

S.A.(MD)No.223 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.223 of 2018

Thangathai

... Appellant/Appellant/

Defendant

2.Hemalatha

3.Raja

4.Thiketha

5.Devitha

6.Mutheesh

... Appellants

(Appellants 2 to 6 are brought on record
as LR's of the deceased sole appellant
vide order dated 01.02.2022 made in
C.M.P.(MD)Nos.97 and 98 of 2022)

vs

Jeyachandran

...Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 03.07.2017, passed in A.S.No.8 of 2014, on the file of the Additional District and Sessions Court, Theni at Periyakulam, by confirming the judgment and decree, dated 12.11.2013, passed in O.S.No.15 of 2010, on the file of the Subordinate Court, Uthamapalayam.



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For Appellants : Mr.K.Guhan

For Respondent : Mr.M.Karuppasamy Pandian

JUDGMENT

The defendant is before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree, dated 03.07.2017, in A.S.No.8 of 2014, on the file of Additional District and Sessions Court, Periyakulam, confirming the judgment and decree, dated 12.11.2013, in O.S.No.15 of 2010, on the file of the Subordinate Court, Uthamapalayam.

3. For the sake of convenience, the parties are referred to as per the litigative status before the trial Court.

4. It is the case of the plaintiff that the defendant is the absolute owner of the suit property. The plaintiff had entered into a sale agreement with the defendant on 20.07.2009 agreeing to purchase the suit property for



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a sale consideration of Rs.1,50,000/- and an advance of Rs.1,00,000/- was paid on the same day. The balance sale consideration of Rs.50,000/- is to be paid at the time of completion of the sale. Time period of one year was fixed for completing the sale transaction. It is the further case of the plaintiff that he was ready with the balance sale consideration and willing to get the sale deed executed in his favour and since several requests made by the plaintiff asking the defendant to come and complete the sale by receiving the balance sale consideration did not materialise, he issued a legal notice on 16.02.2010, calling upon the defendant to be present in the Sub-Registrar office at Cumbum on 25.02.2010. The plaintiff was waiting in the Sub-Registrar office on 25.02.2010 with the balance sale consideration of Rs.50,000/- and complete the sale. However, the defendant did not turn up. But the defendant has issued a reply on 18.02.2010 with false averments denying the sale agreement. As such, the plaintiff has come with the suit for specific performance.

5. The defendant resisted the suit disputing the sale agreement. According to the defendant, since she was in need of money for her family expenses, she had availed a loan from the plaintiff for a sum of



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Rs.1,00,000/-, agreeing to repay with interest. The plaintiff is carrying on finance business by giving money at higher rate of interest. Since the defendant is an illiterate, the plaintiff had created a fabricated document by using the document given for receipt of loan, as a sale agreement. Even though, the defendant sought for a sum of Rs.1,00,000/-, only a sum of Rs.70,000/- was given and further, a sum of Rs.5,000/- as interest for four months totally Rs.20,000/- has been paid. Since there was a default in payment of a month's interest, the plaintiff had created the fabricated sale agreement and had filed the suit and thereby sought for dismissal of the suit.

6. During trial, the plaintiff examined himself as P.W.1 and the attester in Ex.A.1 as P.W.2 and the scribe as P.W.3 and marked Exhibits A.1 to A.4. On the side of the defendant, the defendant had examined herself as D.W.1 and her daughter, who is another attester in Ex.A.1 as D.W.2, but has not marked any documents.

7. The trial Court, after analysing the evidences, came to the conclusion that the sale agreement in Ex.A.1 has been proved by the examination of attester and the scribe as P.W.2 and P.W.3. The trial Court



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also came to the conclusion that the plaintiff had proved his readiness and willingness in performing his part of the contract and when the defendant had not disputed the signatures in Ex.A.1, had only sought to contend that it is a document executed for a loan transaction, but however had failed to establish such a claim. The suit came to be decreed. On appeal, the lower appellate Court re-appraises the evidences and on finding that when the defendant claimed that Rs.20,000/- was paid towards interest, no receipts or documents have been marked and the non-availability of such receipts, has also been admitted by D.W.1 and further on concluding that since D.W.2 – daughter of the defendant, who is also an attester, had admitted that she is a literate and well educated, disbelieved the claim of the defendant that they were not aware of the contents in Ex.A.1 and dismissed the appeal, confirming the judgment and decree of the trial Court. Assailing the concurrent findings of fact, the defendant had preferred the above Second Appeal.

8. The Second Appeal has not been admitted and only notice has been ordered to the respondent.

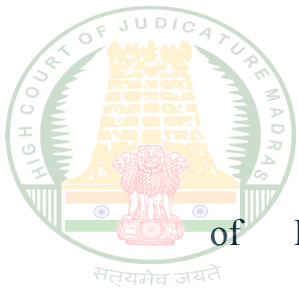


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9. The learned Counsel appearing for the appellants argued that the defendant being an illiterate person, had availed the loan from the plaintiff and the documents have been misused by preparing the sale agreement and as such, Ex.A.1 is not executed towards the sale transaction. It is his further contention that when D.W.2, who is also an attester in Ex.A.1, did not support the case of the plaintiff, the Courts below had erroneously come to the conclusion that the sale agreement in Ex.A.1 stood proved. The learned Counsel further contended that when a sum of Rs.1,00,000/- was given as advance, there was no reason for the plaintiff to take seven months time for paying the balance sale consideration, even though the time of one year is fixed in the agreement. The learned Counsel further submitted that when the onus was on the plaintiff to prove, the Courts below have relied on the weaknesses in the case of the defendant stating that the receipts towards interest has not been produced and therefore, the findings rendered are perverse and sought for interference of this Court.

10. Contending contra, the learned Counsel for the respondent argued that the plaintiff had proved the sale agreement in Ex.A.1 by the evidence

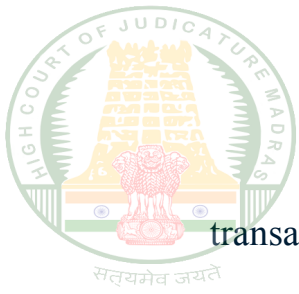


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of P.W.1 to P.W.3. When the sale agreement stands proved and the defendant had not disputed the signature, however contends that it is towards loan transaction, the onus is on the defendant to prove otherwise. The defendant had miserably failed to let in any evidence in this regard and the plaintiff having proved the agreement and also established that he was ready and willing to complete the sale, the Courts below have rightly decreed the suit, which needs no interference and sought for dismissal of the appeal.

11. Heard the rival submissions and perused the materials available on record.

12. Admittedly, the defendant is the owner of the suit property. The plaintiff had filed the suit for specific performance, based on the sale agreement executed on 20.07.2009 in Ex.A.1. A perusal of the sale agreement reveals that a sale consideration of Rs.1,50,000/- has been fixed and an advance amount of Rs.1,00,000/- has been paid on the date of execution of Ex.A.1. The time period of one year has been fixed for paying the balance sale consideration of Rs.50,000/- and complete the sale



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transaction. Admittedly, as per the sale agreement, the time period of one year expires only on 19.07.2010.

13. The plaintiff, even though had sought the defendant to receive the balance sale consideration and execute the sale deed, did not come forward, had issued a legal notice on 16.02.2010, in Ex.A.2. As per notice in Ex.A.2, the plaintiff has called upon the defendant to be present in the Sub-Registrar office on 25.02.2010, to receive the balance sale consideration and execute the sale deed. In this regard, the plaintiff had been present in the Sub-Registrar office on 25.02.2010 as intimated through the legal notice in Ex.A.2 and the defendant had not turned up to execute the sale deed. To prove that the plaintiff was ready and willing and he was present in the Sub-Registrar office along with the balance sale consideration, he had applied and got the encumbrance certificate on that day and the same has been filed in Ex.A.4. Further it has to be noted that immediately since the defendant had not turned up, the plaintiff had filed the suit on 09.03.2010 itself and had also deposited the balance sale consideration in the Court. From the documents filed by the plaintiff, it is evident that the sale agreement in Ex.A.1, which has been executed on 20.07.2009 and inspite of legal notice



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being issued, the defendant did not turn up to complete the sale deed on 25.02.2010. The plaintiff had obtained the encumbrance certificate and immediately filed the suit and made the deposit and thereby the plaintiff had established that he was ready and willing to perform his part of contract.

14. Further, to prove the sale agreement in Ex.A.1, the plaintiff has examined himself as P.W.1 and the attesor in the agreement as P.W.2 and also the scribe of the agreement as P.W.3. P.W.2 had supported the case of the plaintiff and had given evidence to the effect that the sale agreement in Ex.A.1 has been executed on payment of advance amount, agreeing to convey the suit property by the defendant. P.W.3 – scribe had also given a cogent evidence in line with P.W.2 and also P.W.1 and had stated that he had read over the agreement to the defendant and the defendant agreeing to the same, had signed the agreement in Ex.A.1 and thereby the sale agreement was executed on payment of advance. From the evidence of P.W.1 to P.W.3, the sale agreement in Ex.A.1 stands proved.

15. It is the only case of the defendant that even though the signature in the agreement in Ex.A.1 is not disputed, but however, it has been given



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only for the purpose of availing loan. The defendant has contended that she had availed a loan of Rs.1,00,000/- from the plaintiff, out of which only a sum of Rs.70,000/- was given and after receiving the loan amount, the defendant had paid interest at Rs.5,000/- per month for four months and totally a sum of Rs.20,000/- has been paid to the plaintiff. Even though the defendant had made such a claim, as rightly noted down by the lower appellate Court, the defendant has not produced any receipts or examined anyone to prove that this sum of Rs.20,000/- has been paid by the defendant as interest to the plaintiff. Further when the onus was on the defendant to establish the fact that the document in Ex.A.1 was executed towards loan transaction, when particularly the defendant had admitted the signature, the defendant miserably failed to produce any evidence in this regard.

16. Further it is the specific case of the defendant that since she was an illiterate, she was not aware of the contents in the agreement in Ex.A.1, her daughter, who was also an attesor in Ex.A.1, has been examined as D.W.2. D.W.2, in her evidence, had admitted that she is a literate and well educated and therefore, when D.W.2 had herself stood as an attesor witnessing the sale agreement in Ex.A.1, there was no possibility for the



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plaintiff for having created the sale agreement in Ex.A.1. The defence that the defendant was not aware of the contents, is falsified by the fact of admission of D.W.2. When the plaintiff had proved the sale agreement in Ex.A.1 through the witnesses of P.W.1 to P.W.3 and also has proved his readiness and willingness in completing the same in marking the documents in Exs.A.2 and A.4 and further immediately on issuance of the legal notice, the plaintiff had filed the suit and had also deposited the balance sale consideration in the Court, the defendant, who had denied the agreement and contended that it is towards the loan transaction, had not established the claim made by her.

17. The Courts below had rightly come to the conclusion that the plaintiff having proved the agreement in Ex.A.1, is entitled for the decree of specific performance and had rightly decreed the suit. This Court does not find any illegality or perversity in the concurrent findings arrived at by the Courts below. No question of law, much less a substantial question of law arises for consideration in the Second Appeal.



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WEB COPY 18. Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs.

22.07.2025

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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To

- 1.The Additional District and Sessions Court, Theni at Periyakulam.
- 2.The Subordinate Court, Uthamapalayam
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgment made in
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