



S.A.No.246 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.09.2025
Pronounced on	28.11.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.246 of 2023 and
C.M.P. Nos. 7265 and 7261 of 2023

Thangam @ Thangammal

...Appellant

Vs.

1. Kandharooban

2. Jayapal

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 15.10.2022 passed in A.S. No.110 of 2018, on the file of the Principal Sub Court, Kallakurichi, reversing the Judgment and decree dated 25.07.2017 passed in O.S.No.704 of 2006, on the file of the Principal District Munsif Court, Kallakurichi.



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For Appellant : Mr. G. Balamaniandan

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JUDGMENT

In this Second Appeal, challenge is made to the decree and judgment dated 15.10.2022 passed in A.S. No.110 of 2018, on the file of the Principal Sub Court, Kallakurichi, reversing the Judgment and decree dated 25.07.2017 passed in O.S.No.704 of 2006, on the file of the Principal District Munsif Court, Kallakurichi.

2. The defendant in O.S. No.704/2006 is the appellant herein. The respondents as plaintiffs filed the above suit for specific performance based on an agreement dated 15.03.2004.



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3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4. The plaintiffs and the defendant entered into an agreement of sale by way of an unregistered instrument dated 15.03.2004 under which the defendant agreed to sell the suit property to the plaintiffs for a sum of Rs.1,00,000/- and received a sum of Rs.90,000/- as advance on the same date of the agreement. It was agreed that the balance amount of Rs.10,000/- shall be paid by the plaintiffs to the defendant within a period of 2½ years from the date of agreement, i.e. on or before 15.09.2006 and that the defendant shall execute the sale deed in favour of the plaintiffs. As per the agreement of sale, the plaintiffs were always ready and willing to perform their part of contract by paying the balance sale consideration of Rs.10,000/-. In spite of several demands, the defendant failed to come forward to execute the sale deed. Hence the



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plaintiffs issued a legal notice on 05.09.2006 calling upon the defendant

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to perform her part of the contract. Though the defendant received the said notice, she failed to reply. Since the defendant was attempting to alienate the suit property, the plaintiffs were constrained to file the above suit for specific performance.

5. The defendant denied that she had executed the suit agreement dated 15.03.2004 in favour of the plaintiffs and that she had received any sale consideration in advance as alleged in the plaint. Her further contention is that the defendant filed a suit against the plaintiffs and 9 others in O.S. No.579/2006 before the District Munsif Court, Kallakuruchi for the relief of permanent injunction. Aggrieved by this, the plaintiffs, with ulterior motive, fabricated the suit sale agreement and has come forward with the present vexatious suit. Hence the suit is liable to be dismissed.



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6. The trial court, after appreciating the evidence on record dismissed the suit by a judgment and decree dated 25.07.2017 by holding that the agreement of sale purforth by the plaintiffs was false and must have been created. Feeling aggrieved, the plaintiffs appealed before the Principal Sub Court, Kallakuruchi. The first appellate court allowed the plaintiffs' appeal by judgment and decree dated 15.10.2022 by holding that the agreement of sale was proved and decreed the suit granting specific performance.

7. Assailing the judgment and decree of the first appellate court, the present second appeal has been preferred by the defendant.



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8. The second appeal has been admitted on the following substantial questions of law.

i) Whether the judgment and decree made by lower appellate court based on Exfacie illegal evidence is sustainable in law?

ii) Whether the impugned decree and judgment of lower appellate judge is correct when burden of proof lies on the respondents to prove the genuineness of agreement on denial of execution of agreement and thumb impression by the appellant/defendant?

iii) Was not the appreciation of evidence by the first appellate court ignoring material contradiction and inconsistencies in the evidence made available especially the



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internal evidence available to discredit the genuineness of

Ex.A1, perverse?

9. The learned counsel appearing for the appellant submits that the trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendant. His further contention is that the appellant/defendant filed a suit in O.S. No.579/2006 on the file of the Principal District Munsif Court, Kallakuruchi, against the plaintiffs and 9 others for the relief of permanent injunction for the same schedule of property. The plaintiffs, by suppressing the above facts, filed the present suit for specific performance. The respondents/plaintiffs have approached the court with unclean hands and therefore, they are not entitled for any relief. His further submission is that the date of seal found in the stamp paper is 23.08.2004, but the agreement of sale found



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to be executed on 15.03.2004. This would go to show that the suit

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agreement was forged one. Moreover, the evidence of P.W.1 and P.W.2

would create a doubt about the genuineness of the agreement. Further,

the stamp paper of the alleged agreement of sale stands in the name of

third party and there was no explanation on the side of the plaintiffs for

the same. The appellant/defendant denies execution of sale agreement and

the thumb impression in the agreement. While so, the burden of proof is

on the plaintiffs to take steps to prove their case. Whereas, the

appellant/defendant alone filed an application for sending the thumb

impression for expert's opinion. However, the expert opined that the

thumb impressions were unfit for comparison. Moreover, the name of the

defendant is wrongly mentioned in the sale agreement. The learned

counsel further submits that when the execution of an unregistered

document put forth by the plaintiffs is denied by the defendant, it is for

the plaintiffs to establish that the document is a genuine one. But the first



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appellate court erroneously observed that it is for the defendant to establish the factum of forgery, which is not a sound proposition. The first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In the present case, the plaintiffs came to court alleging that the defendant had executed an agreement of sale in their favour. The defendant having denied it, the burden was on the plaintiffs to prove that the defendant had executed the agreement and it is not for the defendant to prove the negative. From the above facts and circumstances of the case, the first appellate court ought to have dismissed the suit filed by the plaintiffs. Hence, he prays or setting aside the judgment and decree dated 15.10.2022 passed by the first appellate court in A.S. No.110 of 2018. In support of his contentions, he relied on the judgment of the Hon'ble Supreme Court in the case of ***Thiruvengadam Pillai vs. Navaneethammal and another*** reported in ***(2008) 4 SCC 530*** in which it has been held as follows:



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19. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant



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had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses. But the various circumstances enumerated by the trial court and the High Court referred to earlier, when taken together, rightly create a doubt about the genuineness of the agreement and dislodge the effect of the evidence of PWs 1 to 3. We are therefore of the view that the decision of the High Court, reversing the decision of the first appellate court, does not call for interference.

10. On the other hand, the learned counsel appearing for the respondents/plaintiffs submits that the trial court wrongly appreciated the evidence on record and failed to uphold the evidenciary value of Ex.A1 to Ex.A4. The trial court erred in dismissing the suit by observing that the

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suit agreement is a fabricated document. Whereas, the first appellate court

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on appreciation of oral and documentary evidence adduced on both sides found that the suit agreement is a genuine one and granted the decree of specific performance in favour of the plaintiffs. The learned counsel further submits that since the defendant has set up a case that the agreement of sale was a forged document and had denied its execution and also passing of any consideration, the burden is on the defendant to substantiate that the suit agreement is a fabricated document. He would further contend that to assert that when forgery and mis representation are alleged by the defendant, the burden of proof lies upon the defendant to substantiate such documents. In the present case, the defendant contended that the agreement of sale dated 15.03.2004 was a forged and fraudulent document. The burden is on the defendant to provide credible evidence to support her allegations. Thus, he would submit that when a party alleges fraud, the onus is on that party to prove the allegation and



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the burden does not shift to the party relying on the document to prove its validity beyond its face value. In support of his contention, he relied on the judgment of the Hon'ble Supreme Court in the case of *Shyam Kumar Inani vs. Vinod Agrawal and others* reported in (2025) 3 SCC 286.

11. Heard on both sides. Records perused.

12. The first appellate court allowed the plaintiffs' appeal by its judgment dated 15.10.2022, holding that the agreement of sale was proved and decreed the suit, granting specific performance. The following reasons were given by the first appellate court in support of its findings:

a) The evidence of P.W.1 and P.W.2 (plaintiffs), and the attester (P.W.3) proved the due execution of the agreement by the defendant.



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b) The burden of proving that the agreement of sale was concocted

and forged was on the defendant. She failed to do so.

Being aggrieved, the defendant filed this Second Appeal. The questions to

be answered in this Second Appeal is:

- a) Whether the first appellate court is right in placing the onus on the defendant to prove the negative?
- b) As the defendant denied the execution of the agreement, the burden of establishing the execution of document was on the plaintiffs?
- c) Whether the plaintiffs failed to establish by acceptable evidence that the suit agreement was true and valid?

The evidence, examined as a whole, threw considerable doubt as to whether it was truly and validly executed. The trial court has doubted the genuineness of the suit agreement on the ground that the plaintiffs failed to establish the execution of sale agreement by acceptable evidence.



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12.1. In this case, the defendant has denied having put her finger impression on the suit agreement. As rightly pointed out by the trial court, the plaintiffs must prove the execution of the sale agreement when the defendant denies it. The trial court had analyzed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendant. Its observation that when the execution of a document put forth by the plaintiffs was denied by the defendant, it was for the defendant to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendant alleged that the agreement was forged, it was for her to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case, the agreement of sale is in



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favour of the plaintiffs. The defendant having denied it, the burden was

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on the plaintiffs to prove that the defendant had executed the agreement and not on the defendant to prove the negative. No doubt, the plaintiffs attempted to discharge their burden by examining themselves and also one of the attesting witness. But, the various circumstances stated by the trial court, when taken together, rightly create a doubt about the genuineness of the agreement and dislodge the effect of the evidence of P.W.1 to P.W.3. The respondents / plaintiffs have relied upon the judgment in *Shyam Kumar Inani vs. Vinod Agrawal and others* reported in (2025) 3 SCC 286 to assert that when fraud and misrepresentation are alleged by the defendant, the burden of proof lies upon them to substantiate such claims. No doubt, when a party alleges fraud, the onus is on that party to prove the allegation. In the present case, the defendant has taken steps to send the thumb impression for expert opinion. But, the expert opined that it is unfit for comparison for certain



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reasons. Hence, the defendant has discharged the burden of proof to substantiate that the suit agreement is a forged document. The plaintiffs have not taken any steps to compare the thumb impression found in the suit agreement. Moreover, there is no explanation on the side of the plaintiffs for purchasing the stamp paper in the name of third party and for postponing the execution of the sale deed for 2½ years after tendering a substantial amount. Furthermore, the defendant has also filed a suit in O.S. No.579/2006 against the plaintiffs and others for the relief of permanent injunction in respect of the suit property. This fact was suppressed by the plaintiffs. When a plaintiff is alleged to have suppressed the above facts, it refers to a legal defence strategy used by the opposing party known generally as the doctrine of unclean hands or a similar principle like fraud on the Court. This allegation implies that the plaintiffs have acted in bad faith by deliberately concealing material information that, if disclosed, would harm their own case or undermine



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the Court's ability to render a fair judgment. The above circumstances create a doubt about the genuineness of the agreement. Therefore, the decision of the first appellate court reversing the judgment and decree of the trial court, warrants interference.

13. In the light of the aforementioned discussion, the impugned decree and judgment dated 15.10.2022 passed in A.S. No.110 of 2018, on the file of the Principal Sub Court, Kallakurichi, is set aside. The Second Appeal is allowed, and the suit of the plaintiffs in O.S.No.704 of 2006, on the file of the Principal District Munsif Court, Kallakurichi stands dismissed. There is no order as to costs. Consequently connected miscellaneous petitions are closed.

2811.2025

Index: Yes/No

Internet: Yes/No

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Speaking/Non-Speaking order

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To

1. The Principal Sub Judge, Kallakurichi
2. The Principal District Munsif Court, Kallakurichi
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J

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Pre delivery Judgment in

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