



A.S.No.665 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2025

CORAM:

THE HON'BLE MR. JUSTICE M.JOTHIRAMAN

A.S.No.665 of 2019

Muniyappan

... Appellant / Plaintiff

vs.

V.Baskar

... Defendant / Respondent

Prayer: Appeal Suit filed under Order XL1 Rule 1 r/w. Section 96 of the Code of Civil Procedure Code, 1908 against the Judgment and Decree dated 03.01.2019 in O.S.No.155 of 2016, on the file of the II Additional District Judge, Salem.

For Appellant : Mrs.V.Srimathi
For Respondent : Mr.R.Muralidharan

JUDGMENT

M.JOTHIRAMAN, J.

The unsuccessful plaintiff has preferred this appeal. The Suit is filed for specific performance to execute the sale deed, after receiving the balance sale consideration of Rs.4,36,000/- as per the sale agreement dated 30.11.2012 or in the alternative to return the advance amount of Rs.10,00,000/- together with interest and costs. The Trial Court had dismissed the suit in entirety, against



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which the present appeal suit has been filed. The parties are referred to as per their rankings / litigative status before the Trial Court.

2. The brief case of the plaintiff is as follows:

2.1. The suit schedule property belonged to the defendant as per the Sale Deed dated 31.05.2004. The defendant intended to sell the suit property to the plaintiff for Rs.1000/- per sq.ft. and entered into a sale agreement on 30.11.2012. The total sale consideration was fixed at Rs.14,36,000/- and on the same day, the defendant received an amount of Rs.10,00,000/- towards advance. The period of completion of the sale was fixed as 11 months. The plaintiff is ready and willing to perform his part of contract, but the defendant evaded his part of contract under some pretext or another.

2.2. The plaintiff came to know that the defendant is making arrangement to sell the suit property in favour of 3rd parties and hence, the plaintiff issued a legal notice dated 25.04.2016, calling upon the defendant to execute the sale deed. The defendant sent a reply on 29.04.2016 denying the very sale agreement and stated that the agreement is a forged one and further he requested to send a copy of the



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agreement. Accordingly, the plaintiff had issued a rejoinder along with the xerox copy of the sale agreement on 04.05.2016. Thereafter, the defendant issued a reply on 17.05.2016 with false allegations. Hence, the suit.

3. Brief case of the defendant, as stated in the written statement, are as follows:

3.1. The defendant is the absolute owner of the suit property. It is false to state that the defendant intended to sell the suit property to the plaintiff and entered into a sale agreement dated 30.11.2012, as stated by the plaintiff. There was no agreement either written or oral between the plaintiff and the defendant in respect of the suit property. The defendant never received any money from the plaintiff as sale agreement. The sale agreement entered into between the plaintiff and the defendant is a forged and created one. The plaintiff has no means to purchase the suit property. The suit property was worth Rs.2,000/- per sq.ft. at the time of the alleged sale agreement.

3.2. In fact, the plaintiff was working as Deputy Superintendent of Police on the date of the alleged sale agreement. The defendant did not inform about the



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sale agreement to the head of his department and he had not even obtained permission to purchase the property in his name. The defendant preferred a complaint to the Commissioner of Police, Salem on 12.09.2016 and on his appearance, the plaintiff stated that he has filed the present suit and therefore, the police did not take any action. The sale agreement is a forged one and there is no cause of action and therefore, the suit may be dismissed with costs.

4. Based on the above pleadings, the Trial Court had framed the following issues for consideration:

- (1) Whether the suit sale agreement is true, valid and genuine one?
- (2) Whether the plaintiff is entitled to get the relief of specific performance as prayed for ?
- (3) Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?
- (4) To what other relief?

Subsequently, the Court below had framed the following additional issue also:

- (1) Whether the plaintiff is entitled to get alternative relief of return of advance amount ?



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5. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and one Rajendran and Sivaraj were examined as PWs.2 and 3 respectively and Exs.A1 to A14 were marked. On the side of the defendant, the defendant examined himself as DW1 and Exs.B1 to B11 were marked.

6. Findings of the Trial Court:

6.1. When the defendant denied that the sale agreement dated 30.11.2012 is a forged and fabricated one, burden of proof as to execution of the sale agreement lies only upon the plaintiff.

6.2. The evience of PWs.1 to 3 found to be contradictory to each other. PW1 has stated that the sale agreement was entered into at his residence. PW2 / Rajendran, who is the attestor to the sale agreement, has stated in his cross examination that only on the request made by the plaintiff, he went to his residence and before ever he reaches the house of the plaintiff, the agreement of sale was made ready and it was awaited for putting signatures and only after PW2 reaches the house of the plaintiff, it was signed by the parties. PW2 does not



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know as to what had happened between the plaintiff and the defendant before subscribing his signature as an attesor. PW2 also deposed that scribe also subscribed his signature only in the residence of the plaintiff.

6.3. PW3 - Sivaraj, who is the scribe of the sale agreement, in his cross examination deposed that on the date of preparation of the sale agreement, the plaintiff has brought a person to his house stating that both are going to enter into a sale agreement and the plaintiff and the other person, who had accompanied him subscribed their signature in the agreement and then it was handed over by PW3 to the plaintiff.

6.4. The evidence of PW3 is found totally inconsistent and contradictory to the evidence of PW2 as to the place of execution of the sale agreement and the presence of the plaintiff and the defendant together at the residence of the plaintiff.

6.5. The plaintiff was working as Deputy Superintendent of Police in Tamil Nadu on the date of the alleged sale agreement, but he has not obtained



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permission from the Government or from his higher officials to enter into Ex.A1 - sale agreement with the defendant.

6.6. The plaintiff has not shown the advance of Rs.10 lakhs paid to the defendant in his income tax returns. The plaintiff himself admitted that except from his job, he had no other source of income. Though the plaintiff pleaded that he borrowed loan from Cooperative Society, as well as from General Provident Fund and was keeping money in hands, however, the plaintiff has not produced any document to substantiate his evidence as to the means possessed by him on the date of the sale agreement.

6.7. The sale agreement was entered into on 30.11.2012, just before the implementation of the provisions of the Registration Amendment Act, 2012. Though 11 months period was fixed for completion of the sale, no notice was issued to the defendant before the expiry of the said 11 months period. The sale agreement was entered into on 30.11.2012, whereas Ex.A2 notice was issued only on 25.04.2016, nearly 3 1/2 years after the sale agreement.



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6.8. The reason for not sending the document to get the opinion of the handwriting expert on the side of the plaintiff, inspite of serious denial made on the side of the defendant, would also create reasonable doubt as to the signature of the defendant in the impugned sale agreement.

6.9. The plaintiff has to stand on his own legs and he cannot pick holes in defence and therefore, he is not entitled to take advantage of the weakness in defence.

6.10. While comparing the disputed signature of the defendant in Ex.A1 - Sale Agreement with his admitted signature in other documents, the Tribunal was unable to find that the disputed signatures vary in all respects i.e., shape, curves and angles.

Ultimately, the Trial Court holds that the suit sale agreement is not true and genuine and therefore, the plaintiff is not entitled to the relief of specific performance or return of advance amount.



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7. Mrs.V.Srimathi, learned counsel appearing for the appellant / plaintiff would submit that the Court below should have appreciated that the defendant has executed the sale agreement in the presence of respectable witnesses and it is not the case of the defendant that PWs.2 and 3 are falsely deposing against him. The plaintiff had issued a notice under Ex.A2 on 25.04.2016 and in response, the defendant had evasively denied the sale agreement. He had claimed that at the time of Ex.A3, he was not in Salem and had demanded for the copy of the agreement and in addition, the defendant has claimed inconsistently on the value of the property as well as the sale being needless. On 04.05.2016, the plaintiff complied with the demand by furnishing the copy of the sale agreement. Thereafter, the defendant issued Ex.A5- Reply Notice evasively denying his signature. Nowhere, the credibility of the witness had been challenged. The Trial Court should have seen that the certified copy of the sale deed dated 03.12.2004 under Ex.A6 was applied in the name of the defendant. The documents under Exs.A7, A8, A9, A11, A12, in particular Ex.A7, indicates that the defendant was in distress and he was in need of money.



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8. The learned counsel for the appellant would further submit that the allegations in the written statement are totally unfounded. The Trial Court should have seen that the defendant is known to the plaintiff and it would be evident from documents in Exs.A13 and A14, wherein it is admitted that for over a decade, they are known to each other. The Trial Court has committed an error in assuming that the evidence of PWs.2 and 3 are at variance, when it reality go hand-in-hand. The findings of the Court below that the document was not sent for expert opinion and the plaintiff has failed to establish Ex.A1, is therefore erroneous. The Court below should have seen that it is irrelevant for the defendant to demand upon the plaintiff whether he has secured permission or not from his employer. The fact that the permission has not been secured is not a ground to derail the contract. The Court below should have seen that no acceptable evidence let in by the defendant to show as to why the plaintiff should fabricate his signature and procure a document. In the absence of prior animosity or dishonest intention pleaded and proved, the Court below ought not to have accepted the case of the defendant.

9. *Per contra*, learned counsel appearing for the respondent/defendant



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would submit that the defendant never intended to sell the property and absolutely there was no need or necessity to sell the suit property. The defendant denied the execution of the sale agreement and also the receipt of any advance amount from the plaintiff. The plaintiff was working as Deputy Superintendent of Police and he has never informed about the so-called agreement to the authorities and not obtained any permission to purchase the property and the defendant has preferred a complaint to the Commissioner of Police, Salem dated 12.09.2016. The Trial Court rightly found that the evidence of PWs.1 to 3 are contradictory to each other. It was also found that PW1 has not obtained any permission from his higher officials before entering into Ex.A1- Sale Agreement and the same is violation of Service Conduct Rules. Ex.A1 is dated 30.11.2012, a stamp paper for Rs.20/-. The seal in the stamp paper shows as dated 2010. It does not disclose on what name it has been purchased.

10. The learned counsel for the respondent / defendant would further submit that the plaintiff has not taken any steps to send Ex.A1 to handwriting expert to prove that the Sale Agreement is genuine. The plaintiff has not made any suggestion to DW1 to show that the signature is his handwriting. The Court



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below, on the basis of oral and documentary evidence, held that Ex.A1-Sale Agreement has not been proved and also denied the relief of alternative relief and therefore, prayed that there is no reason to interfere with the impugned judgment and decree passed by the trial Court. To strengthen his contentions, the learned counsel for the respondent has relied upon the decision of this Court in ***S.Murugesan v. V.Vijay Sai and Others [CDJ 2007 MHC 105]***, to show that Section 73 of the Indian Evidence Act contemplates that the Court may compare the disputed signature, writing or seal of a person with the admitted signature, writings or seals which have been admitted or proved to the satisfaction of the Court to have been written or made by that person. Thus, the trial Court, after comparison of documents, came to the conclusion that the signatures found in Ex.A1 - Sale Agreement and the signatures found in other admitted documents are not one and the same and they are not tallying with the admitted signature of the defendant.

11. In yet another judgment of the Hon'ble High Court of Punjab and Haryana in the case of ***Jagtar Singh v. Gurdev Kaur & Guro [2024 PH HC 087207]*** to show that service and conduct rules mandates that the police officials



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must obtain prior permission from higher authorities before acquiring / procuring any immovable property.

12. The points for determination arises in this appeal are as follows:

(1) Whether the suit Sale Agreement is true, valid and genuine one ?

(2) Whether the plaintiff is entitled to get the relief of Specific Performance as prayed for or in the alternative to get refund of the advance amount ?

13. According to the plaintiff, the defendant agreed to sell the suit schedule property and an unregistered Sale Agreement was entered into between the plaintiff and the defendant and on the same day, a sum of Rs.10,00,000/- was paid to the defendant as advance and 11 months period was fixed for completion of the sale. The total sale consideration was fixed at Rs.14,36,000/-.

14. It is the specific case of the defendant that he deny the very execution of the Sale Agreement dated 30.11.2012 and receipt of advance amount of Rs.10,00,000/- as alleged and 11 months period fixed for completion of sale. There was no agreement entered into between the plaintiff and the defendant and the suit Sale Agreement is a forged and created one. In order to prove the



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execution of Ex.A1-Sale Agreement dated 30.11.2012, the plaintiff has relied upon the evidence of PW2 - Attesting witness and the evidence of PW3- Scribe of the Sale Agreement and the defendant denies his signature on the said sale agreement.

15. The initial burden of proof lies on the plaintiff to prove the signature on the Sale Agreement is genuine and belongs to the defendant. The burden is on the plaintiff, who is relying upon the Sale Agreement, to prove as genuine. The plaintiff can get an handwriting opinion to compare the disputed signature with the defendant admitted signature. The plaintiff may also rely on the testimonies of witnesss, namely attesting witness to prove the signature. The plaintiff can also produce other positive list of documents containing the defendant signature, to demonstrate the consistency with the disputed signature. If the plaintiff produce evidence to prove the signature, the defendant may give rebuttal evidence to challenge the plaintiff's claim.

16. A perusal of Ex.A1- Sale Agreement shows that the total sale



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consideration was arrived at Rs.14,36,000/- and the defendant received an amount of Rs.10,00,000/- as advance on the date of execution of the sale agreement on 30.11.2012. It is seen that a sum of Rs.1,000/- per sq.ft. was fixed. The witnesses who have signed in the sale agreement are (1) A.Rajendran, S/o.Arunachalam, (2) Murugan Mudali s/o. A. Singara Mudali. It is seen that one Sivaraj / PW3 has prepared the Sale Agreement and he has also signed in the agreement.

17. PW1, in the cross examination, deposed that he has not shown the advance amount paid to the defendant in his Income Tax Statement. PW1 admits that sale has to be completed within 11 months period and within that period, he has not sent any legal notice. He orally demanded to execute sale deed. He admits that after lapse of more than 2 1/2 years, he sent a legal notice under Ex.A2 dated 25.04.2016 to the defendant. He admits in his proof affidavit or in the plaint that he has not mentioned that the defendant is a friend of him. He states that one Rajendran and one S.Murugesha Mudali have signed as a witness in the Sale Agreement. The defendant has lodged a police complaint against him in the year 2016. He admits that he has not taken steps to send the Sale Agreement to get handwriting expert opinion.



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18. PW2-Rajendran, one of the attesting witness, deposed that on the request made by the plaintiff, he went to his house and before ever he reaches the house of the plaintiff, the Sale Agreement was made ready and only after PW2 reaches the house of the plaintiff, it was signed by the parties. He has stated that he did not know what has happened between the plaintiff and the defendant before subscribing the signature as Attestor. At the time of subscribing his signature, it was around 8.00 or 8.30 p.m. The scribe also subscribed his signature in the Agreement. The plaintiff paid a sum of Rs.10,00,000/- as advance, which was kept in his house.

19. PW3- Sivaraj / Scribe of A1/Sale Agreement stated in his cross examination that the plaintiff had brought a person to his house and stated that both are going to enter into a Sale Agreement and the plaintiff and the other person who had accompanied him subscribed their signature in the agreement and then it was handed over by PW3 to the plaintiff. He further stated that he has never knew about the defendant before that. He deposed that around 8.00 p.m., the Sale Agreement was entered into between the parties. He also deposed that he



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has prepared the Sale Agreement in his house.

20. The evidence of PW2 and PW3 elucidated during their cross examination reveals that the plaintiff and the defendant have entered into the Sale Agreement and they have witnessed the document by subscribing their signatures as Attestor and Scribe. The evidence of PW2 is supporting the case of the plaintiff to the effect that the plaintiff has brought the amount from his house and paid to the defendant as advance. The evidence of PW2 and PW3 are supporting to the case of the plaintiff with regard to the place of execution of the Sale Agreement, presence of the plaintiff and the defendant together at the residence of the plaintiff as well as the time of execution of the Sale Agreement.

21. According to the plaintiff, when the defendant had taken the plea of forgery, it is for him to prove the same through sufficient evidence, but he has not taken any steps to send the document for expert opinion and therefore, it can be concluded that the defence taken by him is false. The reason for non-sending the document for expert opinion on the side of the defendant inspite of denial made by him would also create reasonable doubt as to the conduct of the defendant. The



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defendant has chosen to lodge a police complaint dated 12.09.2016, only after receiving the legal notice from the plaintiff under Ex.A2 dated 25.04.2016.

22. The plaintiff has relied upon Exs.A13 and A14 / photographs to show the presence of the defendant in the function conducted in the family of the plaintiff. The defendant, in the cross examination, initially denied that he never knew the plaintiff, whereas he categorically admitted that he has attended the plaintiff's daughter puberty function and he has participated and he has handed over the gifts/Seervarisai articles to the plaintiff's daughter in the said function.

23. At this juncture, it is relevant to refer to Sections 101 to 103 of the Indian Evidence Act, 1872, which is extracted hereunder:

Section 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.

Section 102. On whom burden of proof lies. — The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 103. Burden of proof as to particular fact. — The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law



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that the proof of that fact shall lie on any particular person.

24. The evidence of PWs.1 to 3, shows the execution of the Sale Agreement. The initial burden lies on the plaintiff has been discharged. Then the onus is on the side of the defendant to prove that the so-called Sale Agreement is a forged and created one. The defendant has not taken any steps to get handwriting expert opinion and also not chosen to place any documentary evidence.

25. The contention of the defendant is that the plaintiff was working as Deputy Superintendent of Police at the time of the alleged Sale Agreement and he has not obtained permission from his appointing authority, which would prove that the Sale Agreement is a created one, is not an acceptable one. It is not in dispute that the plaintiff was working as Deputy Superintendent of Police in the Tamilnadu police on the date of execution of Sale Agreement under Ex.A1. The contention of the defendant that the plaintiff did not possess means to give advance for execution of Sale Agreement, is also unacceptable. It is also the contention of the defendant that the Sale Agreement was dated 30.11.2012, just before the implementation of the provisions of the Registration Amendment Act, 2012 is also not acceptable. The evidence of PWs.2 and 3 supported the case of



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the plaintiff that the suit Sale Agreement is true and genuine. The findings of the Court below that the suit Sale Agreement is not true and genuine is liable to be set aside.

26. It is pertinent to mention that Section 16(C) of the Specific Relief Act, 1963 mandates that the plaintiff has to establish that he/she was always ready and willing to perform the terms of the contract. In the plaint, the plaintiff himself must allege that he was ready and willing to perform his part of contract from the date of the agreement till the date of institution of the suit, as laid down by the Hon'ble Apex Court in ***Sandhyarani v. Sudharani [(1978) 2 SCC 116]***.

27. The suit sale agreement was entered into on 30.11.2012 and the legal notice under Ex.A2 dated 25.04.2016, came to be issued by the plaintiff after a lapse of more than 3 1/2 years, demanding execution of the sale deed, which would show that the plaintiff was not ready and willing to perform his part of contract. The contract must be performed within a reasonable time as observed by the Hon'ble Supreme Court in the case of ***K.S.Vidyanandam and Ors v. Vairavan [(1997) 3 SCC 1]***.



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28. It is relevant to cite the judgment of the Hon'ble Apex Court in the case of ***Urvashi Aggarwal (since deceased) through L.Rs. and Ors. v. Kushagr Ansal and Ors. [AIR 2019 SC 1280]***, wherein it has been held that even in cases where it is not possible to order specific performance, the plaintiff is entitled for refund of advance amount in a suit for specific performance. The plaintiff has not chosen to deposit the balance sale consideration before the Trial Court. Though the plaintiff pleaded that he is ready and willing to perform his contract, but the defendant evaded his part of contract under some pretext or another. In order to prove the above said facts, the plaintiff has not filed any document and not chosen to examine any witness.

29. As per Section 16C of the Specific Relief Act, the plaintiff must exhibit her readiness and willingness as per the prepositions laid down in the decision of the Hon'ble Apex Court reported in ***R.Shama Naik v. G.Srinivasiah, [2024 INSC 927]***, wherein it was held that even though the sale agreement is a valid document, if the contention of the sale consideration set out therein is inadequate, it would of not evidence.



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30. At this juncture, it is relevant to mention that the Hon'ble Supreme Court in the decision in *Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs [(2005) 3 SCC 738]* has considered the term "unjust enrichment], wherein it has been held that "unjust enrichment" means retention of a benefit by a person that is unjust or inequitable and "unjust enrichment" occurs when a person retains money or benefits such as justice, equity and good conscience belong to someone else.

31. In light of the above discussions, this Court is of the view that the defendant is bound to refund the advance amount received by him. The plaintiff is entitled to the alternative relief of getting refund of the advance amount. There are merits in this appeal. The judgment and decree of the Court below is liable to be set aside. The points are answered accordingly.

32. In the result, this appeal suit is allowed in part. The judgment and decree dated 03.01.2019 made in O.S.No.155 of 2016 on the file of the II Additional District Court at Salem is modified to the effect that the suit is



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dismissed for the relief of specific performance and the plaintiff is entitled to get the refund of Rs.10,00,000/- from the defendant. The defendant is directed to pay the advance amount of Rs.10,00,000/- together with interest @ 6% p.a. from the date of filing of the suit till the date of realisation. No costs.

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Intex : Yes/No
Internet : Yes/No
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To
II Additional District Judge,
Salem.

M.JOTHIRAMAN, J.

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