



APPEAL SUIT NO.170 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2025

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CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.170 OF 2019

Kamala ... Appellant / Defendant

Vs.

Ayyasamy ... Respondent / Plaintiff

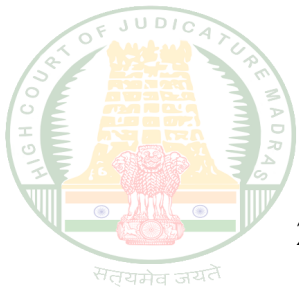
PRAYER: First Appeal filed under Section 96 read with Order XLI Rules 1 and 2 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated December 12, 2018, passed in O.S. No.20 of 2017 by the learned IV Additional District and Sessions Judge, Bhavani.

For Appellant : Mr.R.Bharanidharan
for M/s.D.Jagajothi

For Respondent : Mr.B.Kumarasamy

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated December 12, 2018 passed in O.S. No.20 of 2017 by the 'IV Additional District and Sessions Court, Bhavani' ['Trial Court' for brevity], the defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rules 1 and 2 of 'the Code of Civil Procedure, 1908' ['CPC' for short].



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

PLAINTIFF'S CASE

3. The Suit Properties together form a house site of a total extent of 1183 sq. ft., and absolutely belongs to defendant. On January 29, 2014, vide registered Sale Agreement dated January 29 2014, the defendant agreed to sell the Suit Properties to the plaintiff for a sale consideration of Rs.15,00,000/- (Rupees Fifteen Lakhs only), and on the same day itself, the defendant received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as advance. As per the terms of Sale Agreement, plaintiff has to pay the balance sale consideration within four years from the date of execution of Sale Agreement and get the Sale Deed executed in his favour by the defendant. The time for specific performance was not considered as the essence of contract.

3.1. Ever since the date of Sale Agreement, the plaintiff has been always ready and willing to perform his part of contract, on the other hand, the defendant has been dodging and protracting to receive the balance sale consideration from the plaintiff and to perform his part of contract. From the date of Sale Agreement, despite plaintiff's repeated oral demands, the



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defendant has been evading to perform her part of contract. When the plaintiff lastly orally contacted the defendant on October 14, 2017 for execution of Sale Deed, she refused and on the contrary, preferred a complaint before the Erode District Police against the plaintiff. Thereafter, on October 16, 2017, the defendant issued a legal notice to the plaintiff with false allegation that the above said transaction is only for loan. The plaintiff issued a reply notice to the defendant on November 7, 2017 expressing his readiness and willingness to purchase the Suit Properties. Though the defendant counsel received the said reply notice on November 8, 2017 she did not come forward to perform her part of contract.

3.2. On November 16, 2017, the plaintiff came to understand that the defendant is taking hectic attempts to alienate the Suit Properties to third parties. On November 16, 2017 itself, the defendant was trying to construct houses in the Suit Properties. Therefore, the plaintiff filed the present Suit seeking the relief of Specific Performance and an alternative prayer to direct the defendant to repay the advance amount with interest at the rate of 9% per annum from the date of Suit Agreement till actual realization and sought permanent injunction restraining the defendant from alienating or encumbering and constructing over the Suit Properties.

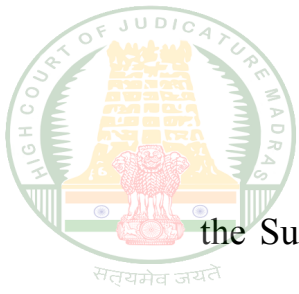


DEFENDANT'S CASE

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4. The defendant filed written statement denying the allegations made by the plaintiff in the plaint. It is admitted that the Suit Properties are belonging to the defendant. The defendant borrowed a sum of Rs.3,00,000/- at the rate of Rs.2/- per Rs.100/- per month from one Rajamani and executed a Sale Agreement as a security. She paid a sum of Rs.6,000/- per month as interest to the said Rajamani. Then the defendant was in need of another sum of Rs.2,00,000/-. While so, the plaintiff approached the defendant offering financial assistance at the rate of Rs.1/- per Rs.100/- per month. The plaintiff settled the defendant's debt of Rs.3,00,000/- with Rajamani and cancelled the Sale Agreement. The plaintiff further paid Rs.2,00,000/- to another person for the debts borrowed by the defendant. Then, the plaintiff and the defendant entered into the Suit Sale Agreement as a security for the sum of Rs.5,00,000/- that the defendant owes the plaintiff. The defendant has been paying interest to the plaintiff properly since then.

4.1. In October 2017, when the defendant attempted to settled the loan amount of Rs.5,00,000/- to the plaintiff, the plaintiff refused to receive the amount and cancel the Sale Agreement with a view to usurp

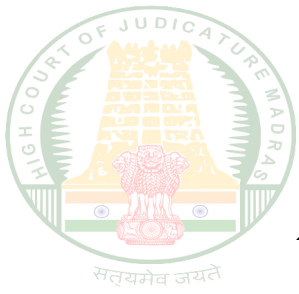


the Suit Properties. He threatened the defendant to execute Sale Deed in respect of the Suit Properties in his favour. Further, the plaintiff interfered with the defendant constructing a house in the Suit Properties and caused trouble. Therefore, the defendant, on October 4, 2017, gave a complaint before the Superintendent of Police, Erode. The police officials also warned the plaintiff accordingly. When the defendant asked the plaintiff to receive the sum of Rs.5,00,000/- along with the accrued interest for two months from her and cancel the Sale Agreement, the plaintiff abused the defendant in filthy language and also threatened the defendant with dire consequences. By spending a sum of Rs.30,00,000/-, the defendant constructed house and performed a housewarming ceremony on November 24, 2017. The Suit Properties worth is more than Rs.40,00,000/-. The Court-Fee paid by the plaintiff is also in-correct. Stating so, the defendant sought to dismiss the Suit.

TRIAL COURT

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

"1)Whether the Sale Agreement dated January 29, 2014 was executed for the purpose of sale of Suit Property, or in lieu of loan transaction?



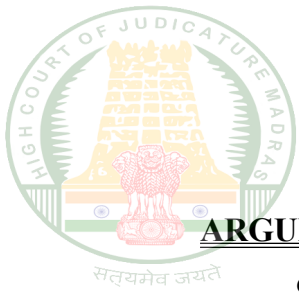
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- 2) *Whether the plaintiff is entitled to the relief of Specific Performance ?*
- 3) *Whether the plaintiff is entitled to the alternative relief of refund of advance amount from the defendant ?*
- 4) *To what other relief?"*

6. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3 and Ex-A.1 to Ex-A.7 were marked. On the side of the defendant, defendant was examined as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3 and Ex-B.1 to Ex-B.7 were marked. Ex-X.1 and Ex-X.2 were marked through D.W.2 and D.W.3 respectively.

7. After full-fledged trial, the Trial Court concluded that the Sale Agreement was intended for sale of Suit Properties and the plaintiff was ready and willing to perform his part of contract. Accordingly, the Trial Court decreed the Suit in favour of the plaintiff by granting the relief of Specific Performance.

8. Feeling aggrieved, the defendant has preferred this First Appeal under Section 96 read with Order XLI Rules 1 and 2 of the CPC.



ARGUMENTS:

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9. Mr.R.Bharanidharan learned Counsel appearing on behalf of M/s.D.Jagajothi, learned Counsel on record for the appellant / defendant would argue that Ex-A.1 – Sale Agreement dated January 29, 2014 was not intended for sale of Suit Properties. The plaintiff cleared the defendant's debts to the tune of Rs.5,00,000/- and as security for the same, the defendant executed Ex-A.1 – Sale Agreement. As per Ex-A.1, which is a sham and nominal document, the time period of performance is 4 years, the total sale consideration is Rs.15,00,000/- and an advance of Rs.10,00,000/- was paid on the same day. If really Ex-A.1 was intended for sale of Suit Properties, there was no need for the parties to fix 4 years as time period for performance, that too when 2/3rd of the alleged sale consideration has been allegedly paid as advance. This itself shows that Ex-A.1 was intended for sale of Suit Properties, rather it was executed as a security for the loan transaction between the parties. Further, the Title Deed remain with the defendant and in the year 2016. Further, the defendant obtained a home loan from a bank and constructed a house on the Suit Properties, and the plaintiff did not raise any objection at that time, which also points out that Ex-A.1 was not intended for sale of Suit Properties. The Judgment and Decree of the Trial Court is not justifiable



and deserves to be interfered with. Accordingly, he would pray to set aside the Judgment and Decree of the Trial Court and dismiss the Original Suit.

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

- (i) Judgment of this Court in ***Renuka -vs- Chennakesavalu Naidu***, reported in **2008 (4) LW 504**;
- (ii) Judgment of this Court in ***V.P.Murugrsan -vs- P.Shiek Mideen***, reported in **2016 (2) LW 107**;
- (iii) Judgment of this Court in ***K.L.Damodharan -vs- Venkattapa Naidu***, reported in **2018 (5) LW 84**;
- (iv) Judgment of this Court in ***Ponnusamy -vs- Govindhan***, reported in **CDJ 2022 MHC 1122**.

10. On the other hand, Mr.B.Kumarasamy, learned Counsel for the respondent / plaintiff would argue that Ex-A.1 – Sale Agreement was executed purely for the sale of Suit Properties. There was no loan transaction between the parties as alleged by the defendant. Ex-A.1 being



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a registered document, no oral evidence can be adduced to contradict its terms as per Sections 91 and 92 of Indian Evidence Act, 1872. In this regard, he would place reliance on the Judgment of this Court in ***M.Sekar -vs- P.Madeshwaran***, reported in ***2014 (1) CTC 165***.

10.1. He would further argue that Ex-A.1 – Suit Sale Agreement is dated January 29, 2014. The period of performance is 4 years *i.e.*, on or before 28.01.2018. The last demand for performance of her part of the contract was made to the defendant by the plaintiff on October 14, 2017. The defendant refused to perform her part of the contract and on October 16, 2017, issued legal notice containing false allegations, which prompted the plaintiff to issue a reply that he is ready and willing to perform his part of contract on November 7, 2017. The Original Suit has been filed on November 20, 2017 and the plaintiff deposited a balance sale consideration of Rs.5,00,000/- on December 26, 2017. From the above, it is crystal clear that the plaintiff has always been ready and willing to perform his part of the contract. The Trial Court rightly decreed the Suit as prayed for. There is no need to interfere with the Judgment and Decree of the Trial Court. Accordingly, he would pray to dismiss the Appeal Suit and confirm the Judgment and Decree of the Trial Court.



DISCUSSION:

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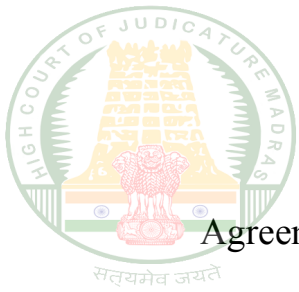
11. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether Ex-A.1 – Suit Sale Agreement dated January 29, 2014 was executed for sale of Suit Properties, or as a security for loan transaction between the parties ?
- (ii) When the terms of Ex-A.1 – Suit Sale Agreement speak of sale of Suit Properties, whether the defence that Ex-A.1 was intended as a security to the loan transaction between the parties, is legally barred under Sections 91 and 92 of Indian Evidence Act, 1872 ?
- (iii) Whether the Judgment and Decree of the Trial Court is to interfered with by this Court ?

Point Nos.(i) and (ii)

12. The execution of Ex-A.1 – Suit Sale Agreement dated January 29, 2014 is admitted. There is no serious dispute with the fact that the plaintiff has the wherewithal to purchase the Suit Properties. The plaintiff and the defendant are residing in the same locality and there is no dispute with the same as well. The case of the plaintiff is that Ex-A.1 – Suit Sale



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Agreement is genuine and true while that of the defendant is that it is a sham and nominal document executed as a security towards the debt the defendant owed to the plaintiff, Rs.5,00,000/- with interest at the rate of Re.1/- per Rs.100/- per month.

13. The plaintiff has examined himself as P.W.1, one of the attestor to Ex-A.1 – Suit Sale Agreement as P.W.2 and the scribe thereto as P.W.3 and proved the execution of Ex-A.1. Moreover, the execution is admitted. Hence, the plaintiff has discharged his initial burden of proof. Now it on the defendant to prove his case by way of preponderance of probabilities.

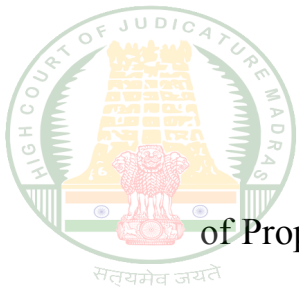
14. P.W.1 / plaintiff in his cross-examination has deposed that one Munniyan was residing in a house which was there on the Suit Property; that however, said Munniyan sold the Suit Property after demolishing the said house to the defendant. Further, he has deposed that he knows the earlier type of house that existed in the Suit Property as well as the present type. Contrary to the same, he has later deposed that the Suit Property is a vacant land. Further, the plaintiff has deposed that there will be no house tax receipt issued for a vacant land.



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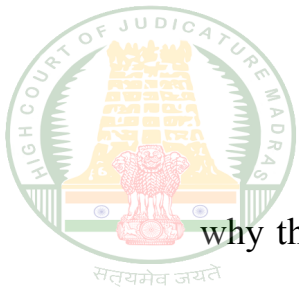
15. The defendant's side has marked Ex-B.3 to Ex-B.6 - House Tax Receipts for the years 2012 – 2013, 2014 -2015, 2015- 2016 and 2017 -2018, which stand in the name of Munniamuthu in respect of Door No.414, Kamarajar Salai., in the name of Munniamuthu. The question that may arise here is whether these are in respect of the Suit Property. As per Ex-A.1, the Suit Property is in Kamarajar Salai. From the evidence of P.W.1 that the Suit Property originally belonged to one Munniyan and that there was a house in it, coupled with the fact that Suit Property exists in Kamarajar Salai, shows that Ex-B.3 to Ex-B.6 are in respect of the Suit Property. Moreover, in the cross-examination of D.W.1 / defendant, she deposed that at the time of Ex-A.1 – Sale Agreement itself, there was a house in the Suit Property and the plaintiff side has not denied the same. Ex-B.3 to Ex-B.6 - House Tax Receipts show that house tax was paid in the respective years itself. Notably, Ex-B.6 was paid on March 14, 2013 and Ex-B.5 was paid on February 5, 2015. Ex-A.1 – Sale Agreement is dated January 29. 2014. It could be seen that on the date of Ex-A.1, there existed a house in the Suit Property.

16. However, there was no mention of any house property in the Suit Schedule of Property or in Ex-A.1. In Ex-A.1 and the Suit Schedule



of Property, the Suit Property has been described as a vacant land. If really the parties intended Ex-A.1 to be a Sale Agreement, they would not have described the Suit Property as a vacant land while there existed a house. This makes the defendant's case that the Suit Property was intended as a security for loan transaction probable.

17. Further, this Court has perused Ex-A.1 – Suit Sale Agreement dated January 29, 2014. Sale consideration has been fixed at Rs.15,00,000/- and 2/3rd of the same *i.e.*, Rs.10,00,000/- has been paid as advance to the defendant by the plaintiff on the date of Ex-A.1 itself. While so, the time period for performance has been fixed as 4 years. No reason of any sort has been specified in Ex-A.1 for such a long time period for performance, despite the payment of 2/3rd of the sale consideration as advance on the very day of execution. The learned Counsel for the respondent / plaintiff would contend that time period for performance is at parties' discretion, they can choose any time period they desire or deem apt and the mutually agreed time period for performance cannot be questioned. While this Court agrees with the learned Counsel that the parties are at liberty to choose any time period for performance, such long time period for performance is unusual and there is no hint in Ex-A.1 as to



why the parties agreed upon the same. If really the parties had a genuine

reason for the same, they would have naturally at least hinted it somewhere in Ex-A.1, which is not the case here. Such inordinate and unexplained time period for performance despite payment of a huge portion of sale consideration towards advance on the very same day of execution creates serious doubts as to the intention of the parties behind execution of Ex-A.1. The defendant has pleaded that Ex-A.1 is a sham and nominal document executed for the purpose of security for a loan transaction and contends that hence, the long time period for performance. On the other hand, the plaintiff has not assigned any reason for the same. This circumstance suggests that the parties never intended Ex-A.1 to be a Sale Agreement but rather a security for loan transaction, making the case of defendant more probable.

18. Further, the plaintiff, the defendant and one of the defendant side witness – D.W.3 are all known to each other and the same is also admitted. Before Ex-A.1, the defendant executed a Sale Agreement dated April 20, 2012 with one Rajamani and the same was cancelled on September 18, 2013. In the said Sale Agreement, the sale price was fixed at Rs.4,35,000/- and an advance of Rs.2,00,000/- was paid to the



defendant. The defendant side examined the said Rajamani as D.W.3 who

deposed that she lent Rs.2,00,000/- to the defendant and only as a security

for the same, the said Sale Agreement was executed. She further deposed

that the defendant was paying interest properly and a year later sought a

further sum of Rs.2,00,000/- as loan, which request was denied by D.W.3

due to insufficiency of funds. She further deposed that thereafter on

September 18, 2013, the defendant approached, informed that the plaintiff

is willing to offer the required sum and paid the principle amount of

Rs.2,00,000/- and sought for cancellation of the said Sale Agreement with

D.W.3. She further deposed that upon receiving the principal amount, she

cancelled the said Sale Agreement on the same day. The plaintiff side

suggested to her that the as the plaintiff offered a higher sale price of

Rs.15,00,000/- as against the sale price offered by D.W.3 viz.,

Rs.4,35,000/-, the defendant sought to cancel the Sale Agreement. D.W.3

has stated that she does not know about it. As stated *supra*, admittedly

D.W.3 is known to both plaintiff and defendant. There seems to be no

reason for her to depose falsely against the plaintiff. This Court is of the

view that the evidence of D.W.3 that the defendant was in need of more

money and since the plaintiff was ready to offer the same to her as loan,



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defendant sought to cancel the Sale Agreement with her, supports the case of the defendant. Hence, the case of the defendant is probable and the defendant has substantiated it with the aid of D.W.3. Therefore, this Court concludes that Ex-A.1 is a sham and nominal document executed as a security for a loan transaction.

19. As regards the Sections 91 and 92 of Indian Evidence Act, 1872, it does not operate as a bar to the oral evidence that Ex-A.1 - Sale Agreement was executed for the purpose of security to loan transaction. Hon'ble Supreme Court in ***Roop Kumar v. Mohan Thedani***, reported in **(2003) 6 SCC 595**, has discussed the purpose and scope of Sections 91 and 92 and clarified that Sections 91 and 92 of Indian Evidence Act, 1872 do not act as a bar to oral evidence that the document is sham and nominal and some other agreement altogether not mentioned in the document was actually entered into by the parties. Relevant extract is hereunder:

“19. Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with the mode of proof of a document with limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms under Section 91, provisions of Section 92



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come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91.

20. The two sections, however, differ in some material particulars. Section 91 applies to all documents, whether they purport to dispose of rights or not, whereas Section 92 applies to documents which can be described as dispositive. Section 91 applies to documents which are both bilateral and unilateral, unlike Section 92 the application of which is confined to only bilateral documents. (See : Bai Hira Devi v. Official Assignee of Bombay [AIR 1958 SC 448] .) Both these provisions are based on “best-evidence rule”. In Bacon's Maxim Regulation 23, Lord Bacon said “The law will not couple and mingle matters of speciality, which is of the higher account, with matter of averment which is of inferior account in law.” It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory.

21. The grounds of exclusion of extrinsic evidence are : (i) to admit inferior evidence when law requires



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superior would amount to nullifying the law, and (ii) when parties have deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory.

22. This Court in Gangabai v. Chhabubai [(1982) 1 SCC 4 : AIR 1982 SC 20] and Ishwar Dass Jain v. Sohan Lal [(2000) 1 SCC 434 : AIR 2000 SC 426] with reference to Section 92(1) held that it is permissible to a party to a deed to contend that the deed was not intended to be acted upon, but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. Oral evidence is admissible to show that document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties.

(emphasis supplied by this Court)

20. In *R. Janakiraman -vs- State*, reported in (2006) 1 SCC 697, Hon'ble Supreme Court has referred to *Gangabai's Case* (*supra*) referred to in *Roop Kumar's Case* and after an elaborate discussion has held that the bar under Section 92 of Indian Evidence Act, 1872 would operate only



against the terms of the contract and not the contract itself. It is apposite to

extract the relevant portion of the Judgment hereunder:

“18. The contention that the evidence of PW 11 and PW 15 is contrary to the documentary evidence (Exts. P- 64 to P- 81) and therefore, should be excluded under Section 92 of the Evidence Act, 1872 is not tenable.

19. In Tyagaraja Mudaliyar v. Vedathanni [AIR 1936 PC 70 : 63 IA 126] the Privy Council observed that oral evidence is admissible to show that a document executed by a person was never intended to operate as an agreement, but was brought into existence solely for the purpose of creating evidence about some other matter.

20. In Krishnabai Bhritar Ganpatrao Deshmukh v. Appasaheb Tuljaramarao Nimbalkar [(1979) 4 SCC 60 : AIR 1979 SC 1880] this Court observed: (SCC p. 72, para 27)

“[W]hen there is a dispute in regard to the true character of a writing, evidence dehors the document can be led to show that the writing was not the real nature of the transaction, but was only an illusory, fictitious and colourable device which cloaked something else, and that the apparent state of affairs was not the real state of affairs. ”

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22. *The above view was reiterated in Ishwar Dass Jain v. Sohan Lal [(2000) 1 SCC 434] and it was held that the bar under Section 92(1) would arise only when the document is relied upon, but, at the same time, its terms are sought to be varied and contradicted.*

23. *In Parvinder Singh v. Renu Gautam [(2004) 4 SCC 794] this Court observed: (SCC p. 800, para 9)*

“The rule as to exclusion of oral by documentary evidence governs the parties to the deed in writing. A stranger to the document is not bound by the terms of the document and is, therefore, not excluded from demonstrating the untrue or collusive nature of the document or the fraudulent or illegal purpose for which it was brought into being. An enquiry into reality of transaction is not excluded merely by availability of writing reciting the transaction. ”

24. *We may cull out the principles relating to Section 92 of the Evidence Act, thus:*

(i) Section 92 is supplementary to Section 91 and corollary to the rule contained in Section 91.

(ii) The rule contained in Section 92 will apply only to the parties to the instrument or their successors-in-interest. Strangers to the contract (which would include the prosecution in a criminal proceeding) are not barred



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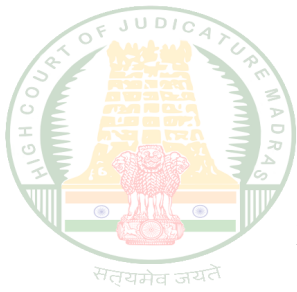
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from establishing a contemporaneous oral agreement contradicting or varying the terms of the instrument. On the other hand, Section 91 may apply to strangers also.

(iii) The bar under Section 92 would apply when a party to the instrument, relying on the instrument, seeks to prove that the terms of the transaction covered by the instrument are different from what is contained in the instrument. It will not apply where anyone, including a party to the instrument, seeks to establish that the transaction itself is different from what it purports to be. To put it differently, the bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different.

Applying the aforesaid principles, it is clear that the bar with Section 92 will apply to a proceeding inter partes to a document and not to a criminal proceeding, where the prosecution is trying to prove that a particular document or set of documents are fictitious documents created to offer an explanation for disproportionate wealth. Oral evidence can always be led to show that a transaction under a particular document or set of documents is sham or fictitious or nominal, not intended to be acted upon.”

(emphasis supplied by this Court)

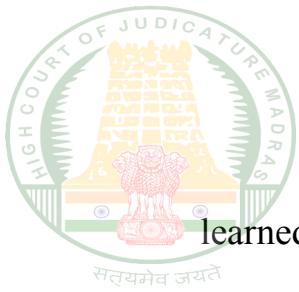


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21. By placing reliance on ***R. Janakiraman's Case***, the Hon'ble Supreme Court in ***Vimal Chand Ghevarchand Jain -vs- Ramakant Eknath Jadoo***, reported in ***(2009) 5 SCC 713*** held that Section 91 read with Section 92 does not act as a bar to oral evidence as to true nature of a document. Relevant extract is hereunder:

“31. Indisputably when the true character of a document is questioned, extrinsic evidence by way of oral evidence is admissible. (See R. Janakiraman v. State [(2006) 1 SCC 697 : (2006) 1 SCC (Cri) 442] , SCC para 24; Roop Kumar v. Mohan Thedani [Roop Kumar v. Mohan Thedani, (2003) 6 SCC 595] , SCC para 19 and SBI v. Mula Sahakari Sakhar Karkhana Ltd. [(2006) 6 SCC 293] , SCC paras 23 to 32.) We would, therefore, proceed on the premise that it was open to the respondent to adduce oral evidence in regard to the nature of the document.”

22. From the above authorities, it is clear that Sections 91 and 92 do not act as a bar to a party contending that the document itself as sham and nominal. Hence, there is no bar to the defendant contending that Ex-A.1 is a sham and nominal document originally intended as a security for the loan transaction between her and the plaintiff. As regards the Judgment of the learned Single Judge of this Court in ***M.Sekar's Case*** relied on by the



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learned Counsel for the respondent / plaintiff, it was held therein that documentary evidence cannot be impeached by oral evidence except in any abnormal circumstances where there is any legally acceptable evidence available against the document. The proposition of law put forth in *Sekar's Case* is the same as that put forth in the afore-cited Judgments of the Hon'ble Supreme Court and hence, *M.Sekar's Case* does not come to the aid of the plaintiff. **Point Nos.(i) and (ii) is answered accordingly in favour of defendant and against the plaintiff.**

Point No.(iii)

23. In view of the foregoing narrative, the Trial Court is not justifiable in concluding that Ex-A.1 was intended for sale of Suit Properties and accordingly, decreeing the Suit for specific performance. As stated supra, Ex-A.1 was intended to serve as a security for loan transaction. Hence, the plaintiff is not entitled to the relief of specific performance. But he is entitled to the relief of refund of money. According to the defendant, the loan amount is Rs.5,00,000/-. But the same has not been substantiated by her. The evidence of D.W.3 suggests that the defendant would have received Rs.5,00,000/- as loan from the plaintiff, but if that is really the case, there is no need to enter Rs.10,00,000/- as the

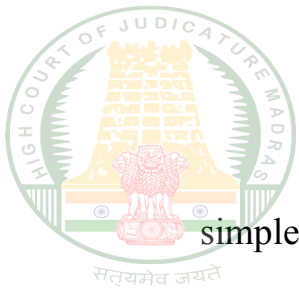


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advance amount in the place of Rs.5,00,000/-. The defendant admits the execution of Ex-A.1. Her case is that Ex-A.1 is a sham and nominal document intended to serve as a security for loan transaction. In these circumstances, in the absence of evidence to the contrary, as Ex-A.1 stipulates Rs.10,00,000/- as the advance amount, this Court holds that the defendant owed a principal sum of Rs.10,00,000/- to the plaintiff. The defendant is directed to repay the principal sum of Rs.10,00,000/-, along with 9 % interest per annum as alternatively prayed for by the plaintiff, within 5 months from today. Charge is created on the Suit Property to enable the plaintiff to realise the said amount. The plaintiff shall be entitled to costs incurred by him before the Trial Court, in the facts and circumstances of this case. **Point No.(iii) is answered accordingly partly in favour of plaintiff and partly against the defendant.**

CONCLUSION:

24. Resultantly, the Appeal Suit stands partly-allowed. The Judgment and Decree of the Trial Court is set aside. The plaintiff is entitled to the alternate relief of refund of money. The defendant is directed to repay the principal sum of Rs.10,00,000/-, along with 9%



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simple interest per annum from the date of Suit till realisation as alternatively prayed for by the plaintiff, within 5 months from today.

Charge is created on the Suit Property to enable the plaintiff to realise the said amount. The plaintiff is entitled to withdraw the deposit of Rs.5,00,000/- made by him before the Trial Court with accrued interest thereon if any. In the facts and circumstances of this case, the plaintiff shall be entitled to costs incurred by him before the Trial Court, and there shall be no order as to costs in this Appeal Suit.

18.08.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To
The IV Additional District and Sessions Judge
Bhavani.



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R. SAKTHIVEL, J.

TK

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