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A.S. NO.458 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 08 / 2025

JUDGMENT PRONOUNCED ON : 05 / 03 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

A.S. NO.458 OF 2019

AND

C.M.P. NO.12998 OF 2019

Mohamed Haja Moideen,
S/o.Mohamed Kamaludeen,
No.8, Kaziyar Street, Neravy,
Karaikal Town and Munsif.

... Appellant / Defendant

Versus

Lakshminathan,
S/o.Thendayuthapani Pathar,
No:689, Bharathiyar Road,
Keezhakasakudy,
Karaikal Town and Munsif.

... Respondent / Plaintiff

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to allow the First Appeal, set aside the Judgment and Decree dated August 13, 2018 made in O.S. No.15 of 2014 on the file of the District Court, Karaikal and dismiss the Suit.



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For Appellant : Mr.T.Murugamanickam
Senior Advocate
Assisted by Mr.R.Sreedhar

For Respondent : Mr.R.Sunilkumar
* * *

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated August 13, 2018 passed in O.S. No.15 of 2014 by 'the District Court, Karaikal' ['Trial Court' for brevity], the Defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. On December 17, 2013, the Defendant and the Plaintiff entered into an agreement for sale in respect of the Suit schedule mentioned property for a total sale consideration of Rs.22,00,000/-. It was agreed that the sale should be concluded within a period of three months from the date of agreement. It was further agreed that the Defendant shall produce the encumbrance certificate for 31 years, antecedent title deed, survey sketch,



receipt for tax payment up to date, patta and also that the Suit Property be measured as per re-survey. On the date of agreement, the Defendant had received a sum of Rs.20,00,000/- from the Plaintiff and the balance of Rs.2,00,000/- was to be paid. All these were to be done within the period of three months.

3.1. Despite repeated reminders, the defendant did not perform his part of the contract and did not come forward to receive the balance sale consideration. The plaintiff was always ready and willing to perform his part of the contract. The plaintiff further issued a pre-suit notice dated March 20, 2014 after expiry of the agreement on March 16, 2014 calling upon the defendant to perform his part of the contract. The defendant, after the receipt of the notice, remained silent. Therefore, the plaintiff filed the present Suit seeking performance of the sale agreement and an alternate relief of refund of advance money with an interest @ 18% per annum from the date of agreement.

DEFENDANT'S CASE

4. The Defendant filed a written statement denying the allegations made by the Plaintiff in the plaint. The defendant denies the nature, contents and execution of the Sale Agreement. The defendant avers that the



plaintiff and his brother T.Sivakumar were running a jewellery shop in the name and style of M/s.Meenam Jewellery. They both were also profession money lenders. The defendant bought jewels worth Rs.10,50,000/- and at that time, also borrowed Rs.5,00,000/- from plaintiff's brother with a huge interest at 36% per annum and for the said loan, they obtained unfilled signed promissory notes, two unfilled and signed cheque leaves and also obtained signature in blank stamp paper. The said stamp paper took its place as the first page of Suit Sale Agreement; the second and third pages of the Sale Agreement does not contain defendant's signature. The defendant has never seen the Sale Agreement and have no knowledge of it until the Suit.

4.1. Further, the Suit Property can be easily valued in the neighbourhood at Rs.70,00,000/- as on the date of Suit Sale Agreement and moreover the Defendant was residing there. In these circumstances, there was no need or necessity arose for the defendant to sell the same.

4.2. According to the defendant, there was a delay in paying the monthly interest on and from the month of February 2014 and at that time, the Plaintiff issued the pre-suit notice dated March 20, 2014. After the receipt of notice, the Defendant met the Plaintiff and enquired, at that time,



the Plaintiff and his brother promised that they would not take any legal action and directed the Defendant to arrange for repayment of the loan amount. Hence, the Defendant did not issue any reply. The Defendant is ready to repay Rs.5,00,000/- borrowed from the Plaintiff and his brother with interest on and from February 2014. Stating so, the Defendant prayed to dismiss the Suit with costs.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- '1. *Whether the plaintiff is entitled for a direction to the defendant to execute a sale deed in his favour or in his nominees favour after receiving balance of sale consideration and in the event of failure on the part of defendant to execute the sale deed in favour of plaintiff, is he entitled for execution of sale deed through this Court?*
2. *Whether the plaintiff is entitled for repayment of advance money of Rs.21,20,000/- with 18% future interest per annum on the principal amount of Rs.20,00,000/- from the date of suit till realisation of decree amount?*



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3. *Whether the plaintiff is entitled for cost?*

4. *For what other relief the plaintiff is entitled for?'*

6. At trial, Plaintiff was examined as P.W.1 and Sivakumar, who is the plaintiff's brother was examined as P.W.2 and Ex-A.1 to Ex-A.3 were marked on the side of the Plaintiff. On the side of the Defendant, one Fajila Parveen was examined as D.W.1 and Ex-B.1 was marked during the cross examination of P.W.2.

7. After full-fledged trial, the Trial Court has concluded that the plaintiff has proved that the sale agreement was executed by the defendant with an intention to sell the Suit Property. The plaintiff was always ready and willing to perform his part of the contract. Accordingly, the Trial Court decreed the Suit and passed a decree directing the Defendant to execute Sale Deed in respect of the Suit Property in favour of the Plaintiff or his nominee within three months after receiving the balance sale consideration of Rs.2,00,000/- which was deposited in the Court.

8. Feeling aggrieved, the Defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.



ARGUMENTS

9. Mr.T.Murugamanickam, learned Senior Counsel assisted by Mr.R.Sreedhar, learned Counsel on record for the appellant / defendant would submit that the plaintiff's brother (P.W.2) is engaged in jewellery business and the plaintiff and his brother are engaged in money lending business as well. The defendant purchased jewels from plaintiff's brother's jewellery shop for the purpose of his sister-in-law's marriage. Further, the defendant borrowed a sum of Rs.5,00,000/- from the plaintiff's brother (P.W.2). At the time of borrowing, the plaintiff and his brother (P.W.2) obtained unfilled signed promissory notes, cheques and signed unfilled stamp papers. By using the said unfilled stamp papers, the plaintiff fraudulently created Ex-A.1 - Suit Sale Agreement. The defendant is residing in the Suit Property and has no intention to sell the same. Further, when the Suit Property would fetch more than Rs.70,00,000/- in open market, no rational person would sell the same for an extremely low amount of Rs.22,00,000/-. He would further submit that as per Section 120 of the Indian Evidence Act, 1872, the wife is a competent witness to depose on behalf of husband. In this case, the defendant was in abroad from 2015. Hence, he could not appear before this Court and give evidence. Hence, the Trial Court's finding that adverse inference has to be



drawn against the defendant is an erroneous one. Accordingly, he would pray to allow the Appeal Suit.

9.1. In support of his arguments, he would rely on the following Judgments: (i) Judgment of the Hon'ble Supreme Court in Roop Kumar -vs- Mohan Thedani, reported in (2003) 6 SCC 595; (ii) Judgment of the Hon'ble Supreme Court in Tejram -vs- Patirambhau, reported in (1997) 9 SCC 634; (iii) Judgment of the Hon'ble Supreme Court in Bhagirath -vs- Ram Ratan, reported in (2017) 6 MLJ 237 (SC); (iv) Judgment of the Hon'ble Supreme Court in R.K.Mohammed Ubaidullah -vs- Hajee C.Abdul Wahab (Dead) by LRs', reported in (2000) 6 SCC 402; (v) Judgment of this Court in A.Shahul Hameed Vs. N.Malligarjuna, reported in 2025-3-L.W-577.

10. *Per contra*, Mr.R.Sunilkumar, learned Counsel appearing for the respondent / plaintiff would contend that the defendant offered the Suit Property for sale. The plaintiff and the defendant entered into Ex-A.1 - Sale Agreement in which the defendant's wife / D.W.1 has also signed as an attesting witness. Plaintiff's brother / P.W.2 signed as another attesting witness. The plaintiff examined P.W.2 and proved the execution of Ex-A.1



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- Sale Agreement. Though D.W.1 has also signed as an attester, she denied her signature as an afterthought before the Trial Court. The plaintiff has always been ready and willing to perform his part of contract. The plaintiff proved the execution of Ex-A.1 - Suit Sale Agreement and discharged his initial burden. Now the onus shifts to the defendant to disprove that the signature found in the 2nd and 3rd pages of Ex-A.1 are not that of the defendant. The defendant did not send Ex-A.1 for expert opinion and did not enter into the witness box and deny the signature. He would further contend that the plaintiff paid a sum of Rs.20,00,000/- as part of the total sale consideration of Rs.22,00,000/-. Further, the plaintiff sent a pre-suit notice and filed a Suit within the reasonable time period. The Trial Court, after considering the entire facts and circumstances, rightly decreed the Suit. There is no warrant to interfere with it. Accordingly, he would pray to dismiss the Appeal Suit and sustain the Judgment and Decree of the Trial Court. In support of his arguments, he relied on the following judgments: (i) Judgment of the Hon'ble Supreme Court in Iswar Bhai C. Patel -vs- Harihar Behera, reported in (1999) 3 SCC 457; (ii) Judgment of the Hon'ble Supreme Court in Vidhyadhar -vs- Manikrao, reported in (1999) 3 SCC 573.



POINTS FOR CONSIDERATION

11. Heard the submissions made on either side and perused the evidence available on record. The points that arises for consideration in this Appeal Suit are as follows:

- (i) Whether the execution of Ex-A.1 - Suit Sale Agreement is proved ?
- (ii) Whether Ex-A.1 - Suit Sale Agreement was intended for sale of the Suit Property as claimed by the plaintiff ?
- (iii) Whether the plaintiff is entitled to the relief of specific performance?

DISCUSSION AND DECISION

POINT NO.(i) - *Whether the execution of Ex-A.1 - Suit Sale Agreement is proved ?*

12. It is settled law that the initial burden is always upon the person who seeks relief *i.e.*, the plaintiff. In this case, Ex-A.1 - Suit Sale Agreement is attested by the plaintiff's brother and the defendant's wife. The plaintiff examined himself as well as his brother as P.W.1 and P.W.2 respectively. The cogent and clear evidence of P.W.1 and P.W.2 *prima facie* proves the execution of Ex-A.1. Now the onus shifts upon the defendant to establish their case or rebut the case of the plaintiff.



12.1. The defendant in his written statement has stated that the plaintiff and plaintiff's brother - T.Sivakumar are running a jewellery shop in the name of 'Meenam Jewellery' and that they are professional money lenders. The defendant bought jewellery for a sum of Rs.10,50,000/- from their jewellery shop and also borrowed a sum of Rs.5,00,000/- from the plaintiff's brother / P.W.2, during the month of November 2013. According to the defendant, at the time of borrowal, as per the prevailing business practice, the plaintiff and plaintiff's brother obtained unfilled and signed promissory notes, two signed blank cheque leaves and also obtained the defendant's signature in an unwritten stamp paper for the purpose of security. The defendant does not deny the signature found in the first page of Ex-A.1 - Suit Sale Agreement which according to him is that one stamp paper he signed for security purposes to the loan obtained from the plaintiff. But he denies the 2nd and 3rd pages of the Sale Agreement which according to him do not bear his signature and are fabricated.

12.2. Moreover, D.W.1 who is the wife of the defendant has also allegedly signed as an attesting witness in Ex-A.1 - Suit Sale Agreement in its 3rd page. However, she denied the same as hers. As per Section 103 of the Indian Evidence Act, 1872, the burden to prove the specific defence of the defendant lies on the defendant. The defendant who is a competent



person to deny Ex-A.1 stayed away from the witness box. It is true that as per Section 120 of Indian Evidence Act, 1872, the defendant's wife is a competent person to depose on his behalf. The defendant's wife examined as D.W.1, in her chief affidavit, has signed as 'H.Fazilla Parveen' and in her cross-examination, signed as 'H.Fazilla' both in 'tamil' language. Her alleged signature in Ex-A.1 is as 'H.Fazilla Parveen'. The defendant's wife seems to have purposely signed differently at the stage of her cross-examination.

12.3. Be that as it may, the burden to prove the alleged defendant's signature found in 2nd and 3rd pages of Ex-A.1 and the alleged signature of defendant's wife as an attester in 3rd page of Ex-A.1 as false lies upon the defendant, especially when the plaintiff has established the execution of Ex-A.1 in a *prima facie* manner by examining himself and his brother, the latter being one of the attesting witness. The defendant ought to have sent Ex-A.1 for expert opinion but he failed to do so. Hence, this Court is of the view that the execution of Ex-A.1 - Suit Sale Agreement has been proved by the plaintiff. ***Point No.(i) is answered accordingly.***



POINT NO.(ii) - *Whether Ex-A.1 - Suit Sale Agreement was intended for sale of the Suit Property as claimed by the plaintiff?*

13. Plaintiff / P.W.1 in his evidence deposed that though the defendant used to buy jewels from plaintiff's brother, he has no knowledge as to whether the defendant purchased jewels from plaintiff's brother as stated in the written statement and whether the defendant borrowed any sum from plaintiff's brother as stated therein. He deposed that the advance amount of Rs.20,00,000/- is his 5 year of savings in Bank. He admitted that he is an income-tax assessee but he deposed that he did not show the said amount in his income-tax return for the financial year 2013-14. The plaintiff's brother / P.W.2 deposed that he owns a jewellery shop and that there were some money transactions between him and the defendant as well as between the plaintiff and the defendant. He further admitted that the defendant used to buy jewels from his shop and also that Ex-B.1 - Estimate was issued by his shop. As admitted by P.W.1 / plaintiff, the advance amount of Rs.20,00,000/- was not shown in his income-tax returns. It is quite unbelievable that such a huge amount was transacted in cash, that too in the year of 2014. If really the plaintiff had saved the advance amount of Rs.20,00,000/- over a span of about 5 years in his bank account, he could have very well filed his bank statement which he failed



to do so. Further the written statement averment that the suit property is a residential property where the defendant and his wife are residing has not been denied by the plaintiff. The defendant's case is that he purchased jewels for marriage and obtained loan from the plaintiff and his brother. Further, the defendant's side suggested P.W.2 during his cross-examination that the defendant borrowed Rs.50,00,000/- from P.W.2 and plaintiff. As held under Point No.(i), execution of Ex-A.1 is proved. Cumulative consideration of the facts and circumstances coupled with the evidence of P.W.1 and P.W.2 would show that Ex-A.1 - Sale Agreement was executed by the defendant only for the purpose of security to the loan transaction of Rs.20,00,000/- between the defendant and the plaintiff and his brother. Hence, Ex-A.1 was not intended for sale of the Suit Property, on the other hand, Ex-A.1 - Sale Agreement was executed only to stand as a security.

Point No.(ii) is answered accordingly.

POINT NO.(iii) *Whether the plaintiff is entitled to the relief of specific performance?*

14. As held under Point No.(ii), Ex-A.1 was executed as a security for loan transaction and the defendant owes the plaintiff Rs.20,00,000/-. Ex-A.1 was not intended for sale of suit property. Hence, the plaintiff is not



entitled to the relief of specific performance. However, considering the fact that the defendant owes Rs.20,00,000/- to the plaintiff, this Court is of the view that the plaintiff is entitled to the alternate relief of return of money paid under Ex-A.1 - Sale Agreement. ***Point No.(iii) is answered accordingly.***

15. In view of the above findings, the Judgment and Decree of the Trial Court are liable to be set aside. There is no dispute with regard to the rulings relied on by the learned Counsel on either side.

CONCLUSION

16. In view of the foregoing discussions, the Appeal Suit is allowed in part and the Decree and Judgment passed by the Trial Court granting the relief of specific performance is set aside, and alternatively, money decree is passed in favour of the plaintiff. The defendant shall pay a sum of Rs.20,00,000/- to the plaintiff with simple interest at 9% per annum from the date of Suit till the date of realization. A charge is created on the Suit Property enabling the plaintiff to realise the said money decree. As and when the defendant completes payment of the decree amount, the charge shall be raised automatically without any further reference to the Court.



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Considering the facts and circumstances, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

The District Court
Karaikal.



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