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A.S.No.190 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2026.

Coram

**The Hon'ble Mr.Justice N.Sathish Kumar
and**

The Hon'ble Mr. Justice R. Sakthivel

A.S.No.190 of 2023

A.Mohammed Thariq

...Petitioner

Vs.

R.Balamurugan

...Respondent

Prayer :-

First Appeal filed under Section 96 read with Order 41 of Rule 1 of CPC against the judgment and decree made in O.S.No.26 of 2013 dated 15/12/2022 on the file of Principal District Judge, Perambalur.

For Appellant : Mr.S.Doraiswamy

For Respondent : Mr.R.Venkatesulu

Judgment

(Judgement of the Court was made by **N.Sathish Kumar J.**)

The unsuccessful plaintiff has preferred the present Appeal Suit.

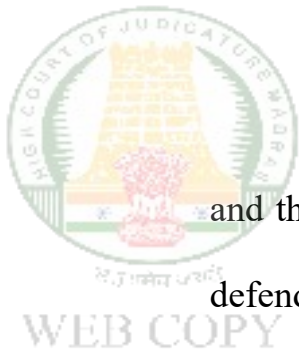


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2. The Suit has been laid for recovery of money based on the agreements dated 22.10.2010 and 15.12.2010.

3. According to the plaintiff, the defendant has agreed to sell his property and received a sum of Rs.25,00,000/- as advance on 22.10.2010, subsequently on 16.05.2011, another sum of Rs.6,45,000/- was received and later, vide agreement dated 15.12.2010, another sum of Rs.25,00,000/- was received. Totally, the defendant has received a sum of Rs.56,45,000/-. Later on, the plaintiff came to know that the defendant is not the owner of the property. Therefore, even when the plaintiff is always ready and willing to perform his part of the contract, viz. Sale agreements dated 22.10.2010 and 15.12.2010, as the defendant is not the owner of the property and also evading to execute the Sale Agreements, the plaintiff filed the Suit for recovery of money.

4. Whereas, it is the contention of the defendant that he has not executed any such agreements agreeing to sell the property, as alleged by the plaintiff. The plaintiff and the defendant are doing a Real Estate business



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and that, the plaintiff, to suit his own purpose, obtained the signature of the defendant in some blank papers and misused the same. According to the defendant, he has not received any amount from the plaintiff at any point of time, and therefore, he disputed the entire agreements itself.

5. On the side of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A1to A4 were marked and on the side of the defendant, D.W.1 was examined and no documents were marked.

6. The Trial Court on the basis of both oral and documentary evidence has framed the following issues:-

i) Whether the plaintiff is entitled to the suit amount with subsequent interest?

And

ii) To what relief, the plaintiff is entitled to?

7. The Trial Court, on appreciation of both oral and documentary evidence, found that the plaintiff has not established, whatsoever,



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the agreements marked as Exs.A1 and A2 and also disbelieved Ex.A4, viz., the letter/complaint stated to have given to the Police as against the defendant and dismissed the Suit.

8. The learned counsel appearing for the appellant/plaintiff would mainly submit that the respondent/defendant has not disputed the agreements, Exs.A1 and A2, whereas, he has admitted the signature that were found the sale agreements, and therefore, the Trial Court has erroneously dismissed the Suit without properly appreciating the evidence. According to the learned counsel for the appellant/plaintiff, entire *onus* is cast on the respondent/defendant to establish that there was no such agreements entered into between them.

9. Per contra, the learned counsel for the respondent/defendant would submit that the agreements, Exs.A1 and A1 have not been established and that no prudent man would advance such a huge amount (Rs.56,45,000/-) without verifying the right/title/ownership of the property.



10. In the light of the submissions made, now, the Points that arise for consideration in this Appeal Suit are as follows:-

i) Whether the sale agreements, Exs.A1 and A2 dated 22.10.2010 and 15.12.2010 were validly executed by the defendant?

and

ii) Whether the plaintiff is entitled to any other relief.

11. On a perusal of Exs.A1 and A2, viz., the sale agreements dated 22.10.2010 and 15.12.2010, we find that the agreements, Exs.A1 and A2, were not supported by any consideration. Though it is the statement of P.W.1, appellant/plaintiff that, under Ex.A1, totally a sum of Rs.25,00,000/- stated to have paid on the date of the agreement for sale of the property to the respondent/defendant, the facts remains that, no enquiry, whatsoever, was made by the appellant/plaintiff with regard to the right/title/interest of the respondent in the property. Therefore, advancing such a huge amount without verifying the title of the property is also highly doubtful. The respondent/defendant has stoutly denied the execution of the agreements



itself. In such case, *onus probandi* is cast only on the appellant/plaintiff to prove the execution of such sale agreements. Though the Attesting Witness are very much shown at the time of execution of Exs.A1 and A2, they were not examined, especially, when the defendant has denied the execution of the agreements. Therefore, in the absence of execution is proved, merely, on the basis of Exs.A1 and A2, we are not in a position to accept the appellant/plaintiff's case.

12. Further, on a perusal of Exs.A1 and A2, we find that the signatures stated to have been made by the respondent/defendant in the endorsement differs from one another. For instance, the signature found in Ex.A.1, back varies with that of the other signature found in the other agreement. Though the Court cannot assume the role of the Handwriting Expert to examine and analyze the authenticity of the signature, with a bare eyes, we can see the huge difference in the writing style of the signatures, as the slant, curves, etc., varies from one another. Thus, we find that there were lot of dissimilarity, distinctness and variations in the signatures found in Exs.A1 and A2 endorsements.



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13. In such view of the matter, when the documents, viz., agreements itself have not been established by the appellant/plaintiff and the genuineness of those documents suffered from serious doubts, it is highly improbable to believe that the appellant/plaintiff would have advanced such a huge sum of Rs.56,45,000/- towards for purchase of the property without even verifying the ownership of the property. Further, the appellant/plaintiff has not adduced any evidence to establish or show that he had such huge amount in his account and the same was withdrawn from his account for the sake of making payment to the respondent/defendant on the particular date of execution and such other details to substantiate his case. Had really it is the case of the appellant/plaintiff that he had paid such huge amount towards purchase of the property, the same would have got reflected in the Income Tax Statement filed by him for the relevant assessment year. In the absence of any such evidence to substantiate the payment, at no stretch of imagination, it could be deduced that the appellant/plaintiff made such huge payments.



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14. Therefore, when the burden of proof is on the appellant/plaintiff to prove the execution of the agreements and the same having not been established by him, we do not find any infirmity the Judgment of the Trial Court in dismissing the Suit. Accordingly, the points are answered.

15. In the result, this Appeal Suit is dismissed and the Judgment and Decree of the Trial Court stands confirmed. No costs.

(N.S.K.J.) (R.S.V.J.)
28.01.2026

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Index : yes/no
Neutral Citation : yes/no

To

The Principal District Judge, Perambalur.



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**N.Sathish Kumar &
R.Sakthivel, J.,**

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