



SA No. 988 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 03.03.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 988 of 2013

and

M.P.No.1 of 2013

1. Rathinavalli
2. Kannan
3. Mahalakshmi
4. Sathiswari
5. Mahadevi

.. Appellants

Versus

Sakthivel

.. Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.07.2013 made in A.S. No. 46 of 2011 on the file of the II Additional District Court, Salem reversing the judgment and decree dated 13.04.2010 made in O.S. No. 326 of 2005 on the file of the I Additional Sub Court, Salem.

For Appellants : Ms. K. Ponmani
for M/s.T.Kurugamanickam

For Respondent : No appearance

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 25.07.2013 passed in A.S. No. 46 of 2011 by the learned II Additional



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District Judge, Salem, reversing the judgment and decree dated 13.04.2010

passed in O.S. No. 326 of 2005 by the learned I Additional Sub Judge, Salem.

2. The suit in O.S. No. 326 of 2005 filed by the Respondent herein for the relief of specific performance was dismissed and against which, the Respondent filed A.S. No. 46 of 2011 before the First Appellate Court and it was allowed. Therefore, the present Second Appeal is filed by the Defendants in the suit.

3. For the sake of convenience, the parties shall be referred to as “Plaintiff” and “Defendants” as has been arrayed in the suit.

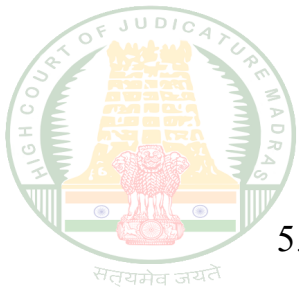
4. As per the plaint averments, the Plaintiff and one Madheswaran, who is the husband of the first Defendant, have entered into an agreement of sale dated 30.05.2002, for purchase of the plaint described property. The total sale consideration was fixed at Rs.2,00,000/- out of which the Plaintiff paid Rs.1,50,000/- towards advance and the balance payable is Rs.50,000/-. The agreement of sale dated 30.05.2002 was also registered on the file of Sub-Registrar, Vazhapady under document No. 1201 of 2002. After executing the agreement of sale, on 03.04.2003 the said Madheswaran approached the Plaintiff to grant him six months time for executing the sale deed, which the



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Plaintiff granted after making a due endorsement on the sale agreement dated 30.05.2002. Subsequently, on 10.09.2003, at the request of the said Madheswaran, the Plaintiff paid another sum of Rs.30,000/- and asked the said Madheswaran to execute the sale deed. This time also, the said Madheswaran sought another six months time and accordingly, after due endorsement in the agreement of sale itself, time was granted. Subsequently, on 10.03.2004, when the Plaintiff approached the said Madheswaran, he sought another time of six months. Suspecting that the said Madheswaran is evading and avoiding to execute the sale deed, the Plaintiff issued a notice dated 20.10.2004 calling upon the said Madheswaran to execute the sale deed, however, no reply was received. Therefore, another notice dated 04.03.2005 was issued calling upon the said Madheswaran to execute the sale deed on 28.03.2005. On receipt of the notice dated 04.03.2005, no reply was received and on enquiry, the Plaintiff came to know that the said Madheswaran died leaving behind the Defendants as his legal heirs. Therefore, the Plaintiff met the Defendants and sought to execute the sale deed, but they refused it. Therefore, on 25.07.2005, the Plaintiff sent a notice calling upon the Defendants to execute the sale deed in his favour on 17.08.2005. However, a reply notice dated 17.08.2005 was issued containing untenable averments. Therefore, the Plaintiff has instituted the suit.



5. On notice in the suit, the first Defendant filed a written statement

mainly contending that the agreement of sale dated 30.05.2002 is forged and her husband had never executed any such agreement. It is further stated that the husband of the first Defendant Madheswaran is a famous Astrologer in the locality and there was no necessity for him to sell the suit property for a sum of Rs.2 lakhs. Even otherwise, the market value of the suit property will not be less than Rs.6 lakhs on 30.05.2002 and therefore, the agreement of sale, agreeing to sell the suit property for Rs.2 lakhs is forged and fabricated. The husband of the first Defendant owns several lands measuring 30 acres and also buildings in Vazhapady Taluk and therefore, he would not have entered into any such agreement. The suit property was purchased by the father of the deceased Madheswaran namely Perumal Padayatchi along with his wife during the year 1979. As her husband Madheswaran died intestate on 01.05.2005, the Defendants are the owners of the suit property. The signatures in the agreement of sale dated 30.05.2002 are forged and fabricated and prayed for dismissal of the suit.

6. The trial Court framed as many as 6 issues for consideration and the parties went for trial. During trial, the Respondent-Plaintiff examined himself as PW1 and two other witnesses were examined as P.W-2 and P.W-3. The documents in support of the claim of the Plaintiff were marked as Ex.A-1



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to Ex.A-15. On behalf of the Defendants, the first Defendant examined herself as DW1 and Exs. B1 to B4 have been marked.

7. After full fledged trial, on assessment of evidence, the learned I Additional Sub Judge, Salem by Judgment dated 13.04.2010 dismissed the suit. Aggrieved by the dismissal of the suit, the Plaintiff preferred an Appeal in A.S. No. 46 of 2011 before the District Court. After hearing the arguments of the Appellants as well as the Respondent, in the appeal, the learned II Additional District Judge, Salem by Judgment dated 25.07.2013, set aside the Judgment of dismissal passed by the learned I Additional Sub Judge, Salem and decreed the suit for specific performance.

8. Aggrieved, the Defendants in the suit in O.S.No.326 of 2005 had preferred this Second Appeal seeking to set aside the judgment and decree passed in A.S.No.46 of 2011 by the learned II Additional District Judge, Salem, and to restore the judgment of the learned I Additional Sub Judge, Salem, dismissing the suit in O.S.No.326 of 2005.

9. At the time of admission, this Court had framed the following substantial questions of law:-

“1. When all the originals of the parent documents of title are in possession of the agreement-holder, will it not be an indication of the fact, that, Ex.A.1 agreement was not intended



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to be one for sale of property, but, has been executed as a security for a loan?

2. Even assuming, but, not conceding the validity of Ex.A1, agreement, whether the Respondent could be considered to be ready and willing to perform his part of the contract, when he has not filed the suit immediately, after issuance of Ex.A5, notice dated 20.10.2004, but, filed the suit 10 months later? And

3. Whether Ex.A1, agreement has been executed as a security for a loan obtained will be evident from the fact that, a three year time period is sought for payment of a meagre balance of Rs.50,000?"

10. Ms.K.Ponmani, learned Counsel appearing for the Appellants contended that the deceased Madheswaran was a leading Astrologer in Salem and there was no necessity for him to either avail a loan from the Plaintiff or to execute the Ex.A-1 Sale Agreement dated 30.05.2002. He also invited the attention to the recitals in Ex.A-1, agreement of sale, wherein it was written as “Swadheenam Illadha Kiraya Oppandham” viz., an agreement of sale without handing over the possession of the property. It is the further contention of the learned Counsel for the Appellants that had the Sale Agreement been genuine and *bona fide*, there would not have been three extensions which are nothing but artificial, fanciful and exaggerated. No prudent purchaser, after paying 80% of the sale amount, would grant three extensions for execution of sale in his favour. In this case, there were three endorsements made on the Sale Agreement granting three extensions. Further, the Plaintiff issued notice



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seeking to enforce the contract for sale of the property, but had not filed the suit after issuance of notice within three years. On the other hand, only after the death of Madheswaran, he issued another notice to the Legal Heirs of Madheswaran directing them to enforce the contract of sale of the property and when it was refused by the Defendants, he has instituted the instant suit for specific performance of the agreement of sale dated 30.05.2002.

11. It is the contention of the learned Counsel for the Appellants that the conduct of the Plaintiff in not enforcing the contract after issuing notice calling for the Defendants to execute the Sale Agreement itself has to be considered by the Court that it was executed not for sale of the property but only as a security. Even assuming but not conceding the validity of the Sale Agreement, whether the Plaintiff could be considered to be ready and willing to perform his part on the contract when he had not filed the suit immediately after the issuance of Ex.A-5 Notice dated 20.10.2004. The Sale Agreement had been executed as a security for the loan obtained and it will be evident from the fact that the three years time period was sought for the payment of balance meagre amount of Rs.50,000/-. The First Appellate Court, without taking note of the above facts, has erroneously reversed the well considered Judgment and Decree of the Trial Court. Accordingly, the learned Counsel for the Appellants seeks to set aside the Judgment and Decree passed by the



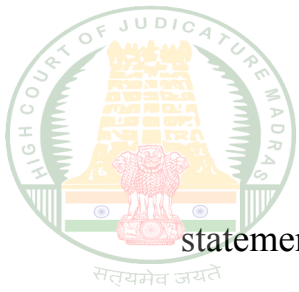
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learned II Additional District Judge, Salem and to restore the Judgment and decree of the learned I Additional Sub Judge, Salem by allowing this Second Appeal.

12. For the purpose of hearing the submissions of the learned Counsel for the Respondent/Plaintiff, the appeal was continuously adjourned. Even though the name of the Respondent/Plaintiff was printed in the causelist, he did not appear in person or engaged a Counsel to resist the Second Appeal. Therefore, the appeal was posted in the cause list under the caption 'for orders' continuously for a week. Since there was no representation for the Respondent/Plaintiff, the appeal is being disposed of on merits.

13. Heard Ms.K.Ponmani, learned Counsel for the Appellants and perused the documents made available, including the Judgment of the First Appellate Court as well as the Trial Court.

14. On perusal of the judgment of the trial Court and the first Appellate Court, the judgment of the First Appellate Court is found erroneous in not considering the plea of the Defendants in the written statement to the effect that there may not be any necessity for the husband of the first Defendant to execute any such agreement of sale. Further, it was contended in the written

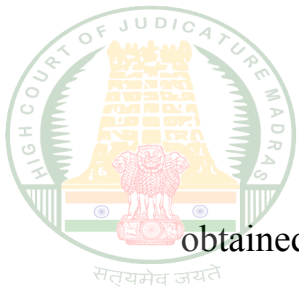


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statement that no prudent purchaser would grant three extension of time for payment of balance Rs.20,000/- after paying Rs.1,80,000/- and to get the sale deed executed. This according to the Defendants is artificial, exaggerated and fanciful. It was also contended that the endorsement made on the reverse of the sale agreement had not been proved before the trial Court through any acceptable evidence. The Plaintiff also did not prove the so called extension of time granted twice and the endorsements made thereof on the reverse of the sale agreement. Precisely, the claim of the Appellants/ Defendants in this Second Appeal is that the sale agreement has not been proved by the Plaintiff before the trial Court and the suit is barred by limitation. It was also the defence of the Defendants/Appellants that Ex.A-1 came into existence only as a security for the loan amount availed by the husband of the first Defendants and it could not have been executed with an intention to sell the suit property.

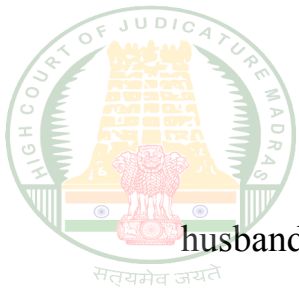
15. At the outset, it must be pointed out that the Plaint described property is not the self-acquired property of the deceased Madheswaran, husband of first Defendant. It was purchased by the father in law and mother in law of the first Defendant and after his death, as a son, the deceased Madheswaran become the owner of the property. It is needless to mention that even during the life time of Madheswaran, the Defendants also have a right over the said property. However, even as admitted by the Plaintiff, he has not



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obtained any signature or consent from the Defendants at the time of entering into the agreement of sale, Ex.A-1. The trial Court, on considering the entire evidence, rendered a specific finding that when Ex.A-1 is a registered agreement of sale, there should not be any endorsement over such agreement and if at all any extension of time is granted, it must also be registered. However, in this case, extension of time was granted twice notwithstanding the fact that Ex.A-1, agreement of sale was registered, and an endorsement of the deceased Madheswaran was obtained. P.W-3 is one of the attestors of Ex.A-1 and he feigned ignorance as to why the agreement of sale was entered into. P.W-2 is the attestor of Ex.A-3, endorsement and he also do not know the survey number or other particulars of the agreement, over which an endorsement was made. Therefore, it is relevant to point out that the Plaintiff ought to have obtained a consenting signature from one of the family members of Madheswaran instead of getting the attesting witness from his friends or relatives. Above all, the trial Court has rendered a finding that the signature of the deceased Madheswaran in Ex.A-4, endorsement, is different from page to page.

16. The trial Court pointed out the specific deposition of D.W-1, wife of the deceased Madheswaran and first Defendant in the suit in her cross-examination. It was her specific assertion that there is no necessity for her



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husband to either sell the suit property or to mortgage the property for availing a loan. She also deposed that the market value of the suit property will be Rs.6 lakhs and it is not known as to why her husband has to enter into an agreement only for Rs.2 lakhs. Therefore, the trial Court suspected the genuineness of Ex.A-1 and concluded that the Plaintiff has not proved his case with respect to the genuineness of Ex.A-1.

17. The claim of the Defendants is that Ex.A-1 could have came into existence only as a security and not with the intention to sell the property. Such a defence appears to be probable in as much as land measuring 3.37 acres was sought to be purchased for a mere Rs.2 lakhs. Above all, no prudent purchaser would wait for a long time after paying nearly 80% of the sale amount and what remains to be paid is only a sum of Rs.20,000/-. That apart, it is the definite case of the Defendants that all the parents document are with them. When the Plaintiff claims to have paid a sum of Rs.1,80,000/- it is surprising that he did not insist for production of the original documents of title to his possession. This is also one of the suspicious circumstance appearing in this case and this was also rightly pointed out by the trial Court while dismissing the suit.

18. The Plaintiff examined P.W-3, who attested Ex.A-1 agreement of



sale. He in his cross-examination has stated that he does not know what is the purpose for which Ex.A-1 was executed. He went on to add that it might have been executed as a security for any loan or for sale of property. Thus, the manner in which Ex.A-1 came to be executed creates a suspicious circumstances. The trial Court is wholly justified in not accepting Ex.A-1 as an agreement for sale of the property especially when the Plaintiff did not receive any of the parent documents or obtained the signature of family members of the deceased Madheswaran. Further, having got the agreement of sale, Ex.A-1 registered before the competent Registrar Office, the Plaintiff ought not to have granted extension of time. If extension of time is to be granted, it must also be endorsed before the competent Sub-Registrar and recorded. These flaws, looked into as a whole, would only creates suspicion in the manner in which the agreement of sale came to be executed.

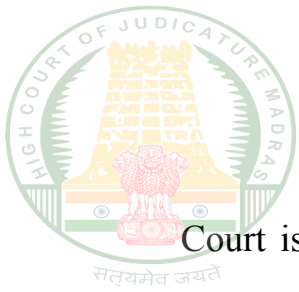
19. Yet another suspicious circumstance appearing in this case is that the Plaintiff, after instituting the suit, did not deposit the balance sale consideration. A normal prudent purchaser, who offered a major portion of the advance amount, would have deposited the amount into the Court to get a decree in his favour. When the Plaintiff had not deposited balance sale consideration, his claim that he was always ready and willing to perform his part of the contract cannot be considered.



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21. Yet another finding rendered by the First Appellate Court is that in Ex.A1, there is no recital to the effect that the deceased Madheswaran needs money and therefore he is selling the property. According to the first appellate Court, the absence of such a recital in the agreement of sale will not invalidate it especially when it was registered before the competent Sub-Registrar. The First Appellate Court, by adopting a hyper-technical approach and on surmises, upset the judgment and decree passed by the trial Court. The circumstances, taken note of by the trial Court are natural and there is infirmity or perversity in the judgment and decree passed by the First Appellate Court. Therefore, this

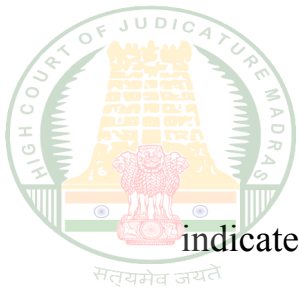


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Court is of the view that the judgment of the first Appellate Court is not on proper appreciation of evidence and law.

22. The learned Counsel for the Appellants placed reliance on the decision of the Honourable Supreme Court in the case of **Tejram vs. Patirambhau** reported in **AIR 1997 Supreme Court 2702**. In the said case, the purchaser was a money lender who paid Rs.48,000/- out of Rs.50,000/- and the balance sum of Rs.2,000/- was to be paid. However, he kept quiet for 3 years without paying the balance sum and thereafter filed the suit. The Honourable Supreme Court held that it is one of the doubtful conducts of the Plaintiff who kept quiet for the period to lapse and therefore directed the Defendant therein to pay the advance amount and the relief of specific performance was declined.

23. In yet another decision relied on by the learned Counsel for the Appellants in **Bhagirath vs. Ram Ratan** reported in **(2017) 6 MLJ 237 (SC)**. In that case, the Honourable Supreme Court held that the agreement was said to have been executed only for loan amount for treatment and the intention was not to sell the suit property for a consideration. Further, even after receipt of substantial consideration of the sale amount, the Plaintiff, who was a lawyer, waited for six years even for asking the son of the deceased to perform his part of the contract. It was therefore held that keeping silence for six years only

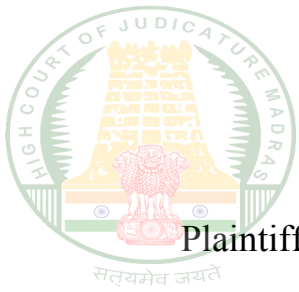


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indicates that the amount was paid only for treatment and not with an intention to sell the property.

24. The aforesaid decisions relied on by the learned Counsel for the Appellants squarely applies to the facts of this case. In this case also, the Plaintiff claims to have paid a sum of Rs.1,80,000/- out of Rs.2,00,000/- and at the time when the suit was instituted, he has not deposited the minuscule balance sum of Rs.20,000/- to prove his *bona fides*. Such an attitude on the part of the Plaintiff, who claims to have entered into Ex.A1 for purchasing the suit property is artificial and unnatural. Therefore, this conduct of the Plaintiff is unnatural and doubtful. In such circumstances, the trial Court is wholly justified in doubting the credibility of Ex.A1, agreement of sale.

25. Considering the fact that the husband of the first Defendant, Madheswaran, who is alleged to have entered into the sale agreement with the Plaintiff, who is not alive on the date of filing of the suit, the first Defendant as wife of the deceased Madheswaran disputed the claim of the Plaintiff by stating in the written statement that Madheswaran was an Astrologer in the locality and there was no necessity for him to sell the suit property for a meagre sum of Rs.2,00,000/- when the value of the property on the date of the alleged sale agreement was not less than Rs.6,00,000/-. She disputed the claim of the



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Plaintiff including the signature of the deceased Madheswaran. It is the specific case of the first Defendant, the wife of the deceased Madheswaran in the written statement that the signature of Madheswaran is forged and the sale agreement itself is a fraudulent one. In the light of the doubtful circumstances raised by the wife of the deceased Madheswaran, when the evidence of the Plaintiff was assessed by the learned Trial Judge, the learned trial Judge had pointed out that in spite of the fact that Rs.1,80,000/- was paid as per the claim of the Plaintiff and only Rs.20,000/- was the balance to be paid to the Defendant-1, the Plaintiff having filed the suit had not deposited the amount.

26. Ex.A-1 is the sale agreement relied by the Plaintiff. The sale agreement is a registered sale agreement registered as Doc. No.1201/2002 on the file of the Sub Registrar, Vazhapady, Salem District. As on the date of sale agreement, the sale price for the property was fixed at Rs.2,00,000 and Rs.1,50,000 was paid as advance. For the balance of sale consideration, 11 months time was fixed. Subsequently, as per the Plaintiff, Madheswaran husband of the first Defendant had sought extension of time by making endorsement on 03.04.2003 seeking 6 months further time from 30.04.2003. Again he is alleged to have made endorsement on 10.09.2003 receiving Rs.30,000/- and expressing his inability sought further 6 months time from 30.10.2003. The learned I Additional Sub Judge, Salem, on perusal of Ex.A-1



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to Ex.A-4 the sale agreement and the endorsement alleged to have been made by the deceased Madheswaran during his lifetime (husband of the first Defendant) had found suspicious circumstances stating that the signature of Madheswaran differs from page to page regarding endorsement made under Ex.A-2 to Ex.A-4. Also the learned I Additional Sub Judge had raised that as per the plaint averments the Plaintiff had paid Rs1,80,000/- and only balance of Rs.20,000/- remained to be paid. He had not deposited the amount. Also the Plaintiff had stated that the legal heirs of Madheswaran had made endorsement but it is not signed had caused suspicion in the minds of the Court in accepting the case of the Plaintiff. Along with that, the Plaintiff had not approached the Court immediately by filing the suit within time and depositing the balance of sale consideration of Rs.20,000/-.

27. The Defendant-1 wife of the deceased Madheswaran claimed that he had 30 acres of property and he was earning his livelihood as Astrologer. He was popular in the neighbourhood. The said 30 acres of land was purchased by his parents. Therefore, the legal heirs of Madheswaran had right over the properties. Madheswaran died intestate due to heart attack. There was no necessity for him to sell the property which would fetch Rs.6,00,000/- as per the alleged date of sale agreement. Therefore, the Plaintiff had forged the signature of Madheswaran and created a fraudulent deed. Therefore, the



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learned trial Judge had on assessment of the evidence and on perusal of the documents under Ex.A-1 to Ex.A-4 found out the suspicious circumstances in the difference in signature of Madheswaran from page to page and rejected the claim of the Plaintiff.

28. As per the documents filed by the Plaintiff under Ex.A-5 Advocate notice dated 20.10.2004 issued to Madheswaran which was received by Madheswaran under Ex.A-6. Again a notice was issued on 04.03.2005 and it was received by Madheswaran under Ex.A-8. Again a notice was issued under Ex.A-9 to the legal heirs of Madheswaran after the death of Madheswaran in which it is stated that the Plaintiff had approached the legal heirs directly, the legal heirs sought time to execute sale deed. Since they did not come forward to execute the sale deed, notice was issued under Ex.A-9. It was received by first Defendant under Ex.A-10. Ex.A-15 is the reply on behalf of the Defendants claiming that Madheswaran did not have any necessity to sell the property and claimed that the sale agreement itself is suspicious.

29. The suit in O.S.No.326 of 2005 was presented on 22.08.2005. The balance of sale consideration was not deposited to show his *bona fides*. When the Court has suspicion over the averments of the Plaintiff, on perusal of Ex.A-2 to Ex.A-4 endorsement, it is found to be suspicious. Therefore, the

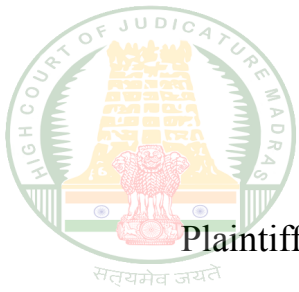


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learned trial Judge had rightly rejected the claim of the Plaintiff.

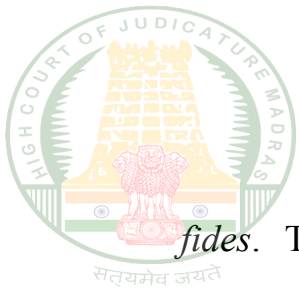
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30. The learned trial Judge rejected the claim of the Plaintiff and dismissed the suit. Aggrieved, the Plaintiff had approached the first Appellate Court, the learned II Additional District Judge, Salem by filing Appeal in A.S.No.46 of 2011. The learned II Additional District Judge, Salem, on reappraisal of evidence, failed to consider the circumstances creating doubt in the minds of the trial Judge. Even though it was a well reasoned judgment of the trial Judge, the learned II Additional District Judge against the principles governing appeals that if the trial Judge had on proper appreciation of evidence arrived at a conclusion, the conclusion arrived at by the trial Judge should be given due weightage on the ground that the trial Judge had the advantage of observing the demeanour of the witnesses which is not available to the Appellate Court. Therefore, the Appellate Court shall not reverse the findings of the trial Judge, if it is on proper appreciation of evidence. Contrary to such guidelines issued by the Hon'ble Supreme Court in the reported decisions in ***Betal Singh -vs- State of M.P.*** reported in ***(1996) 8 SCC 205*** and in ***V.Sejappa -Vs- State*** reported in ***2016 (12) SCC 150***, the learned II Additional District Judge, Salem, had reversed the findings of the learned trial Judge/learned I Additional Sub Judge, Salem, dismissing the suit in O.S.No.326 of 2005 of the Plaintiff on the suspicious circumstances available in the evidence of the



Plaintiff. The reasoning of the learned II Additional District Judge granting the decree for specific performance ignoring the suspicious circumstances raised by the wife of the deceased Madheswaran is found unacceptable on appreciation of evidence independently of the learned trial Judge which cannot be appreciated by this Court. When the Plaintiff claims that he had paid Rs.1,80,000/- and only Rs.20,000/- remains to be paid, what prevented him to file the suit at the earliest opportunity. Therefore, the filing of the Second Appeal by the Defendants is found justified.

31. If 80% of the amount had been paid to deceased Madheswaran, the husband of the first Defendant, what prevented the Plaintiff from taking parental documents from the said Madheswaran. It is not explained. What prevented the Plaintiff from depositing Rs.20,000/- immediately on filing of the suit to show his readiness and willingness to perform his part of contract. These are found unnatural from the point of view of an ordinary prudent man. The wife of the deceased Madheswaran in the written statement had claimed that the deceased Madheswaran possessed 30 acres of land which was in his possession from his ancestral properties. Therefore, those properties are joint family properties of the wife and children of deceased Madheswaran. If the sale agreement had been true, what prevented the Plaintiff from getting signature of the wife of the Madheswaran, first Defendant to show the *bona*

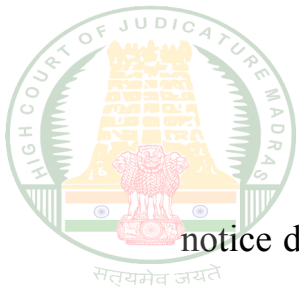


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fides. Those are the suspicious circumstances raised by the first Defendant in the written statement. Therefore, the learned trial Judge, first Additional Sub Judge, had on proper appreciation of evidence had arrived at a conclusion that the claim of the Plaintiff is not *bona fides* thereby rejected the relief of specific performance of contract for sale of property sought by the Plaintiff and dismissed the suit. While so, the learned II Additional District Judge, Salem, had ignored the valuable evidence against the Plaintiff raised by the Defendants, had mechanically granted the relief of specific performance.

32. In the light of the above discussion from paragraphs 14 to 31, **the Substantial Question of Law-1 is answered in favour of the Defendants and against the Plaintiff.** When all the originals of the parental documents of title are in possession of the agreement-holder, it is an indication that Ex.A-1 Sale agreement was not intended to be one for sale of property.

33. In the light of the above discussion from paragraphs 14 to 31 and on the same reasoning, **the Substantial Question of Law-2 is also answered in favour of the Defendants and against the Plaintiff.** Even assuming but not conceding the validity of Ex.A-1 Agreement, the Respondent in the Second Appeal could not be considered to be ready and willing to perform his part of the contract when he has not filed the suit immediately after issuance of Ex.A-5

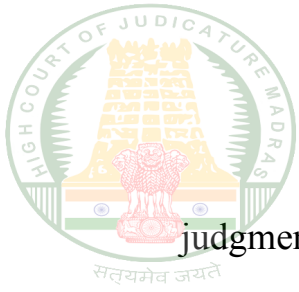


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notice dated 20.10.2004 but filed the suit ten months later. That indicates that the Plaintiff is aware of the fact that he was not ready and willing to perform his part of the contract.

34. In the light of the above discussion from paragraph 14 to 31, **the Substantial Question of Law-3 is also answered in favour of the Defendants and against the Plaintiff.** The execution of Ex.A-1 agreement itself is disputed by the wife of the deceased Madheswaran. It is her evidence that Madheswaran was in possession of 30 acres of land in which the wife and children of Madheswaran had share. The properties were purchased by the parents of Madheswaran. Therefore, without obtaining consent from the wife or children of Madheswaran, the execution of Ex.A-1 claimed by the Plaintiff is disputed by the Defendant-1 widow of Madheswaran. The Defendants claim that execution of Ex.A-1 is a forged and fraudulent one. The Plaintiff filing the suit after the death of Madheswaran and even after the notice under Ex.A-5 without filing the suit immediately and after ten months beyond the period of limitation and also without depositing the balance sale consideration are all suspicious circumstances against the Plaintiff.

In the result, **this Second Appeal is allowed.** The judgment of first Appellate Court in A.S.No.46 of 2011, dated 25.07.2013 is set aside and the



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judgment of the trial Court in O.S.No.326 of 2005, dated 13.04.2010 is

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restored. The suit filed by the Plaintiff is dismissed with costs.

03.03.2025

shl/srm

Index : Yes/No

Internet: Yes/No

Speaking/Non-speaking order



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To

1. The II Additional District Court,
Salem.
2. The I Additional Sub Court,
Salem.
3. The Section Officer,
V.R.Section,
High Court, Madras .



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SA No. 988 of 2013

SATHI KUMAR SUKUMARA KURUP, J

shl/srm

S.A.No.988 of 2013

03.03.2025