will not help the Plaintiff to overcome the claim that there was fraud committed by the Plaintiff on the Defendant.



SA No. 381 of 2018

WEB COPY54. The husband of the Defendant is a competent witness as per Section 120 of Indian Evidence Act. He had spoken about the transaction involving his wife. There is suppression by him that he claims that he does not know his wife's signature and it is unacceptable from the normal human conduct. Still, he had established that there was no voluntary execution of sale agreement deed by his wife. If both parties ie., Plaintiff as well as Defendant commits suppression of material facts before the Court, the party who approaches the Court, who knocks the door of the Court, is duty bound to prove facts in his favour and if those facts are not proved, he or she cannot seek relief from a civil Court by picking holes from the evidence of the Defendant. The party who had approached the Civil Court, who knocked the Court is duty bound to prove his case as per Section 101 of the Indian Evidence Act. Here, the Plaintiff miserably failed to claim that there was enforceable contract of sale of property. Therefore, the contention of the learned Counsel for the Appellant that both the Courts failed to consider to draw adverse inference against the Defendant for not entering the witness box and also the contradictory statement made in the written statement cannot help the Plaintiff. Even if the contradictory statements are considered and those statements are rejected, still, the Plaintiff has to prove his case that there was an enforceable



SA No. 381 of 2018

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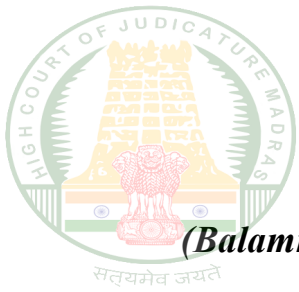
contract. The Plaintiff has to explain why after 15.06.2001, notice was not issued calling upon the Defendant to come and execute the sale deed, if he had parted with the entire amount as claimed by him. The conduct of the Defendant in cancelling the registered power of attorney in favour of the Plaintiff by executing cancellation of power of attorney on 08.10.2002 and registering it with the same Sub Registrar Office and then issuing notice dated 11.10.2002 to the Plaintiff not to invoke the power of attorney deed creates circumstances against the Plaintiff.

55. Regarding the claim by the Plaintiff as Appellant in this Second Appeal when the Defendant had wantonly abandoned witness box to establish her case which is purely within her personal knowledge and when the Defendant had failed to submit herself for enabling the Plaintiff to cross examine her thereby presuming the Defendant's case as false, as held by the Hon'ble Supreme Court, whether the Courts below were right in ignoring such serious lapse and omission committed by the Defendant, as per Section 120 of the Indian Evidence Act which provides that the spouse of the party to the civil proceedings is a competent witness – either the wife or the husband who is a party to the civil proceedings. In this case, the husband of the Defendant to the proceedings Mr.Mohan Kumar had let in evidence as D.W-1. From the



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course of everyday experience, it is found that the husband as well as the wife shares ideas between them. Therefore, in the course of such transaction, the husband who is aware of the transaction between his wife the Defendant and the Plaintiff had deposed evidence on behalf of the wife. He had withstood his cross-examination. He is not a lay man. He is a Ph.D., Degree holder working and settled in Bengaluru. Whereas the property is within the territorial jurisdiction of Sub Court, Thiruppur. He had made it clear that his wife had executed power of attorney in favour of the Plaintiff for development of the property and in the course of such power of attorney had also given her signature in a blank paper for preparing documents as and when necessity arise. But those signed blank papers were misused by the Plaintiff to create a sale agreement deed behind the back of the Defendant which forced her to cancel the same and issued notice of the execution of the cancellation deed to the Plaintiff under Ex.B-13 dated 11.10.2002. Only after this notice, the Plaintiff had caused notice on 20.10.2002 under Ex.A-4 seeking execution of sale deed. Therefore, the claim of the Plaintiff as Appellant that the Defendant abandoned the witness box to establish her case is not attracted in this case on appreciation of evidence. The facts of the reported decisions relied on by the learned Counsel for the Appellant in this Second Appeal in (i) ***AIR 1999 SC 1441 (Vidhyadhar Vs. Mankikrao and another)***; (ii) ***MANU/TN/2088/2002***



SA No. 381 of 2018

(Balammal and others Vs. Velayutham (deceased) and others); (iii) 2007

(1) CTC 449 (Jayalakshmi Ammal and 8 others Vs. Chinnasamy Gounder

and another); (iv) (2009) 1 MLJ 67 (Prabhakaran and Others Vs.

Ranganathan and Others) and (v) (2010) 10 SCC 512 (Man Kaur (dead) by

LRS. Vs. Hartar Singh Sangha) will not help the case of the Plaintiff as the

husband of the Defendant had deposed evidence and subjected himself to

cross-examination where the Plaintiff had not put suggestion regarding the

disability of the Defendant to appear as witness which was considered by the

learned trial Judge in rejecting the evidence of the Plaintiff. D.W-1 the

husband of the Plaintiff had deposed evidence based on personal knowledge

that the Defendant did not have intention to sell the property and clearly stated

that the Plaintiff had fraudulently created the sale agreement misusing the

signature given by the Defendant.

56. In the light of the above discussion from paragraphs 37 to 55, the **Substantial Questions of law Nos. 3 and 4 are answered against the Appellant and in favour of the Respondent.**

In the result, **the Second Appeal is dismissed.** The judgment and decree dated 27.07.2017 passed in A.S. No. 9 of 2013 on the file of the learned



SA No. 381 of 2018

III Additional District Judge, Tiruppattur, confirming the judgment and decree

dated 25.07.2012 made in O.S.No.102 of 2010 on the file of the Subordinate

Judge, Tiruppattur are confirmed. No costs.

24.06.2025

Index : Yes/No

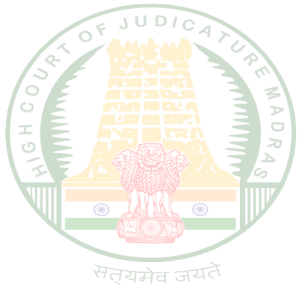
Internet : Yes / No

Speaking Order/Non-Speaking Order

cda/srm/dh/shl

To

1. The III Additional District Court,
Tiruppattur.
2. The Subordinate Court,
Tiruppattur.
3. The Section Officer,
V. R. Section,
High Court Madras.



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SA No. 381 of 2018

SATHI KUMAR SUKUMARA KURUP, J

cda/srm/dh/shl

Judgment in
S.A.No.381 of 2018

24.06.2025