



S.A.No.258 of 2000

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

**DATED : 31.01.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE S.SOUNTHAR**

S.A.No.258 of 2000

A.Ramalingam

... Appellant/Appellant/  
Plaintiff

Vs

1.Ponnusamy (Died)

... 1<sup>st</sup> Respondent/Respondent/  
Defendant

2.Kuppayee Ammal

3.Palaniammal

4.Saraswathi

5.Samppornam

... Respondents 2 to 5

*[RR2 to 5 were brought on record as LRs of the deceased sole respondent vide order dated 05.11.2020 made in C.M.P.(MD) Nos.3918, 3919 and 3921 of 2020 in S.A.(MD) No.258 of 2000]*

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 05.02.1999 made in A.S.No.290 of 1997 on the file of the II-Additional District Court, Tiruchirappalli, confirming the



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judgment and decree dated 28.08.1997 made in O.S.No.209 of 1991 on the file of the Sub Court, Karur.

For Appellant : Ms.V.T.Harshini  
for Mr.D.Nallathambi

For RR2 to 5 : No appearance

### J U D G M E N T

1.1. The plaintiff in the suit for specific performance is the appellant. The suit was dismissed by the trial Court and the findings of the trial Court were confirmed in first appeal. Aggrieved by the concurrent findings against him, the plaintiff is before this Court. Pending second appeal, the 1<sup>st</sup> respondent/defendant died and his legal representatives were brought on record as respondents 2 to 5.

1.2. According to the appellant/plaintiff, he entered into a suit sale agreement dated 15.01.1989 marked as Ex.A.1 with the deceased first respondent/sole defendant for purchase of 'A' Schedule property described therein. The agreed sale consideration as per the agreement was Rs.90,000/-



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and according to the appellant, he paid an advance amount of Rs.30,000/- on the date of sale agreement itself. The time for completion of the sale transaction was fixed as six months. As per the recitals in the agreement, the appellant was directed to pay Rs.40,000/- to one Periyasami, the fourth son-in-law of the deceased first respondent to discharge the debt incurred by the first respondent. It was agreed that the balance of Rs.20,000/- should be paid by the appellant within the period stipulated in the agreement and get the sale deed executed in his favour.

1.3. It was further averred in the plaint that the deceased first respondent tried to encumber the property even before expiry of the period stipulated in the agreement and hence, the appellant issued a notice on 22.05.1989 calling upon the first respondent to receive the balance sum of Rs.20,000/- and execute the sale deed. According to the appellant he had not received any reply for the said notice from the first respondent and thereafter, again another notice was issued on 13.07.1989 by registered post as well as telegram. Since the deceased first respondent failed to come forward for execution of the sale deed by receiving the balance sale



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consideration, the appellant was constrained to file the suit for specific performance of the suit agreement.

2. The deceased first respondent filed a written statement denying the very execution of the agreement. He also denied the receipt of advance amount from the appellant. The first respondent further denied the averment contained in the plaint as if he incurred a debt from his fourth son-in-law Periyasami and the appellant was directed to pay Rs.40,000/- to the said Periyasami and discharge the debt incurred by him.

3. Before the trial Court, the appellant/plaintiff was examined as P.W. 1 and six documents were marked on his side as Ex.A.1 to Ex.A.6. The deceased first respondent/sole defendant was examined as D.W.1 and his fourth son-in-law viz. Periyasami, referred to in the plaint, was examined as D.W.2. No documents were filed on behalf of the first respondent.

4. The trial Court, on consideration of oral and documentary evidences available on record, came to the conclusion that the



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appellant/plaintiff failed to prove due execution of the suit sale agreement and also failed to prove his readiness and willingness and consequently, dismissed the suit. Aggrieved by the same, the appellant filed an appeal in A.S.No.290 of 1997 on the file of the II-Additional District Court, Tiruchirappalli. The first appellate Court concurred with the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.

5. At the time of admission, this Court formulated the following substantial questions of law:

*“1. Is the learned II Additional District Judge correct in dismissing the appeal without proper consideration of evidence? and*

*2. Is the learned II Additional District Judge correct in not giving an opportunity to prove the validity of suit agreement by sending the disputed thumb impression for expert opinion?”*

6. The learned counsel for the appellant, elaborating the substantial questions of law formulated at the time of admission, submitted that the



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appellant filed an application for sending the suit sale agreement for comparison of the thumb impression of the first respondent found in Ex.A.1 sale agreement with the admitted thumb impression and the said application was allowed on payment of cost of Rs.3,000/-. However the appellant failed to pay that amount and hence, the application was dismissed. Subsequently, another application was filed before the trial Court for sending the disputed thumb impression for comparison and the same was also dismissed by the Court below on the ground that second application on the same cause of action cannot be maintained and the revision filed by the appellant against that order was also dismissed. It is also stated by the learned counsel for the appellant that pending first appeal, the appellant filed an application in I.A.No.436 of 1998 for sending the disputed thumb impression for comparison with the admitted thumb impression and the said application was erroneously dismissed by the first appellate Court.

7. It is the contention of the learned counsel for the appellant that the Courts below have not given proper opportunity to the appellant to prove the execution of the suit sale agreement by sending the disputed thumb



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impression for Expert's opinion for comparison with the admitted thumb impression of the first respondent. The learned counsel further submitted that in support of execution of the suit sale agreement, the appellant entered the box as P.W.1 and deposed about due execution of the suit sale agreement and nothing has been elicited in the cross examination of the appellant and therefore, the Courts below ought not to have overlooked the evidence of P.W.1 while considering due execution of Ex.A.1.

8. As mentioned earlier, pending second appeal, the first respondent/sole defendant died and his legal representatives were brought on record as respondents 2 to 5. Though notice was served on respondents 2 to 5 and their names appear in the list, there is no representation for them.

9. This Court is unable to accept the contention raised by the learned counsel for the appellant. The very execution of the suit sale agreement was denied by the first respondent in his written statement specifically. Therefore, it is incumbent upon the appellant to prove due execution of the suit sale agreement by leading acceptable evidence. The appellant failed to



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examine both the attestors to the agreement and also the Scribe, whereas one of the attestors to the suit sale agreement viz., Periyasami was examined on behalf of the respondent as D.W.2 and his evidence is not helpful to the appellant to prove execution. Therefore, the Courts below had taken adverse inference against the appellant for his failure to examine the attestor or Scribe of Ex.A.1 sale agreement to prove due execution of the agreement.

10. Even the other contention of the learned counsel for the appellant that execution of Ex.A.1 sale agreement was proved by the testimony of P.W.1 cannot be accepted. In the absence of any corroboratory evidence to support the interested testimony of P.W.1, execution cannot be assumed solely on the basis of the evidence of the appellant as P.W.1. Even assuming due execution of Ex.A.1 is proved, the appellant as a plaintiff in a suit for specific performance has to prove his continuous readiness and willingness to discharge his part of obligation under the agreement from the date of inception to the date of filing of the suit.





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11. In the case on hand, there is a recital in the suit sale agreement that the appellant has to discharge the debt incurred by the deceased first respondent by paying Rs.40,000/- to his creditor Periyasami. Though P.W.1 in his evidence had stated that the appellant paid Rs.40,000/- to Periyasami and discharged the loan, he failed to lead any evidence to prove the said discharge. Even though P.W.1 in his evidence deposed that after discharging the loan amount of Rs.40,000/-, he got the promissory note executed by the first respondent, he failed to produce the discharged promissory notice before the Court to prove the alleged discharge. In these circumstances, the appellant failed to prove his continuous readiness and willingness to perform his part of the agreement and hence, the findings rendered by the Courts below call for no interference by this Court.

12. Insofar as the contention of the learned counsel for the appellant that he was not given fair opportunity to compare the disputed thumb impression in the suit sale agreement with the admitted thumb impression is concerned, perusal of the records would reveal that the appellant was given



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opportunity to send the disputed thumb impression for Expert's opinion by allowing the application filed by him on payment of cost of Rs.3,000/-. However, he failed to pay the amount and capitalise on the order passed by the trial Court. Subsequently, he filed second application for sending the disputed document for comparison and the same was rightly dismissed by the trial Court citing the earlier order. The said order was confirmed in revision by this Court. Therefore, the default is on the part of the appellant and he cannot put the blame on the Court and contend that he was not given ample opportunity to compare the disputed thumb impression in Ex.A.1 sale agreement with the admitted thumb impression. Therefore, the said contention of the learned counsel for the appellant is not acceptable to this Court.

13. In view of the discussions made above, both the substantial questions of law are answered against the appellant and the second appeal is dismissed.



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14. In fine,

(i) this Second Appeal is dismissed by confirming the judgments and decrees passed by the Courts below; and

(ii) in the facts and circumstances of the case, there would be no order as to costs.

**31.01.2023**

NCC: Yes  
Index: Yes/No  
Internet: Yes

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To

1. The II-Additional District Judge,  
Tiruchirappalli.
2. The Sub Judge,  
Karur.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SOUNTHAR, J.**

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