



S.A.(MD)No.690 of 2021

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 15.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.690 of 2021

and

C.M.P.(MD)No.9181 of 2021

Ramajeyam

... Appellant

Vs.

1.P.Indira

2.The Secretary,

O.309 Thoothukudi Melur Cooperative Housing Society Limited,
New Colony,

Thoothukudi – 628 003.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 27.08.2019 in A.S.No.41 of 2018, on the file of the Principal District Judge, Thoothukudi, confirming the judgment and decree dated 27.08.2018 in O.S.No.288 of 2010, on the file of the learned Subordinate Judge, Thoothukudi by allowing the second appeal.



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For Appellant : Mr.H.Lakshmi Shankar
For Respondent No.1 : Mr.V.Meenakshi Sundaram
for Mr.G.Mohan Kumar
For Respondent No.2 : Mr.B.Vishnu Chelliya

JUDGMENT

The defendant in a suit for recovery of money is the appellant, aggrieved by concurrent findings rendered by the Trial Court as well as the First Appellate Court, directing payment of a sum of Rs.6 Lakhs, together with interest per annum from the date of filing of the plaint.

2.The Second Appeal has been admitted by this Court on 11.11.2021, on the following substantial questions of law:

“(i) Are the conclusions of the Courts below that Ex.A.1 is genuine and true, sustainable in law, in the light of the oral and documentary evidence on record and more particularly in the face of the recitals in Ex.A.6 and the admissions of P.W.1 pointing towards improbability of she being a real intending purchaser and also in the light of the contradictions in the evidence of P.W.1 and P.W.2?

(ii) Whether the Courts below are justified in concluding that Ex.A.1 is proved by P.W.2 and



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P.W.3 in the case of the evidence of P.W.2 which disproves the signature in Ex.A.1 to be that of the appellant and also discredits the presence of P.W.3?

(iii) Are the Court below justified in casting the burden to disprove Ex.A.1 on the first defendant when his signature itself is not proved by the plaintiff?

iv) Whether the conclusions reached by the First Appellate Court on the assumption that appellant admitted Ex.A.1 is sustainable in law in the light of the fact that Ex.A.1 document has been disputed in the pleadings and in the evidence by the appellant and has been contested throughout the trial?

v) Whether the findings and observations of the First Appellate Court in Paragraph Nos.17 , 18 and 19 of the judgment that are based on pure assumption and not based on pleadings and evidence on record and beyond the scope of the appeal, sustainable in law?

vi) Whether the Courts below are justified in relying upon the alleged endorsement dated 19.02.2008 on the back of the Ex.A.1 agreement, without it being exhibited in evidence and proved as per law?"

3.I have heard Mr.H.Lakshmi Shankar, learned Counsel for the appellant, Mr.V.Meenakshi Sundaram, learned Counsel for



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Mr.G.Mohan Kumar, learned Counsel for the first respondent and

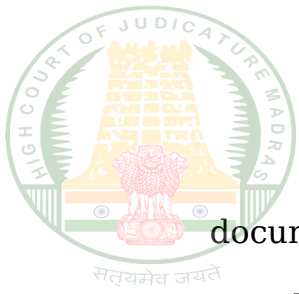
Mr.B.Vishnu Chelliya, learned Counsel for the second respondent.

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4.Brief facts that may be necessary for adjudicating the Second Appeal and the substantial questions of law involved are as hereunder:

4.1.The plaintiff, claiming to have entered into an agreement of sale with the first defendant on 20.10.2007, sought for refund of a sum of Rs.6 Lakhs paid as advance under the said agreement of sale. The first defendant resisted the suit claim by contending that the plaintiff cannot use the alleged agreement of sale to recover money from the first defendant, as if it was a loan transaction. The first defendant proceeded to defend the suit claim, as if it was a suit for specific performance and attacked the entitlement of the plaintiff to the relief and also expressly pleaded about the lack of readiness and willingness on the part of the plaintiff.

4.2.Before the Trial Court, the plaintiff examined himself as P.W.1 and the two witnesses to the agreement of sale as P.W.2 and P.W.3 and Exs.A.1 to A.8 were marked on the side of the plaintiff. On the side of the defendants, first defendant examined himself as D.W.1. However, no documents were marked on the side of the defendants. The Trial Court after assessing the oral and



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documentary evidence, decreed the suit as prayed for. The First Appellate Court also confirmed the findings of the trial Court and dismissed the appeal preferred by first defendant / appellant herein.

5.Mr.H.Lakshmi Shankar, learned Counsel for the appellant / first defendant would state that the entire case pleaded by the plaintiff was totally improbable and admittedly, when the mother was having substantial interest in the suit property, the agreement could not have been clinched between the appellant and the first respondent / plaintiff. In this regard, he would also emphasis on the fact that the plaintiff pleads as if the entire transaction took place in the presence of the mother, which again was highly not believable, considering the fact that mother and son were estranged. In this regard, he took me through the averments in the plaint and also evidence of the plaintiff as P.W.1 and the witnesses to the agreement as P.W.2 and P.W.3.

6.Mr.Lakshmi Shankar, would further state that the pre-suit notice which was issued, contained a different story altogether, which has been virtually given a go by while filing the suit and the plaintiff has been consistently contradicting his own version and the first defendant has been successful in demonstrating that the



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agreement itself was fabricated and therefore, no rights can flow under such agreement, for the plaintiff to claim refund of advance. He would also point out to the fact that even in the pre-suit notice, the plaintiff only wanted specific performance of the said agreement of sale and not refund of advance.

7.Mr.H.Lakshmi Shankar, took me through the evidence of P.W.2 and P.W.3 and would contend that their evidence, by no stretch of imagination, can inspire the confidence of the Court with regard to agreement of sale being a genuine transaction. He would further state that even with regard to endorsement made on the reverse of the agreement, Ex.A.1, under which a further receipt of Rs.1 Lakh towards additional advance is recorded, the said transaction has not been evidenced by any person and P.W.3 was totally incompetent to speak about the same as admittedly, it was only hearsay and she was not present when the alleged payment of Rs.1 Lakh was made by the first respondent to the plaintiff.

8.Mr.H.Lakshmi Shankar would also point out to the evidence of P.W.1, whose evidence also does not lead the Court to an irrefutable conclusion with regard to the genuineness of the agreement of sale in Ex.A.1. He would also point out that P.W.2, who claim to be a real-estate broker, one of the attestor stated that



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the appellant had signed in English in Ex.A.1. He would also point out contradictions in the evidence of P.W.2 and P.W.3, with regard to receipt of money.

9.Mr.H.Lakshmi Shankar would further contend that when the mother herself has filed a suit for injunction, not only against her own son, but also against the plaintiff and despite knowledge, the plaintiff did not choose to contest the suit and the said suit had also been decreed ex-parte, as even the appellant did not contest the suit, all was not well with the claim put forth by the plaintiff. With regard to the endorsement of receipt of further sum of Rs.1 Lakh, Mr.Lakshmi Shankar, would contend that it is an independent contract and when the suit is one for recovery of money, the burden is on the plaintiff to establish the same. Admittedly, the endorsement was not witnessed by any person and the plaintiff has miserably failed to prove the said payment by examining any independent witnesses. He would therefore, pray for the appeal being allowed.

10.Per contra, Mr.Meenakshi Sundaram, learned Counsel appearing for the first respondent / plaintiff would contend that in the written statement, the appellant has neither denied the execution of Ex.A.1 agreement of sale nor the allegation with

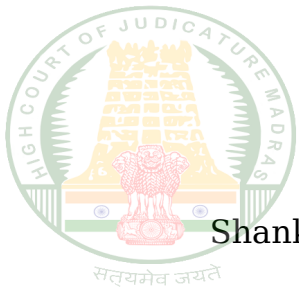


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regard to receipt of advance under the said agreement of sale. He would therefore, state that only after examination of P.W.2 and P.W.3, on the side of the plaintiff, the defendant has chosen to improve his version by pleading for the first time in the proof affidavit that he has not executed any sale agreement and received advance from the plaintiff. It is his argument therefore, that in the absence of pleadings, which is the foundation on which the parties can lead evidence, no amount of evidence could be looked into.

11.Mr.Meenakshi Sundaram, would further submit that with regard to the endorsement as well, there was no necessity for the plaintiff to have obtained such endorsement, recording payment of Rs.1 Lakh and the endorsement was not necessary on account of extension of time of the agreement or for even extend / save limitation. In such circumstances, he would state that the plaintiff's case was rightly believed by the Courts below. Further, the plaintiff's mother-in-law has been examined as P.W.2, who has also spoke about the payment of additional one lakh rupees and she also resides in the same street, she was aware of the additional advance paid by the plaintiff her son-in-law.

12.Mr.Meenakshi Sundaram, would further contend that the contradictions that have been pointed out by Mr.H.Lakshmi



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Shankar, are trivial in nature and as far as execution of Ex.A.1 sale agreement, the witnesses P.W.2 & P.W.3 have clearly spoken about the transaction and the passing of Rs.5 Lakhs from the plaintiff to the first defendant, which has been rightly upheld by the Trial Court and affirmed by the First Appellate Court. He would therefore, state that concurrent findings arrived at by the Courts below do not require interference under Section 100 of CPC.

13. Learned Counsel appearing for the second respondent would state that the second respondent was in no way connected to the alleged transaction between the appellant and the first respondent. He would in fact state that the appellant has borrowed money from the second respondent and has still not discharged his liability and further proceedings have already been initiated before the Registrar of Cooperative Societies, in this regard. He would further state that the Courts below have rightly not granted any relief against the second respondent and the plaintiff has also accepted the said findings and therefore, no relief and direction can be granted against the second respondent herein. He also prays for dismissal of the Second Appeal.

14. I have carefully considered the submissions advanced by the learned Counsel for the parties.



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15.It is the case of the first respondent as plaintiff that he intended to purchase the property that was originally belonging to the mother of the appellant / first defendant and that P.W.2, real-estate broker in the locality identified the property and in his presence, the appellant and the first respondent negotiated the deal and arrived at a total sale consideration of Rs.12 Lakhs, which was reduced to writing in and by an agreement of sale dated 20.10.2007. The said agreement has been witnessed by P.W.2 and P.W.3, who are the real-estate broker and brother-in-law of the plaintiff. The agreement of sale records the fact that out of the agreed sale consideration of Rs.12 Lakhs, a sum of Rs.5 Lakhs has been paid as advance. There is an endorsement obtained on the reverse of the original of Ex.A.1, sale agreement which records the fact that a further sum of Rs.1 Lakh has been paid by the plaintiff towards advance.

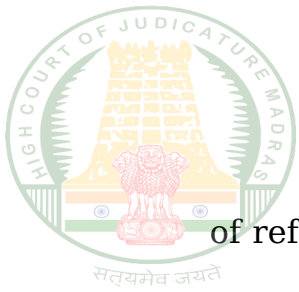
16.Curiously, the said endorsement has been alleged to be confirmed by the appellant by signing not only in English but also in Tamil. As already pointed out by Mr.H.Lakshmi Shankar, the said endorsement dated 19.02.2008, was not witnessed by any person. However, it has been contended by Mr.V.Meenakshi Sundaram,



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learned Counsel for the first respondent that agreement of sale including the endorsement has been marked as Ex.A.1 and straightaway, I have gone through the original of Ex.A.1 and I find that there is no specific reference to the endorsement. The agreement dated 20.10.2007 alone has been marked. In fact, during the course of arguments, when the appeal was heard on an earlier occasion, Mr.H.Lakshmi Shankar, pointed out that in the typed set of papers filed along with the Second Appeal, the copy of the agreement does not carry the alleged endorsement. Therefore, I directed the Registry to call for the original agreement of sale, marked as Ex.A.1, the same was produced and a perusal of the same shows that the agreement contains the endorsement and as already pointed out the appellant's signature is not only in English but also in Tamil.

17.There is no explanation from the first respondent / plaintiff as to why the appellant signed in two languages. The agreement of sale is signed by the appellant only in English and further, the endorsement is also not attested by any witnesses as well. In the absence of marking the endorsement as a separate exhibit and also failing to prove the endorsement, I am unable to affirm the findings of the Trial Court and the First Appellate Court that the plaintiff has made out a case for grant of relief in respect



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of refund of additional sum of Rs.1 Lakh, alleged to have been paid by the first respondent to the appellant. At the risk of repetition, the burden was entirely on the first respondent / plaintiff to establish the transaction, namely payment of Rs.1 Lakh on 19.02.2008 and excepting for the oral evidence of P.W.1 and P.W.3, there is no supporting material to come to the conclusion that a sum of Rs.1 Lakh was paid as a further advance on 19.02.2008. Further, no proper explanation is also forthcoming with regard to the necessity of the appellant signing in English as well as in Tamil, especially in the endorsement alone and not in the agreement of sale Ex.A.1.

18.For the above reasons, straightaway I am inclined to set aside the findings of the Court below, with regard to additional advance of Rs.1 Lakh claimed to have been acknowledged by the endorsement dated 19.02.2008. Substantial question of law (vi) is therefore, answered in favour of the appellant.

19.This now brings us to the entitlement of the first respondent to the amount of Rs.5 Lakhs, which finds place as advance payment under Ex.A.1 sale agreement. In order to establish the said agreement, the plaintiff, besides examining himself, has also examined the two witnesses to the said



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agreement. On scanning the evidence of P.W.1 to P.W.3, I do not find that their evidence bristles with any material inconsistency with regard to the transaction *per se* and payment of Rs.5 Lakhs. All the three witnesses have clearly spoken about the execution of the agreement by the appellant and payment of Rs. 5 Lakhs. In fact, pointing out to evidence of P.W.3, Mr.H.Lakshmi Shankar, would state that P.W.3 has adduced evidence as if money was received not only by the appellant but also by the real-estate broker, P.W.2. However, on going through the evidence of P.W.2, I find that he has clearly deposed that he received the money and paid it to the appellant. Therefore, I do not see how the evidence of P.W.2 and P.W.3 is inconsistent.

20.Further, as already pointed out hereinabove, with regard to the transaction and the payment of Rs.5 Lakhs, the evidence of P.W.2 & P.W.3 clearly support the case of the plaintiff. The Courts below have rightly therefore, come to the conclusion that the agreement of sale had been established and consequently, the payment of advance of Rs.5 lakhs has also been established by the plaintiff, entitling the plaintiff to recovery of the said amount.

21.Mr.Lakshmi Shankar, learned Counsel for the appellant has made elaborate submissions with regard to the role of the



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mother. He would point out that in the plaint, it is alleged by the plaintiff that though the appellant / first defendant claimed himself to be the owner, on going through the document of title, the plaintiff came to know that the appellant's mother alone was the owner and that the first defendant represented that the property had been mortgaged with Central Bank of India and the original title deed has been lodged with the said Bank. It is also claimed by the plaintiff that the copy of the title deed has been handed over by the plaintiff.

22. Taking me through Ex.A.6, settlement deed executed by the mother of the first defendant, he would point out that mother had only assignment patta and no other title deed and therefore, it clearly falsified the case of the plaintiff with regard to handing over the copy of the title deed standing in the name of the mother. He would also point out that even the said copy was not produced during trial. It is therefore, the submission of Mr.H.Lakshmi Shankar, that the plaintiff has come to Court with a totally false case and when the first defendant has probablised that the agreement could not have been entered into in the first place, any payment allegedly made under the said agreement also falls to the ground. Unfortunately, for the appellant, the pleadings in the written statement do not in any manner aid the arguments that are



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now advanced by Mr.H.Lakshmi Shankar, learned Counsel for the appellant.

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23.Order VIII Rule 3 of CPC, requires denials to be specific. The Defendant, while meeting the plaint allegations is not entitled to generally deny the claims of the plaintiff, but is expected to deal specifically with each and every allegation of fact, to which the defendant does not admit. In fact, Order VIII Rule 4 of CPC, specifically deals with a claim for recovery of money and is therefore, usefully extracted hereunder:

“O.VIII R.4. Evasive-denial.—Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.”

24.Denial to be specific is also reiterated in Rule 5 as well. Testing the written statement filed by the appellant in terms of the letter and spirit of Order VIII Rules 3 to 5 of CPC, I find that the



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first defendant has not specifically denied the execution of the sale agreement on 20.10.2007 or even the receipt of a sum of Rs.5 Lakhs under the said agreement. The entire defence projected by the appellant is on the footing that the plaintiff has made a claim as if the amount due from the appellant is a loan transaction and that the appellant never had any loan transaction with the plaintiff. The defence taken by the appellant in the present case is a classic case, which fails the mandate of Order VIII Rules 3 to 5 of CPC.

25.No amount of evidence in the absence of pleadings can be let in by the appellant, is settled legal position of law. Therefore, the entire arguments of Mr.H.Lakshmi Shankar, pointing out to the proof affidavit of the appellant, the cross examination of the plaintiff's witnesses as well as D.W.1's, is of no avail, in the absence of specific pleadings. The Courts below have therefore, rightly discarded the defence taken by the first defendant, while upholding the transaction in Ex.A.1 and directing refund of Rs.5 Lakhs, which has been paid and recorded in the said agreement. I do not find any grounds to interfere with the said findings arrived at concurrently, especially, when the Courts below have arrived at factual findings and such findings are neither perverse, nor illegal, warranting interference under Section 100 of CPC.



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26.As regards the second respondent, no relief has been prayed for in the present Second Appeal and the Trial Court has already declined to grant any relief in favour of the plaintiff against the second respondent. Thus, in the absence of any cross objection having been filed by the plaintiff, I do not see any reasons to interfere with the concurrent findings disallowing the reliefs against the second defendant.

27.In the light of the above, the substantial questions of law (i) to (v) are answered against the appellants. The Second Appeal is partly allowed. The judgment of the Trial Court in O.S.No.288 of 2010, confirmed by the First Appellate Court in A.S.No.41 of 2018 are set aside and modified, granting a decree in favour of the first respondent for a sum of Rs.5 Lakhs, together with 6% interest payable from the date of the plaint till the date of realisation, together with proportionate costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

NCC : Yes / No

MR

17/19



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To

1.The Principal District Judge,
Thoothukudi

2.The Subordinate Judge,
Thoothukudi.

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



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P.B.BALAJI, J.

MR

JUDGMENT MADE IN
S.A.(MD)No.690 of 2021

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