



A.S.No.124 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 15.07.2025

Pronounced on: 24.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.124 of 2022
& C.M.P.Nos.4752 & 4753 of 2022

1. D.Ramesh
S/O.Shri G.Durai.

2. D.Govindaraj
S/O.Shri G.Durai,
Both residing at No.35/2,
Baroda Street, West Mambalam,
Chennai 33.

... Appellants/Plaintiffs

/versus/

Balambal (died)
W/o.Shri Dhanapal,
No.36/6, Sarojini Street, T.Nagar,
Chennai – 600 017.

1. V.Gowri
W/O.Late D.Udhaya Kumar,

2. Balaji
S/O.Late D.Udhaya Kumar,
Respondents 1 & 2 residing at No.11, Vivekanantha Street,
T.Nagar, Chennai 17.

D.Nataraj (Died)

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3. D.Premkumari,
D/O.A.Dhanapal Pillai,
No.9/6, Mosque Street, Saidapet,
Chennai 15.

4. N.Prema,
5. N.Sankar,
6. S.Gowri,
7. S.Jayaprakash
Respondents 4 to 7 residing at
No.55/25, Katta Bomman Street,
Thiruvannamalai 606 601.

...Respondents/Defendants

Prayer:- Appeal Suit has been filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 24.03.2021, passed in O.S.No.12175 of 2010 on the file of IV Additional City Civil Court, Chennai.

For Appellants : Mr.Adaikala Arokiyaraj

For Respondents : Ms.S.P.Aarthi, for R2
: No appearance, for R1, R3 to R7

J U D G M E N T

The suit for specific performance to enforce an agreement of sale dated 17.08.2005, alleged to have been executed by one Udhaya Kumar in favour of the plaintiffs D.Ramesh and D.Govindaraj, both sons of G.Durai.



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2. The case of the plaintiffs is that their father, G.Durai and D.Udhaya

Kumar were known to each other. D.Udhaya Kumar, being the absolute owner of the suit property by virtue of a sale deed dated 04.04.2005 from Mr.S.Ranganathan, agreed to sell the property to the plaintiffs for a sum of Rs.20,00,000/- under an agreement dated 17.08.2005. According to the plaintiffs a sum of Rs.18,00,000/- was paid as part of the sale consideration on different dates. It is further alleged that the title documents and vacant possession of the suit property were handed over to the plaintiffs. Subsequently, Udhaya Kumar was diagnosed for cancer and was undergoing radiation therapy. Before he could execute the sale deed, he died on 23.12.2005. When the plaintiffs approached the legal heirs of Udhaya Kumar, who are defendants in the suit, they started evading to honour the agreement for sale executed by Udhaya Kumar. Notice through Lawyer was sent to the defendants 1 & 2 on 17.07.2006. Despite receipt of the notice, they did not reply. Hence, the plaintiffs have filed the suit in O.S.No.12175 of 2010 for specific performance.

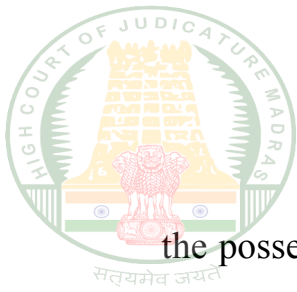
3. The defendants, in their written statement, denied the averments in the plaint. They specifically denied the alleged agreement for sale dated



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17.08.2005 for consideration of Rs.20,00,000/- and the alleged receipt of advance money by Udhaya Kumar. The plaintiffs never approached the defendants for execution of the sale deed nor the defendants assured them to execute the sale deed after the Tamil month of *Aadi*.

4. According to the defendants, Udhaya Kumar was working as an Advocate Clerk and looking after the registration work of the Office. Durai, the father of the plaintiffs, was a real estate broker and contractor running business in the name of M/s.Srinivas Housing Private Limited. Both Udhaya Kumar and Durai were jointly carrying on some business transactions. On 04.04.2005, Udhaya Kumar purchased the suit property for consideration of Rs.15,00,000/- and submitted the sale deed for registration. However, the registration was kept pending for enquiry for under valuation. The defendants assert that there is no necessity for Udhaya Kumar to sell the property and the alleged agreement for sale and part payments made in piecemeal are false. The endorsement alleged to have been made by said Udhaya Kumar not admitted. The plaint averments were denied as invented theory to grab the property by taking advantage of the death of Udhaya Kumar after prolonged illness of Durai. The suit property remains with



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the possession of the defendants and the title documents were not entrusted to the plaintiffs.

5. The trial Court, based on the pleadings framed the following issues:

- (i). Whether the plaintiff is entitled for the relief of execution of sale deed by the defendant or through Court after receiving the balance amount of Rs.2,00,000/- from the plaintiff?
- (ii). To what other relief?

6. To prove the case of the plaintiffs, 1st plaintiff was examined as P.W1 and nine documents were marked as Ex.A1 to Ex.A9. On the side of the defendants, Balaji, the third defendant and son of Udhaya Kumar, was examined as D.W1. No documents were produced by the defendants. The disputed documents were forwarded to the handwriting expert opinion and the forensic expert's opinion were marked as Ex.C1 to Ex.C10.



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7. After hearing the arguments on both sides, the trial Court, on considering the unregistered agreement for sale marked as Ex.A1 and the negative opinion of the forensic experts, after comparing the signature found in the suit agreement for sale dated 17.08.2005 with the admitted signature of Udhaya Kumar found in the title document dated 04.04.2005 along with the signature found in the passport of Udhaya Kumar held that Ex.A1 was not executed by Udhaya Kumar and being a forged document the Ex.A1 cannot be enforced. Consequently, the trial Court observed that the plaintiffs are liable to be prosecuted under criminal law.

8. Aggrieved by the dismissal of the suit, the present appeal is filed on the ground that the trial Court erred in relying upon Ex.C9 and Ex.C10, namely, the forensic report and the reasoning given by the expert without examining the handwriting expert. Hence, the finding of the trial Court is arbitrary and unsustainable. The expert opinion is not conclusive proof and it has to be corroborated by evidence. However, in this case, the trial Court without any corroboration, had accepted the expert opinion as conclusive proof.



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9. The Learned Counsel appearing for the appellants submitted that

the passing of consideration been admitted by Udhaya Kumar under Ex.A1 as well as the endorsement made on the back of Ex.A1. Furthermore, Ex.A2 also proves the passing of consideration. Taking advantage of his death, the legal heirs of Udhaya Kumar for making unjust enrichment, have denied the execution of agreement for sale as well as the endorsement. The trial Court ought to have been considered the bank entires of the account statements marked as Ex.A5 to Ex.A9 as proof of passing of consideration to about Rs.7,00,000/- and the oral evidence of the plaintiffs that the balance amount of Rs.11,00,000/- been paid in cash.

10. Per contra, the Learned Counsel appearing for the respondents submitted that the case of the plaintiffs was specifically denied by the defendants and it was proved that the document relied by the plaintiffs for specific performance is a forged document. It is further submitted that there was no necessity to summon the handwriting expert to give oral evidence about his written opinion. Being Scientific Expert of the State Forensic Laboratory, the report been admitted as per the law. If the plaintiffs/appellants had any doubt about the opinion of expert, it was open to them to summon and examined the



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expert to test the veracity of his report. Knowing fully well that the suit was filed based on a forged document, the plaintiffs did not take steps to examine the expert however, they find fault with the trial Court for not examining the expert.

11. Regarding the entries in the bank account, the Learned Counsel for the respondent submitted that the Court has examined each and every entry and found that the entries reflect only the name of Durai and not the names of the plaintiffs. There is no evidence to link that the payments made by Durai were on behalf of his sons in connection with the agreement for sale. Ex.A5 is the entries in the name of Amsa and Ex.A8, pertains to a term deposit in the name of Durai. Though the plaintiffs claim that a total sum of Rs.18,00,000/- was paid, the documents to show payments are only the bank entries which does not reveal any payment made by the plaintiffs.

12. Heard the rival submissions made Learned Counsel appearing on either side.

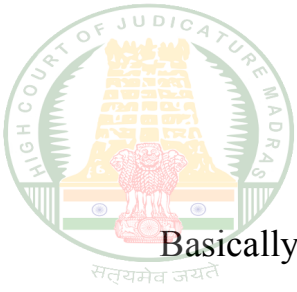


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13. The expert opinion which is marked as Court documents had clearly stated that the agreement for sale was not executed by Udhaya Kumar as alleged by the plaintiffs. No doubt, expert opinion is not a conclusive proof but, at the same time, it cannot be ignored in the absence of any contrary evidence. In this case, this Court finds no material or contrary evidence to reject the opinion of the expert.

14. The Learned Counsel for the appellants submitted that, without framing an issue regarding the genuineness of the agreement for sale, the trial Court ought not to have dismissed the suit solely on the ground of forgery.

15. It is true that, in this case, which is filed for specific performance, the Court below neither framed an issue regarding the plaintiffs' readiness and willingness nor framed an issue regarding the genuineness of the agreement for sale Ex.A1. The omission to frame these issues, in normal circumstances to be considered as a very crucial. However, in the present case, the defendants have denied the execution of the document in their written statement itself and have taken steps for forwarding the document for comparison and get expert opinion.

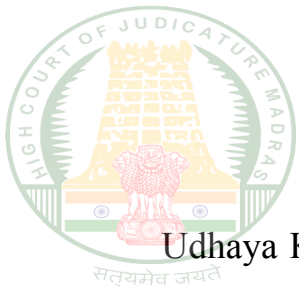


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Basically, the suit filed against the property of a deceased person, based on the document allegedly executed by a deceased person. In such circumstances, the legal heirs will have less information about the document, if they were not parties to the document. However, in this case, the mother of Udhaya Kumar had come forward to give evidence stating that her son used to inform her about all his transactions and he never whispered about the agreement for sale. It is also the case of the defendants that the suit property was purchased only in the month of April 2005 and the registration of the sale document was pending due to issue of undervaluation.

16. Under such circumstances, the plaintiffs, claims to have entered into an agreement with Udhaya Kumar on 17.08.2005 and have paid Rs.3,00,000/- by cash and further payments of Rs.15,00,000/- upto 12.12.2005, substantially by cash and few transactions by bank. However, what this Court able to see from the bank passbook entries is that these payments were not made by the plaintiffs.

17. As far as the endorsement on Ex.A1 and the letter alleged to have issued by Udhaya Kumar, the signatures purported to have been affixed by



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Udhaya Kumar found to be forged as per the opinion of the expert. The plaintiffs have not taken any steps to have a contra opinion to disbelieve the case of the defendants. In such circumstances, the trial Court has rightly dismissed the suit. In the absence of proof regarding execution of the agreement for sale and payment of consideration, the suit is liable to be dismissed. The trial Court has rightly dismissed the suit.

18. Accordingly, this *Appeal Suit is deserves to be dismissed*. With costs. Consequently, connected Miscellaneous Petitions are closed.

24.07.2025

Index :Yes/No.

Neutral citation :Yes/No.

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To,

1. The IV Additional City Civil Court, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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