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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 05-11-2025

Judgment Pronounced on: 27.11.2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

SA.Nos. 58 & 95 of 2015

and MP.Nos.1 & 1 of 2015

and

CMP.No.24780 of 2025 in SA.No.95 of 2015

S.A.No.58 of 2015

C.Duraisamy

Appellant(s)

Vs

1. K.Kandasamy
2. Kalyanasundaram (died)
3. K.Thulasimani
4. K.Maheswari
5. K.Purnima Devi

Respondent(s)

[R2 died, R3 to R5 are bring on record as LR's of the deceased R2 vide order of this Court dated 05.10.2023 made in CMP.Nos.21443, 24115 & 21446 of 2023 in SA.No.58 of 2015]

Prayer in SA.No.58 of 2015:

Second Appeal filed under Section 100 of CPC against the judgment and decree passed in A.S.No.7 of 2012 dated 07.12.2023 on the file of V Additional



District Court, Coimbatore confirming the judgment and decree passed in OS.No.67 of 2007 on the file of Sub Court, Pollachi.

For Appellant(s):

Mr.C.S.Saravanan

For Respondent(s):

Mr.C.R.Prasaran, for R1

R2 – died

Mr.V.P.Sengothavel,

for M/s.Indu Priya, for R3 to R5

SA.No.95 of 2015

Kalyanasundaram (died)

2. K.Thulsimani

3. K.Maheswari

4. K.Purnima Devi

Appellant(s)

Vs

1. K.Kandasamy

2. C.Duraisamy

Respondent(s)

[A1 died, A2 to A4 are brought on record as LR's of the deceased A1 vide order of this Court dated 21.09.2023 made in CMP.Nos.20914, 20918 and 20920 of 2023 in SA.No.95 of 2015]

Prayer in SA.No.95 of 2015:

Second Appeal filed under Section 100 of CPC against the judgment and decree dated 07.12.2023 made in AS.No.117 of 2011 on the file of V Additional District Court, Coimbatore confirming the judgment and decree dated 20.04.2011 made in OS.No.67 of 2007 on the file of Sub Court, Pollachi.

For Appellant(s):

Mr.V.P.Sengothavel,

for M/s.Indu Priya,

For Respondent(s):

Mr.C.R.Prasaran, for R1

Mr.C.S.Saravanan, for R2



CMP.No.24780 of 2025 in SA.No.95 of 2015

WEB COPY Kandasamy

Petitioner

vs

Kalyanasundaram (died)

1. Thulsimani
2. Maheswari
3. Purnima Devi
4. C.Duraisamy

Appellant(s)

Prayer:

This petition has been filed to receive the documents, which are morefully described in the schedule to the accompanying petition as additional evidence in the above second appeal.

For Appellant(s):

Mr.C.R.Prasaran

For Respondent(s):

R1 – died
Mr.C.S.Saravanan, for R2
Mr.V.P.Sengothavel,
for M/s.Indu Priya, for R3 to R5

JUDGMENT

These Second Appeals have been preferred as against the common judgment and decree dated 07.12.2023 passed in A.S.Nos.117 of 2011 and 7 of 2012 on the file of the Additional District Judge, Coimbatore confirming the judgment and decree dated 20.04.2011 in OS.No.67 of 2007 on the file of Sub-Court Pollachi.



2. The plaintiff, who is the first respondent in both the second appeals, filed the suit for specific performance of contract and the suit was decreed. As against the judgment and decree, the first defendant preferred the first appeal in A.S.No.117 of 2011, who is the appellant herein in S.A.No.95 of 2015 and the second defendant preferred the first appeal in AS.No.7 of 2012, who is the appellant herein in S.A.No.58 of 2015. The said appeals were dismissed by the First Appellate Court. Aggrieved by the judgment and decree, the present appeals have been filed by the defendants.

3. For the sake of convenience and brevity, the parties in these appeals are to be referred as plaintiff and defendants as referred in the original suit.

4. The brief averments in the plaint are as follows:

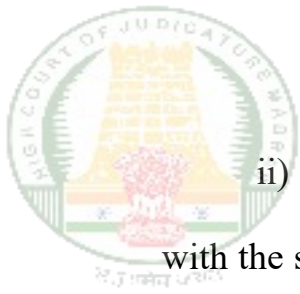
The first defendant is the owner of the suit property through sale deed dated 17.02.2000. The plaintiff and the first defendant entered into a sale agreement on 07.12.2006. The property's sale price was fixed at Rs.3,12,000/-. The first defendant had already borrowed money from the plaintiff on 06.01.2004 to the tune of Rs.1,00,000/- and also executed promissory note and agreed to pay the amount with interest at 24%. Thereafter, he did not repay the amount, therefore, interest along with principal would come to Rs.1,72,000/- and on 07.12.2006, the amount was adjusted for the advance of sale price. That apart, a sum of Rs.28,000/- also was paid on the date of the agreement itself.



Therefore, the plaintiff paid Rs.2,00,000/- as advance to the sale consideration and the period of contract was 6 months. Thereafter, the plaintiff sent a telegram on 22.04.2007 followed by a letter on 23.04.2007 fixing the date for registration of sale deed. After receipt of the same, the first defendant failed to comply with the demand. However, the plaintiff was always ready and willing to perform his part of the contract. In the meantime, the defendants 1 and 2 colluded with each other and fabricated an agreement dated 19.01.2006 and also registered a sale deed in the name of the second respondent on 27.04.2007. Therefore, the plaintiff has filed the suit.

5. The brief averments in the written statement filed by the first defendant are as follows:

i) The first defendant never borrowed money and executed promissory note and also not executed the sale agreement as alleged in the plaint. The documents are forged and concocted one and the signatures found in the agreement were also denied by him. The first defendant never agreed to adjust the principal amount and the interest amount in promissory note towards the advance amount. The first defendant denied the telegram and the notice allegedly sent by the plaintiff. The averments that after receipt of telegram and notice, the first defendant alienated the property in favour of the second defendant and the said sale deed will not binding upon the plaintiff, are also denied.



ii) That on 19.01.2006, the first defendant entered into a sale agreement with the second defendant in respect of the suit property for a sale consideration of Rs.4,29,000/- and on the same day, the first respondent received a sum of Rs.3,00,000/- as part of the sale consideration and also delivered the possession of the suit property to the second defendant. Subsequently, as per the agreement dated 19.01.2006, the first defendant executed a sale deed dated 27.04.2007 in favour of the second defendant after receiving the balance sale consideration. The said sale deed dated 27.04.2007 has been duly duly executed, registered and acted upon. However, the plaintiff filed the suit based on the forged documents. There is no cause of action for the suit and therefore, the suit is liable to be dismissed.

6. The brief case of the second defendant are as follows:

(i) The suit is not maintainable either on law or on facts. The plaintiff is put to strict proof of each and every one of the allegations contained in the plaint except those that are specifically admitted by the defendant. It is true that the suit property was purchased by the first defendant through the sale deed dated 17.02.2000. As alleged, the agreement between the plaintiff and the first defendant dated 07.12.2006 is false. The second defendant does not know anything about the legal notice alleged to have caused by the plaintiff. It is false



to state that the first defendant after receipt of notice dated 22.04.2007, has alienated the suit property to the second defendant and the same would not bind the plaintiff.

(ii) It is stated that the second defendant entered into a sale agreement with the first defendant in respect of the suit property on 19.01.2006 and the sale consideration was fixed at Rs.4,29,000/-. On the date of the agreement itself, a sum of Rs.3,00,000/- was paid towards advance of sale consideration and the remaining amount to be paid at the time of registration of the sale. Thereafter, the first defendant executed the sale deed in favour of the second defendant on 27.04.2007. The second defendant is the bonafide purchaser of the property for valuable consideration. On the date of agreement between the first and second defendants there was no encumbrance over the suit property. Even according to the plaintiff, his agreement is subsequent to the agreement with the second defendant, therefore, the plaintiff also very well know about the purchase of the first defendant's property. Therefore, the plaintiff is not entitled to any relief and therefore, the suit is liable to be dismissed.

7. Based on the pleadings, hearing both sides and perusing the records, the Trial Court framed the following issues:

- i) *Whether the plaintiff and the first defendant entered into an agreement on 07.12.2006 in respect of the suit property?*



- ii) *Whether there was an agreement in respect of the amount due under the promissory note to the tune of Rs.1,72,000/- as advance of the sale consideration?*
- iii) *Whether the agreement dated 06.01.2004 and the promissory note are forged documents?*
- iv) *Whether the first defendant executed sale deed dated 27.04.2007 in favour of the second defendant based on the sale agreement dated 19.01.2006?*
- v) *Whether the plaintiff is entitled to the relief of specific performance of contract?*
- vi) *On what other relief?*

The Trial Court also framed the following additional issue:

Whether the second defendant is the bonafide purchaser without the knowledge of the agreement dated 07.12.2006.

8. Before the Trial Court in order to prove the case, the plaintiff examined witnesses PWs.1 to 4 and marked exhibits A1 to A8. On the side of the defendants, DWs.1 to 3 were examined and exhibits B1 to B3 were marked. After hearing both sides and perusing the records, the Trial Court decreed the suit by directing the defendants to execute the sale deed in favour of the plaintiff based on the agreement dated 07.12.2006 after receipt of Rs.1,12,000/- within two months.



9. Aggrieved by the said judgment and decree passed by the Trial Court, the first defendant preferred an appeal in A.S.No.17 of 2011 and the second defendant preferred an appeal in AS.No.7 of 2012 and both the appeals were heard by the V Additional District and Sessions Judge, Coimbatore.

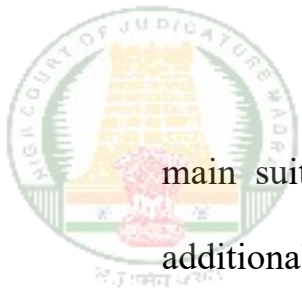
10. The first Appellate Court after hearing both sides framed the following points for determination:

i) Whether the first defendant executed agreement in respect of the suit property?

ii) Whether the second defendant is the bonafide purchaser for valid consideration?

11. Considering the evidence on both sides and hearing both sides and perusing the records, the First Appellate Court dismissed both the appeals with cost, by confirming the judgment and decree passed by the Trial Court. Aggrieved by the said judgment and decree, the first defendant, who is the appellant in AS.No.117 of 2011, has preferred second appeal in S.A.No.95 of 2015. The second defendant, who is the appellant in AS.No.7 of 2012, has preferred second appeal in S.A.No.58 of 2015.

12. **CMP.No.24780 of 2023 in SA.No.95 of 2015:** During the pendency of the appeals, the first respondent in second appeal, who is the plaintiff in the



main suit, filed an application under Order 41 Rule 27 of CPC to receive additional documents.

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12(a). The applicant being the plaintiff before the Trial Court, filed the main suit in OS.No.67 of 2007 as against the defendants based on the agreement entered into between the plaintiff and the first defendant dated 07.12.2006. During pendency of the suit, the plaintiff filed an application to impleaded the fourth respondent herein as party to the suit and the same was also allowed and he was impleaded as second defendant. According to the second defendant, he purchased the property on 27.04.2007 through a sale deed. However, the suit was decreed in favour of the plaintiff and the defendants 1 and 2 preferred first appeals and the same were also dismissed. Now, they preferred, present second appeals.

12(b) The applicant/plaintiff has got more than 50 acres of land and he has substantial income from the agricultural land. In the plaint, the plaintiff has categorically pleaded about his readiness and willingness, but he has not specifically established his bonafide financial status. He also failed to adduce evidence regarding his financial capacity. Therefore, he filed this application to receive additional documents.



12(c) The respondent defendant did not file counter affidavit.

13. The learned counsel for the appellant in SA.No.95 of 2015/first defendant would submit that the plaintiff filed the suit alleging that the first defendant is the owner of the suit property and he executed sale agreement dated 07.12.2006. Prior to the said agreement, the plaintiff gave loan to the first defendant to the tune of Rs.1,00,000/- through pro-note on 06.01.2004 and the first defendant executed promissory note agreeing to pay the interest at the rate of Rs.2/- per Rs.100/- per month. Since the first defendant had not repaid the money, the amount of Rs.1,72,000/-, the principal along with interest, was adjusted towards advance of sale consideration and the sale consideration was fixed at Rs.3,12,000/- and the time was fixed as six months. In fact, the first defendant never executed any agreement or promissory note and no advance amount was adjusted towards sale consideration and he never received any advance as alleged in the plaint. Therefore, the plaintiff has to prove the execution and passing of consideration through the said agreement and pro-note. In order to prove the case of the plaintiff, he examined PWs.1 to 4, and marked exhibits A1 to A8. On the side of the defendants, DWs.1 to 3 were examined and Exs.B1 to B3 were marked.

13.1. He further submitted that the plaintiff was examined as PW1 and PW2 is the attesting witness of the promissory note and PWs.3 and 4 are the attesting witness of the alleged sale agreement. There is a major contradiction



between the plaintiff side witnesses in respect of the execution of the promissory note as well as the suit agreement. The promissory note was marked as Ex.B1 and the agreement was marked as Ex.B2. In fact, the first defendant entered into sale agreement with the second defendant on 19.01.2006 for the sale price of Rs.4,29,000/- and on the date of agreement itself, a sum of Rs.3,00,000/- was paid as advance and thereafter, the sale deed was executed on 27.04.2007 after receipt of the remaining amount of Rs.1,29,000/-. Therefore, the property was sold to the second defendant before filing of the suit. However, the plaintiff based on the forged documents filed the suit. The plaintiff failed to prove the execution of promissory note, and also execution of Ex.A2 sale agreement and passing of consideration through the sale agreement. However, the Trial Court without considering the evidence adduced on both sides, decreed the suit.

13.2. The Trial Court failed to consider that the alleged promissory note and the sale agreement are all forged. Even seeing through the naked eye, the difference can be found between the signatures of the first defendant in Exs.A1 and A2 and the sale deed executed in favour of the second defendant in Ex.B2. The plaintiff failed to prove his readiness and willingness and not even issued any notice prior to the suit. The first defendant categorically denied the execution of promissory note Ex.A1 and the agreement Ex.A2. It is for the plaintiff to prove the genuineness of those documents and the signatures found in Exs.A1 and A2 are that of the first defendant. The plaintiff failed to produce



the telegram dated 22.04.2007 and the letter dated 23.04.2007. Though the plaintiff being an income tax assessee, failed to produce the income tax returns to show that the amount was advanced prior to the first defendant in the year 2002. There was no endorsement made in the promissory note in respect of the alleged adjustment. Therefore, it is clear that the plaintiff has not approached this Court with clean hands. The plaintiff without producing the telegram and letter, tried to execute the sale deed. Therefore, the plaintiff failed to prove his case, but the Court below erroneously decreed the suit.

13.3. The Courts below only based on the evidence of the attesting witnesses, decreed the suit. The Court below not even compared the signatures found in the promissory note and the sale agreement and the sale deed. The Courts below erroneously held that the burden is on first defendant to prove Ex.A2. The learned counsel further submitted that the plaintiff has filed an application in CMP.No.24780 of 2023 to receive the additional documents without any valid reason. Those documents were all under the custody of the plaintiff even at the time of filing the suit and he failed to produce those documents and even at the stage of first appeal, he failed to produce those documents, therefore, without any valid reason, this Court cannot receive those documents. Moreover, those documents are not helpful to decide the case and with the available documents, the suit can be decided and therefore, the said application is liable to be dismissed.



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14. The learned counsel appearing for the appellant in S.A.No.58 of 2015/second defendant would submit that originally the suit property belonged to first defendant through sale deed dated 17.02.2000. The first defendant and the second defendant entered into a sale agreement on 19.01.2006 and for consideration of the suit schedule property, the sale price was fixed fixed at Rs.4,29,000/- and on the date of agreement, Rs.3,00,000/- was paid towards advance. Thereafter, as per the agreement, he got the sale deed dated 27.04.2007 after paying the remaining amount of Rs.1,29,000/-.

14.1. The learned counsel further submitted that the second defendant is the bonafide purchaser for the valuable consideration. Before the Trial Court, he was examined as DW2 and he deposed about the purchase of the property and the sale agreement between the first defendant and the second defendant. The agreement of sale has been referred in the sale deed itself. However, the Courts below erroneously held that the said agreement dated 19.01.2006 was not produced before the Court and thereby, drawn adverse inference. In fact the sale agreement was destroyed immediately after execution of sale deed, therefore, the defendant is unable to produce the sale agreement. After purchase of the property, the second defendant sold the property to one minor Deeraz, S/o Hari



Arumugam through guardian Sivakumar on 21.04.2008. The subsequent purchaser is also proper and necessary party to decide the suit. But the plaintiff failed to implead him and the Trial Court failed to consider the same.

14.2. The alleged sale agreement between the first defendant and the plaintiff has not been proved in accordance with law and the evidence of plaintiff's side witnesses in respect of Ex.A1 pro-note and Ex.A2 sale agreement are contradict to each other. The evidence of PWs.1 to 4 create serious doubts over the genuinity of Exs.A1 and A2. However, the Courts below failed to consider that the second defendant is the agreement holder on 19.01.2006 and he is the bona fide purchaser for valid consideration. Therefore, the judgment and decree passed by the Courts below are liable to be set aside by allowing the second appeal.

15. This Court heard both sides and perused the records.

16. In this case, the plaintiff, who is the first respondent in both the second appeals, filed the suit in OS.No.67 of 2007 on the file of the Sub Judge, Pollachi for the relief of specific performance. According to the plaintiff, the first defendant, who is the owner of the property, had executed the sale agreement in his favour on 07.12.2006 agreeing to sell the property to the tune of Rs.3,12,000/-. On the date of agreement itself, the amount of Rs.28,000/- was



paid in cash to the first defendant and a sum of Rs.1,72,000/- was adjusted for the amount payable by the first defendant to the plaintiff through promissory note. Therefore, in total a sum of Rs.2,00,000/- was paid as advance on the sale price on 07.12.2006. Thereafter, the plaintiff issued telegram on 22.04.2007 and a letter dated 23.04.2007 to fix the date for execution of sale deed, but the first defendant failed to comply with the demand and committed breach.

17. However, the first defendant denied the execution of the pro-note and the receipt of money through pro-note and also denied the execution of agreement Ex.A2 and the receipt of money of Rs.28,000/- and the adjustment of money of Rs.1,72,000/- towards due payable through the promissory note. The first defendant also denied the alleged telegram dated 22.04.2007 and the letter dated 23.04.2007. According to the first defendant, he entered into a sale agreement with the second defendant through an agreement dated 19.01.2006 and the sale price was fixed at Rs.4,29,000/- and on the date of agreement, a sum of Rs.3,00,000/- was paid towards advance of sale price and thereafter, the sale deed was executed on 27.04.2007 after receipt of Rs.1,29,000/-. Therefore, the property was sold to the second defendant before filing of the suit.

18. According to the second defendant, he purchased the property for a valid consideration and he is the agreement holder. The agreement was entered between the first defendant and the second defendant on 19.01.2006 and the alleged date of agreement between the first defendant and the plaintiff was on



07.12.2006. Therefore, the second defendant is the bona fide purchaser for valid consideration through sale deed dated 27.04.2007. Before the Trial Court, on the side of plaintiff, PW1 to PW4 were examined and marked Exs.A1 to A8 and on the side of the defendants DW1 to DW3 were examined, the first defendant examined himself as DW1 and second defendant as DW2 and exhibits B1 to B3 were marked.

19. The Trial Court observed that the agreement dated 19.01.2006 was not produced before the Court. Further, as per the evidence, on the date of agreement itself, the possession of the property was handed over to the second defendant. As per Section 53A of the Transfer of Property Act, when the possession was granted to the parties, the agreement ought to have been registered, but the said agreement was not registered. Therefore, that agreement itself is not valid and the second defendant is not the bonafide purchaser. However, the plaintiff proved the case by examining PW1 to PW4. Therefore, the Trial Court decreed the suit by directing the defendants to execute the sale deed within two months after receipt of the remaining balance amount of Rs.1,12,000/-.

20. Aggrieved by the said judgment and decree, the defendants 1 and 2 preferred separate appeals respectively. The Appellate Court also dismissed the appeals by holding that the plaintiff sent notice to the first defendant and the



same was admitted, however, according to the first defendant, the said notice was sent with only empty cover and therefore, the defendant's version is not acceptable. The defendant also failed to prove the agreement dated 19.01.2006 and the second defendant is not a bonafide purchaser. The plaintiff's evidence are very nature and cogent, and therefore, there is no need to examine the signatures found in the disputed and the admitted documents. Therefore, dismissed the appeals and confirmed the judgment and decree of the Trial Court. Challenging the same, the present second appeals have been filed.

21. In the second appeals, this Court formulated the following questions of law:

“i) Whether the Courts below were right in holding that the sale agreement stands proved only by placing reliance on the evidence of the Attester?;

ii) Whether the Courts below were right in holding that the signatures found on the sale agreement should have been made only by the first defendant without even exercising the power of the Court under Section 73 of the Indian Evidence Act to compare the disputed signatures with that of the admitted signatures of the first defendant?;

iii) Whether the Courts below were right in shouldering the first defendant with the burden to disprove the Ex.A2, which was not accepted by him whereas according to the learned counsel,



under Section 101 of the Indian Evidence Act, the burden is upon the plaintiff to prove the execution of Ex.A2? and

iv) Whether the second defendant is the bonafide purchaser of the suit property for valuable consideration without noticing Ex.A2?"

Q(1): Whether the Courts below were right in holding that the sale agreement stands proved only by placing the reliance on the evidence of the attester?

22. According to the plaintiff, the first defendant executed the sale agreement in favour of the plaintiff on 07.12.2006. Prior to that on 06.01.2004, the first defendant borrowed money of Rs.1,00,000/- and executed promissory note on 06.01.2004 agreeing to repay the said amount with interest at Rs.2/- per Rs.100/- per month and the first defendant had not repaid any amount and thereby, the interest and the principal was adjusted towards advance of sale price to the tune of Rs.1,72,000/-. However, the said execution of promissory note, receipt of money from the promissory note, execution of sale agreement and the receipt of sale advance, were all denied by the first defendant. Therefore, the plaintiff has to prove the said execution of the documents and passing of consideration through those documents. In order to prove the case of the plaintiff, he examined himself as PW1 and deposed about the borrowal of money and execution of promissory note. The said promissory note has been marked as Ex.A1 and on perusal of Ex.A1, it is seen that the first defendant



executed promissory note in favour of the plaintiff for a sum of Rs.1,00,000/- and the interest was fixed at Rs.2/- per Rs.100/- per month. Since the first defendant denied the execution of the promissory note on receipt of money, the plaintiff examined one of the attesting witnesses of pro-note as PW2. PW1 has stated that on 06.01.2004, the first defendant borrowed a sum of Rs.1,00,000/- and agreed to pay 24% interest and executed a promissory note on 06.01.2004. However, the plaintiff during the cross examination admitted that he had not demanded the money through notice and admitted that the first defendant agreed to pay the said amount with interest within six months or one year. But the plaintiff has not taken any steps to get the loan amount from the date of pro-note till the date of execution of the alleged agreement.

23. The plaintiff in his evidence stated that the first defendant was his friend and known to him for the past 10 years. Whereas PW2 in his evidence stated that the first defendant approached the PW2 for a loan of Rs.1,00,000/- and he introduced the plaintiff to the first defendant. PW2 accompanied the first defendant and the plaintiff paid the money. When PW2 had introduced the plaintiff and felicitated to pay money to the first defendant, his statement that he did not know about the repayment of the amount, creates serious doubt over the evidence of PW2 as to whether he was present on the date of alleged execution of pro-note. Further, PW2 stated that on the date of borrowal of money, on



06.01.2004, he introduced the plaintiff to the first defendant for the first time, whereas the evidence of PW1 shows that the first defendant was a friend of him for the past 10 years.

24. PW3 and PW4 are the attesting witnesses in the said agreement. PW3 deposed about the execution of agreement. According to him, on 07.12.2016, they went to Stamp Vendor's office in the morning and the plaintiff and another witness PW4 were present there. The first defendant, brought the parental deed and the agreement was executed. In the cross examination, PW3 stated that he does not know about the properties of first defendant and he never went to the lands of first defendant. While so what is the necessity arising to PW3 to go along with the first defendant to the office of Stamp Vendor. PW3 also stated that a sum of Rs.1,72,000/- was adjusted in the pro-note, but he did not see the pro-note. In the said pro-note there was no endorsement about the adjournment. Therefore, the evidence of PW3 is also not cogent and it is not sufficient to prove the execution of the alleged promissory note and the Ex.A2 agreement.

25. As far as the evidence of PW4 is concerned, he is also one of the attesting witnesses in the Ex.A2 sale agreement. According to him, the plaintiff called him to the Stamp Vendor's office for attesting in the sale agreement. According to him, the plaintiff brought the promissory note at the time of agreement and gave instructions to the Stamp Vendor to prepare the agreement.



While so, there is no reference in the promissory note in respect of the payment of money adjusted in the agreement. Normally, after the payment of money, the promissory note would be cancelled or destroyed. But in this case, they had not even made endorsement in the promissory note. PW4 stated that a typist prepared the document and that after receipt of money of Rs.28,000/-, the first defendant signed in the agreement and thereafter, the plaintiff signed in the document and the PW3 and PW4 signed as witnesses. According to the evidence, there is no reference about the scribe of the document. Normally, when a document is executed, the name of the scribe also to be mentioned and he also put his signature as scribe. Therefore, when the first defendant categorically denied about the execution of the above said documents, it is the duty of the plaintiff to prove the documents in the manner known to law.

26. Though the plaintiff examined witnesses, they are very close associates to him. Further, the plaintiff and their evidence are not cogent and contradict to each other and thereby, it is the duty of the plaintiff to send the documents for expert opinion. In this context, already the defendant filed an application to compare the documents and the same was subsequently withdrawn. The plaintiff ought to have sent the documents for expert opinion to compare the signatures of the first defendant, namely, the first defendant's signature found in the disputed documents in Ex.A1 and Ex.A2 with the



admitted signatures in Ex.B2 sale deed of the first defendant. Ex.A2, is prior to the date of suit and the alleged signatures found in Ex.A2 are more or less in the contemporary period. Therefore, mere examination of attesting witnesses of the documents alone is not sufficient and the plaintiff ought to have taken steps for expert opinion. However, the plaintiff has not taken any steps. The Courts below without considering the discrepancies in the plaintiff side witnesses, placed reliance on the evidence of the attesting witnesses, erroneously held that the sale agreement stands proved.

27. This Court perused the vital documents and found that the signatures found in the Ex.A1/pro-note and the Ex.A2/sale agreement are totally different with the signatures found in the Ex.B2/sale deed executed by the first defendant prior to the suit. Even on seeing through naked eye, the difference can be found between the disputed signatures and the admitted signatures in those documents. Therefore, this Court is of the view that the signatures ought to have been compared as per Section 73 of the Evidence Act, but the Courts below failed to consider the same and merely relying on the oral evidence, which are not natural and cogent and contradict to each other had erroneously held that Exs.A1 and A2 were proved.



28. Even according to the plaintiff's case, the first defendant borrowed a sum of Rs.1,00,000/- on 06.01.2004 and agreed to repay with interest at Rs.2/- per Rs.100/- per month. Therefore, the interest would be Rs.2,000/- per month and from the date of execution of sale agreement i.e., from 7th December 2006, for 35 months, interest would come to Rs.70,000/-, whereas in the sale agreement it was mentioned as Rs.1,72,000/-. Therefore, it is the duty of the plaintiff to explain as to how Rs.1,72,000/- was arrived and adjusted for the due through the pro-note as advance for sale consideration. Further, the signatures found in Ex.A2 in each page had different characters. When Ex.A2 was executed in stamp paper, it is the duty of the plaintiff to explain as to why they have not mentioned the document writer, who written the document. Moreover, in the first page of the stamp paper the name of the first defendant was mentioned as V.Kalyanasundaram, similarly, in the second page of the agreement also mentioned as V.Kalyanasundaram, but in pages 3 and 4, initial "V" is not found place. These are all the discrepancies found in the documents and the Courts below failed to consider the same, therefore the Courts below are not right in holding that the sale agreement stands proved, only by placing reliance on evidence of the attesters. Thus the first substantial question of law is answered.

Q(2): Whether the Courts below were right in holding that the signatures found on the sale agreement should have



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been made only by the first defendant without even exercising the power of the Court under Section 73 of the Indian Evidence Act to compare the disputed signatures with that of the admitted signatures of the first defendant?

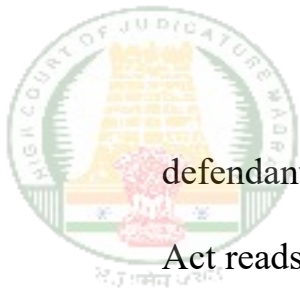
29. The Courts below had relied on the oral evidence of the plaintiff's side and decreed the suit. This Court in the previous paragraphs while answering the first substantial question of law held that the Courts below ought to have compared the signatures found in the Exs.A1 and A2 along with the admitted signatures found in the Ex.B2 sale deed executed by the first defendant in favour of the second defendant. The Courts below failed to exercise its power under Section 73 of the Indian Evidence Act to compare the disputed signatures that of with the admitted signatures. The plaintiff also failed to take steps for comparing the signatures through expert. If the Courts below exercised its power under Section 73 of the Indian Evidence Act, they could not have decreed the suit. The Courts below without exercising the power to verify the signatures found in Ex.A2 on each page, erroneously held that the document Ex.A2 is proved. Therefore, the Courts below are not right in holding that the signatures found in the sale agreement should have been made by the first defendant without exercising power of the Court under Section 73 of the Evidence Act to compare the disputed signatures with that of the admitted signatures of the first defendant. Thus the substantial question of law is answered.



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Q(3): Whether the Courts below were right in shouldering the first defendant with the burden to disprove Ex.A2, which was not accepted by him whereas according to the learned counsel, under Section 101 of the Indian Evidence Act, the burden is upon the plaintiff to prove the execution of Ex.A2?

30. The plaintiff has filed the suit for the specific performance of contract based on Ex.A2. The execution of A2 and the passing of consideration has been denied by the first defendant and therefore the burden of proof lies on the plaintiff to prove Ex.A2 in accordance with law. The plaintiff also examined PWs.1, 3 and 4 to prove the execution and passing of consideration through Ex.A2, but the evidence of plaintiff side are not cogent and they are, contradict to each other and thereby, the plaintiff failed to prove the execution of Ex.A2. Moreover, the plaintiff failed to take steps to compare the disputed signatures with that of the admitted signatures of the first defendant. Mere examination of the witnesses alone will not discharge the burden in proving Ex.A2 as the evidence of the plaintiff side are not cogent. Thereby, it is the duty of the plaintiff to prove Ex.A2. When the first defendant categorically denied the execution of documents, the burden is only the plaintiff, not on the first



defendant, as per Section 101 of the Evidence Act. Section 101 of the Evidence Act reads as follows:

“101. Burden of proof.

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(b) A desires a Court to give judgement that he is entitled to certain land in the possession of B, by reason of facts which he asserts and which B denies, to be true. A must prove the existence of those facts. ”

31. Therefore, the plaintiff, who filed the suit, has to prove his case as per Section 101 of the Act, and burden is upon the plaintiff to prove Ex.A2. The plaintiff failed to prove the execution of Ex.A2 but the Courts below erroneously shifted the burden on the defendant. Thus, the substantial question of law is answered.



Q(4) Whether the second defendant is the bonafide purchaser of the suit property for valuable consideration without noticing Ex.A2?

32. According to the plaintiff, he entered into the agreement with the first defendant on 07.12.2006. According to the second defendant, he entered into agreement with the first defendant on 19.01.2006, and the sale price was fixed at Rs.4,29,000/- and on the date of agreement itself, Rs.3,00,000/- was paid as advance and the remaining amount of Rs.1,29,000/- was paid on the date of sale deed dated 27.04.2007. He has no knowledge about the subsequent agreement dated 07.12.2006 between the plaintiff and the first defendant. The Courts below held that the defendants failed to produce the sale agreement dated 19.01.2006, but however failed to appreciate that in the sale deed Ex.B2 itself it was mentioned about the date of agreement and the advance amount already paid. While so, after execution of sale deed dated 27.04.2007, there is no necessity to keep the agreement with them and it is the usual practice to destroy the agreements after execution of sale deeds based on the agreements. The said agreement is superseded by execution of sale deed and therefore, the Courts cannot expect to produce the said agreement dated 19.01.2006. Even assuming that there is no agreement between the first defendant and the second defendant, the second defendant purchased the property through sale deed. However, the plaintiff did not prove the payment of money through promissory note and the adjustment of advance for the sale consideration and he failed to prove the



execution of Ex.A2. Further, there is no evidence to show that the second defendant after knowing the agreement between the plaintiff and the first defendant, purchased the property.

33. At this juncture, the learned counsel for the plaintiff would submit that the plaintiff issued telegram and notice dated 22.04.2007 and 23.04.2007 respectively, and the first defendant also admitted the receipt of notice. Therefore, the learned counsel for the plaintiff submitted that the first defendant admitted that after the receipt of notice only, he executed the sale deed in favour of the second defendant through sale deed dated 27.04.2007, thereby the defendants 1 and 2 colluded each other and executed the sale deed to defeat the right of plaintiff for specific performance.

34. Per contra, the learned counsel for the appellant would submit that the said notice dated 23.04.2007 and the telegram dated 22.04.2007 have not been produced by the plaintiff and it is for the plaintiff to prove the alleged telegram and letter, but he has not produced copies of those alleged telegram and letter. According to the first defendant, he received only an empty cover and it is the duty of the plaintiff to prove what kind of letter was sent to him as there was no document.



35. This Court also perused the records. The plaintiff stated that he sent the telegram dated 22.04.2007 and letter dated 23.04.2007, but those documents have not been produced by the plaintiff. When the defendant denied the receipt of the said letter and telegram in the written statement, it is the duty of the plaintiff to produce those documents. Mere admission by the first defendant in respect of the receipt of empty cover is not sufficient to prove the alleged telegram and letter. Even assuming that anything sent through the letter dated 23.04.2007, there is no evidence to show what are the said documents and what are the contents of those documents. Therefore, the plaintiff failed to prove that the second defendant had knowledge about the agreement between the plaintiff and the first defendant.

36. Moreover, this Court in the previous paragraphs while answering the substantial questions of law decided that the plaintiff failed to prove Exs.A1 and A2, thereby the plaintiff cannot question the sale deed executed between the first defendant and the second defendant which is prior to the suit. Further, the conduct of the plaintiff also has to be looked into to grant specific performance. In this case, the plaintiff has knowledge about the sale deed in favour of the second defendant prior to the date of filing of the suit, but at the time of filing suit, he had not impleaded the second defendant as one of the parties to the suit, whereas he filed the suit only as against the first defendant, thereafter, the plaintiff filed an application to implead the second defendant and the second



defendant was also impleaded. Therefore, the said conduct of the plaintiff creates serious doubt over the genuinity of the claim of the plaintiff.

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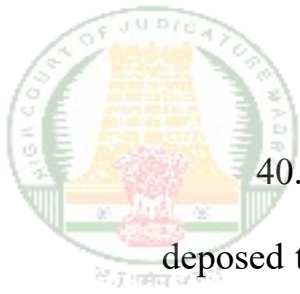
37. The evidence of DW2 clearly shows that he purchased the property based on the agreement and the said agreement was prior to the alleged agreement between the plaintiff and the first defendant. Once the sale deed is executed, the prior agreement has no significance and therefore, this Court without any hesitation comes to the conclusion that the second defendant is the bona fide purchaser for valuable consideration. But the Courts below failed to consider the above said aspects and merely on the context of non-production of agreement, which has no significance after execution of sale deed in favour of the plaintiff and there is a recital in the sale deed itself in respect of previous sale agreement, erroneously held that the non production of agreement is fatal to the defendant's case and wrongly placed the burden on the defendants.

38. At this juncture it is relevant to rely on judgments of Hon'ble Division Bench of this Court in ***M.M.S. Investments through its Managing Director and 4 others and V.Veerappan and 8 others reported in 2000 (I) CTC 538*** and Single Bench of this Court in ***K. Rajendran v. K. Chinnappa Gounder & another reported in 2014-4-L.W. 686***, wherein this Court held that a purchaser subsequent to an agreement for sale in favour of the plaintiff, but prior to filing of the suit, the bar of lis pendens would not apply and the subsequent alienee prior to the filing of the suit is concerned, there is nothing either under the



provisions of the Specific Relief Act or the Contract or any common law principle which would disentitle him to plead that the prior agreement of sale in favour of another person was illegal and not binding on him and he merely steps into the shoes of the vendor and is bound to suffer a decree as would be enforceable against his vendor. As per Section 19(b) of the Specific Relief Act, initial burden lies upon the subsequent purchaser and a mere denial would be sufficient to discharge the said burden as if the subsequent purchaser has denied the factum of existence of earlier contract by giving an evidence on oath and after discharging burden by subsequent purchaser the burden heavily lies upon the plaintiff to prove the subsequent purchaser has purchased the property in collusion after knowing existence of earlier agreement.

39. Learned counsel appearing for the respondent also relied on the judgment of Hon'ble Supreme Court in ***Dr.Govinddas and another vs. Shrimati Shantibai and others*** reported in 1973 3 SCC 418, wherein the Hon'ble Supreme Court held that quantum of proof required to discharge the onus of proof on a defendant claiming he had no notice of the previous agreement. Further the learned counsel has relied on the judgment of ***R.K.Mohammed Ubaidullah and others vs. Hajee C.Abdul Wahab*** reported in 2000 6 SCC 402, wherein the Hon'ble Court held that the subsequent purchaser must prove his bona fide, protection under S. 19(b) of bona fide purchaser for value without notice is nothing but an exception to general rule as the burden of proof on good faith is on the purchaser.



40. In the case on hand, the 2nd defendant was examined as DW2 and he deposed that he had no knowledge about the previous agreement of sale and he is a bonafide purchaser for valid consideration and he had sale agreement prior to the agreement in favour of the plaintiff. Therefore, the second defendant proved his case. Thereby, the Court below came to erroneous conclusion and hence, both the judgment and decree of the Courts below are unsustainable and the same are liable to be set aside.

41. As far as CMP.No.24780 of 2023 is concerned the second respondent in S.A.No.95 of 2015 has filed this application to receive the additional documents. According to the applicant, he is the plaintiff in the main suit and at the time of trial, he failed to produce the petition mentioned documents. The plaintiff was always ready and willing to perform his part of the contract as he had sufficient financial sources to purchase the property by paying the balance of such consideration. To prove his financial capacity, the additional documents are essential and the same have to be received as additional evidence. The respondents have not filed counter. However, the appellants did not produce those documents before the Trial Court and not even produced before the First Appellate Court. There are no reasons to satisfy the conditions under Order 41 Rule 27 of CPC to receive the said documents. Moreover, the respondents/defendants have not questioned the financial capacity of the appellant/plaintiff. The available documents and evidence are sufficient to decide the case effectively and the additional documents are not necessary to



decide the second appeal. Therefore this application has no merits and deserves to be dismissed.

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42. Further the learned counsel appearing for the respondent also relied on the following judgments: i) *Jogendra Ram vs. Phullan Milan* reported in 2014 2 SCC (Civ) 370, ii) *Naresh and others vs. Hemant and others* reported in 2022 18 SCC 802 and iii) *R.Aravindhana vs. K.R.S.Janakiraman* reported in 2015 6 CTC 593. On a careful perusal of those judgments it is clear that parameters for exercise of discretion are that (i) discretion given to Court is not arbitrary and it is guided by judgment of principles and it is capable of correction by a Court of appeal, Jurisdiction of High Court u/s. 100 is confined to substantial question of law only and the fact whether plaintiff was always ready and willing to perform his part of contract and entitled to a decree for specific performance of the contract, is not a question of law and concurrent findings of the Courts below beyond the said question of law can not be interfered. In the case on hand the plaintiff failed to prove the execution of promissory note and the suit agreement in accordance with law and the readiness and willingness is not a substantial question of law framed by this Court. The Courts below failed to appreciate the evidence in a proper perspective manner. Therefore the said case laws will not be applicable to the present facts of this case.



43. In view of the above said discussions and answers made in the substantial questions of law, these second appeals are allowed by setting aside the judgment and decree passed by the Trial Court in OS.No.67 of 2007 dated 20.04.2011 and confirmed by the First Appellate Court through common judgment and decree dated 07.12.2013 in AS.No.117 of 2011 and A.S.No.11 of 2012. CMP.No.24780 of 2023 is also dismissed. The Suit in O.S. No.67 of 2007 is dismissed. Considering the nature of suit, there is no order as to costs. Consequently, M.P.Nos.1 and 1 of 2015 are closed.

27-11-2025
[1/2]

Speaking Order : Yes / No
Index : Yes / No
pvs

To
1) V Additional District Judge, Coimbatore
2) The Sub Judge, Pollachi.
3. The Section Officer, VR Section,
High Court of Madras.



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SA.Nos. 58 & 95 of 2015



P. DHANABAL, J.

pvs

Pre-delivery Judgment in
SA.Nos. 58 & 95 of 2015

27-11-2025