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SA(MD)No.332 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.08.2025

Pronounced on : 10.09.2025

CORAM

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

S.A.(MD)No.332 of 2018

and

C.M.P.(MD)No.9345 of 2018

Mangammal

W/o.V.Balakrishnan

Iswariam Illam, Co-operative Nagar,

Seelapadi Village, Dindigul Town. ... Appellant/1st Respondent /Plaintiff

Vs.

Thiru.Rajendran

S/o.5ubba Naidu

D.No.13 B, East Govindapuram,

Seelapadi Village,

Dindigul Town.

... 1st Respondent/1st Appellant/5th Defendant

2. Tmt.Lakshmi,

W/o.Late.R.Jeganathan

3. Selvi.Kamaladharani

D/o.Late.R.Jeganathan

4. Selvi Dhivya

D/o. Late.R.Jeganathan

(Respondents 2 to 4 are residing at

Rajakkapatti (Opp.to Ayyappa Auto Store),

Chetinaickenpatti Village, Dindigul Taluk). ... Respondents 2to 4/

Respondents 2 to 4/

Defendants 2 to 4



SA(MD)No.332 of 2018

PRAYER in SA: The Second Appeal filed under Section 100 C.P.C., to call for the records and set aside the judgement and decree dated 21.11.2017 in A.S.No.31 of 2014 on the file of the Principal District Court, Dindigul, reversing the judgement decree dated 06.03.2014 in O.S.No.67 of 1998 on the file of Additional Subordinate Judge, Dindigul and allow the second appeal with costs throughout and pass such other suitable orders and thereby render justice.

PRAYER in CMP:

To pass an order of an Interim Injunction restrain the respondents from alienating or encumbering the property subject matter of O.S.No.67 of 1998 on the file of Additional Subordinate Judge, Dindigul and A.S.No.31 of 2014 on the file of Principal District Judge, Dindigul, pending disposal of this SA(MD)No.332 of 2018 and thereby render justice.

APPEARANCE OF PARTIES:

For Appellant : Mr.S.H.Lakshmi Shankar, Advocate
Mr.S.Ramachandra Paradeep, Advocate

For Respondents : Mr.B.Babu, Advocate
for Mr.N.S.Karthikeyan, Advocate for R1

: No appearance for R2 to R4

JUDGMENT

This Second Appeal is directed against the judgment and decree dated 21.11.2017 passed in A.S. No. 31 of 2014 by the learned Principal District Judge, Dindigul, whereby the judgment and decree dated 06.03.2014 made in



O.S. No. 67 of 1998 on the file of the learned Additional Sub Judge, Dindigul,
was reversed.

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2. On 23.10.2018, this Court while admitting the second appeal framed
the following question of law as arising for determination in this appeal:

“ Is the conclusion of the First Appellate Court that the signature in the suit agreement is not proved to be that of the first defendant, sustainable in law in view of the consistent case of the defendant that the first defendant signed and gave blank documents which have been misused?

Whether the conclusion of the First Appellate Court raising a doubt about the agreement in view of the stipulation of 2 ½ years time for completing the sale transaction sustainable, especially in the light of the answers given by PW1 and PW2 explaining the reason for such a time period which was not even disputed by way of suggestion?

Whether the reasoning of the First Appellate Court to draw adverse inference against the plaintiff for her non examination is sustainable in law in view of the fact that her husband examined as PW1 was extensively cross examined and many documents were also marked through him and was not found to be incompetent to give evidence on her behalf and more particularly when the defendants have not made out any prejudice to them due to the non examination of the plaintiff?”

3. For the sake of convenience, the parties would be referred to as per
their ranks before the trial Court.



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4. The appellant before this Court, who was the plaintiff in the suit, instituted the action for specific performance of a contract to execute a sale deed pursuant to the agreement to sell dated 22.01.1996. The brief case of the plaintiff is that the deceased first defendant executed Ex.A1, an agreement of sale, after receiving an advance of Rs.3,00,000/-, agreeing to receive the balance sum of Rs.1,00,000/- within a period of two and a half years, and in that connection also handed over the original sale deed, Ex.A2, under which he had purchased the suit property.

5. The defence of the first defendant was that he never intended to sell the suit property nor executed Ex.A1, but that the transaction was only one of loan, for which Ex.A2 had been deposited as security. He further pleaded that, at the time of borrowing, the plaintiff had obtained his signed blank stamp papers and blank sheets, and he specifically denied the execution of Ex.A1.

6. The learned counsel for the appellant side argued at length that the fifth defendant, a *pendente lite* purchaser, alone contested the suit and his defence was mutually inconsistent; that the defence of loan and misuse of blank papers was inconsistent and unsubstantiated. It was contended that the trial court rightly accepted the plaintiff's evidence as to execution of Ex. A1,



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rejected the plea of fabrication, and found that minor discrepancies could not defeat the claim and that the fifth defendant, being a purchaser *pendente lite*, could not claim the status of a bona fide purchaser. It was urged that the appellate court erred in drawing unwarranted inferences and overlooking explanations, since the loan and the agreement were distinct transactions and the burden lay on the defendant to prove otherwise. Conversely, the respondent argued that he was a bona fide purchaser who stepped into the shoes of the vendor, and the plaintiff is painting the suit for specific performance as a device to sidestep insolvency proceedings, where the plaintiff would otherwise be treated as just another creditor; that the plaintiff neither proved readiness and willingness nor challenged the subsequent sale deed. It was further urged that the alleged witness had no knowledge of the transaction, the first defendant's signature in Ex.A1 was specifically denied, and execution was not proved. The respondent submitted that failure to seek cancellation of the subsequent sale and to establish readiness and willingness is fatal to the relief of specific performance.

7. On the side of the plaintiff, her husband was examined as P.W.1, one of the attesting witnesses as P.W.2, and the scribe of the document as P.W.3. The first appellate court, on a scrutiny of their evidence, observed that there existed a substantial gap between the typed portion and the signature of the executant in Ex.A1, and on that basis concluded that the plaintiff had failed to establish due execution of



the agreement.

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8. The defence was that the loan had been advanced through Aiswarya Finance, the proprietary concern of the plaintiff, at which time the first defendant had handed over signed blank stamp papers along with Ex.A2. While the law permits inconsistent pleas, it does not allow mutually destructive ones, two stands which cancel each other out. In the present case, the first defendant categorically denied execution of Ex.A1 and disputed his signature therein. Although he admitted having delivered signed blank papers at the time of the loan, he never pleaded that Ex.A1 had been fabricated on those papers. In the absence of such a plea, the plaintiff cannot connect the two defences to establish execution, and the first appellate court was therefore justified in holding that Ex.A1 had not been proved.

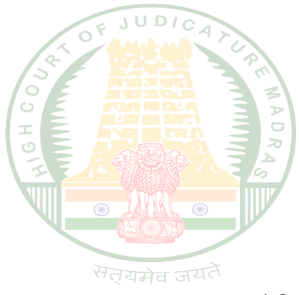
9. It was further observed that it is uncommon, after payment of nearly 75% of the sale consideration, to stipulate as long as two and a half years for completion of the transaction. The plaintiff herself admitted that the first defendant had availed a loan from her and continued to repay part of the principal and interest even after the institution of the suit. Her explanation that the defendant required additional time to vacate the premises is unconvincing,



since under Ex.A1 the agreement was only in respect of the western half of the property, while the defendant retained the remaining portion. The question of vacating the premises therefore does not arise, and the reasoning offered is untenable. The first appellate court was thus justified in concluding that the transaction partook the character of a loan.

10. With respect to the non-examination of the plaintiff, the first appellate court has not drawn any adverse inference. It is well settled under Section 120 of the Indian Evidence Act that a husband is a competent witness in a civil suit on behalf of his wife. Hence, the ground urged in the appeal, as well as the substantial question of law framed thereon, proceeds on an incorrect factual premise, since the first appellate court has not drawn any adverse inference.

11. For the foregoing reasons, this Court holds that no substantial question of law arises for consideration in this Second Appeal. It is well settled that the jurisdiction under Section 100 CPC can be invoked only when such a substantial question is involved, which is not the case here.



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12. Accordingly, the Second Appeal is dismissed. Consequently, connected miscellaneous petition shall stand closed. There shall be no order as to costs.

10.09.2025

NCC : Yes / No

Internet : Yes / No

Index : Yes / No

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To

1.The Principal District Court,
Dindigul.

2.The Additional District Munsif Court,
Dindigal.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.A.D. MARIA CLETE,J.

LS

Pre-delivery Judgment made in
SA.(MD)No. 332 of 2018

10.09.2025