



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2022

Pronounced on : 23.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No. 137 of 2000

1. Janaki Ammal alias Pattammal
 2. Gajendra Babu
 3. Nagabushanammal
 4. Baby Ammal
 5. Chandra Ammal
 6. Minor Suresh
 7. Jamuna
 8. Gowri ... Defendants 1, 4, 6 to 11/Respondent 1, 3, 5 to 10/Appellants

Vs.

1. Premchand (Died) ... Plaintiff/Appellant/Respondent
 2. Jagannathan ... 2nd Defendant/2nd Respondent/Respondent
 3. Punniyakoti (deceased)
... 5th defendant/4th respondent/respondent



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4. Kanniammal
 5. Devendran
 6. Udhayasankar
 7. Nalini
 8. Prakash Bai
 9. P.Rajesh
 10. P.Ramesh
 11. P.Suresh Kumar
 12. S.Premela

... Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree made in A.S.No. 66 of 97 dated 31.03.1999 by the learned Principal Subordinate Judge, Chengalpattu reversing the Judgment and Decree made in O.S.No. 81 of 1996 dated 11.07.1997 by the learned District Munsif Court, Chengalpattu.

For Appellants : Mr. K.Chandrasekaran

For 2nd Respondent : No appearance

For RR 4 to 7 : Mr. M.Rajan

For RR 8 to 12 : Mr.K.Venkatasubban
Amicus Curiae



JUDGMENT

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The 1st, 4th, 6th to 11th defendants in O.S. No. 81 of 1996 on the file of the District Munsif Court, Chengalpet (originally O.S. No. 47 of 1987 on the file of Sub Court, Chengalpet) are the appellants.

2. The suit in O.S. No. 47 of 1987, subsequently on transfer to the District Munsif Court, renumbered as O.S. No. 81 of 1996 had been filed R. Premchand, the 1st respondent who died pending the second appeal, seeking specific performance of an agreement dated 30.09.1985, alleged to have been entered into with him by Govindaraja Naicker with respect to the suit schedule punja lands at Puducheri Village hamlet of Kattur Village, Guduvanchery, Chengalpet. The defendants in the suit were the legal heirs of Govindaraja Naicker. The 2nd defendant remained ex parte. During the pendency of the suit, the 3rd defendant died and his legal representatives had been brought on record as 8th to 11th defendants.

3. By judgment dated 11.07.1997, the District Munsif, Chengalpet



dismissed the suit with costs.
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4. The plaintiff then filed A.S. No. 66 of 1997 before the Principal Sub Court, Chengalpet. By judgment dated 31.03.1999, the appeal suit was allowed with costs and the decree of the trial court in O. S. No. 81 of 1996 was set aside.

5. This had necessitated the 1st, 4th, 6th to 11th defendants to file the present second appeal. Pending the appeal, the 3rd respondent/5th defendant in the suit and the 1st respondent/plaintiff in the suit/R. Premchand died and their legal representatives had been brought on record as 4th to 7th and 8th to 12th respondents respectively.

6. The second appeal had been admitted on the following substantial questions of law :

“1. Whether the lower Court erred in



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coming to the conclusion that Ex. A-1, the sale agreement, dated 30.09.1985, has been proved in spite of the fact that P.W.2 admits that he is not aware whether Ex. A-1 contains the signature of Govindaraja Naicker or not ?

2. Is the lower Court right in concluding that the plaintiff has proved Ex. A-1 especially when no attempts have been made by him to prove the signature of Govindaraja Naicker with that of any of his admitted signatures, especially when there is ocean of difference between Exs. A-1 and A-2?

3. Has the lower Court committed grave error in not at all going into the question as to the willingness and readiness of the plaintiff from the date of agreement till filing of suit, more so when the fact is not admitted by the defendants ? “

7. As stated, the 1st respondent/plaintiff in the suit died pending the



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8th to 12 respondents. Though notice had been served, they had taken a conscious decision not to appear before this Court. This Court had therefore appointed Mr. K. Venkatasubban, Advocate to assist the Court as amicus to put forth their case.

O.S. No. 81 of 1996 (District Munsif Court, Chengelpet) (Originally O.S. No. 47 of 1987 on the file of Sub Court, Chengelpet) :

8. The plaintiff, R. Premchand sought specific performance of an agreement which he claimed had been entered into by him with Govindaraja Naicker on 30.09.1985 with respect to the suit schedule punja lands at Puducheri Village hamlet of Kattur Village, Guduvanchery, Chengalpet for total consideration of Rs. 16,640/-. An advance of Rs.2,101/- was stated to have been paid as advance. Govindaraja Naicker died on 28.11.1985. It was further claimed that the 2nd defendant, one of the sons of Govindaraja Naicker, who remained ex parte in the suit, approached the plaintiff on 04.12.1985 and received further advance of Rs.1,300/-. Claiming that he was ready and willing to pay the balance sale consideration and further complaining that though notice had been issued calling upon the legal representatives to execute sale deed in accordance of



the agreement, they had not so come forward, the suit had been instituted seeking specific performance of the said agreement.

9. The defendants/legal representatives of Govindaraja Naicker denied and disputed the claims of the plaintiff. They denied the assertion that Govindaraja Naicker had entered into an agreement with the plaintiff. They disputed his signature. They claimed that the agreement was not binding on them. They urged that the suit should be dismissed.

10. On the basis of the pleadings, the following issues were framed for trial :

“1. Whether the plaintiff is entitled for specific performance ?

2. Whether the sale agreement dated 30.09.1985 is true and valid binding on the defendants ?

3. To what relief ?”

11. Issue relating to readiness and willingness on the part of the plaintiff to pay the balance sale consideration was not framed.



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12. The parties were invited to graze the witness box.

13. The plaintiff, R. Premchand examined himself as P.W.1 and examined two other witnesses as P.W. 2 and P.W. 3. They marked Exs. A1 to A14. Ex. A1 was the agreement of sale dated 30.09.1985 and Ex. A2 was the endorsement dated 04.12.1985. Ex. A3 was the notice issued by the plaintiff. Ex. A11 was the challan for deposit of balance sale consideration.

14. The 5th defendant, Punniyakoti examined himself as D.W.1 and he examined a further witness as D.W.2. They marked Ex. B1, a discharged mortgage deed dated 07.06.1944.

15. On consideration of the pleadings, oral and documentary evidence, the District Munsif, Chengelpet held that Ex. A1 was a fabricated document. She observed that it had been executed at Tambaram, where neither the plaintiff nor Govindaraja Naicker resided. She further



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observed that the document written very closely in page 1 and with more space in page 2. She further stated that there was an insertion on the left side margin with a pen of different ink. She opined that the document had been written after obtaining signatures of Govindaraja Naicker in blank papers. She observed that the last word in page 1 had been written adjusting the spacing to accommodate the signature. She pointed out the contradictions in the evidences of P.W.2 and P.W.3 on material aspects of signing the document by Govindaraja Naicker. She finally held that the document, Ex. A1, the agreement of sale had been fabricated for the purpose of the case.

16. The suit was dismissed with costs by judgment dated 11.07.1997.

A.S. No. 66 of 1987 (Principal Sub Court, Chengelpet) :

17. The plaintiff filed the above appeal suit. By judgment dated 31.03.1999, the Principal Sub Judge re-examined the evidence on record. He framed points for consideration, particularly with respect to the validity of Ex. A.1. Again no point was framed with respect to readiness and



willingness of the plaintiff to perform his part of the agreement.
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18. The Principal Sub Judge differed from the reasoning given by the District Munsif. He opined that though there was an insertion in the left margin, it would not materially affect the validity of the agreement. According to him, it related to a minor issue of advance sale consideration. He brushed aside all findings of the District Munsif relating to the agreement as being inconsequential, and allowed the appeal suit and set aside the judgment of the trial Court.

S.A. No. 137 of 2000 :

19. The defendants then filed the present second appeal.

20. The second appeal had been admitted on the following substantial questions of law :

“ *I. Whether the lower Court erred in coming to the conclusion that Ex. A-1, the*



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sale agreement, dated 30.09.1985, has been proved in spite of the fact that P.W.2 admits that he is not aware whether Ex. A-1 contains the signature of Govindaraja Naicker or not ?

2. *Is the lower Court right in concluding that the plaintiff has proved Ex. A-1 especially when no attempts have been made by him to prove the signature of Govindaraja Naicker with that of any of his admitted signatures, especially when there is ocean of difference between Exs. A-1 and A-2 ?*

3. *Has the lower Court committed grave error in not at all going into the question as to the willingness and readiness of the plaintiff from the date of agreement till filing of suit, more so when the fact is not admitted by the defendants ?*

“

21. Heard arguments advanced by Mr. K. Chandrasekaran, learned counsel for the appellants and Mr. K. Venkatasubban, learned Amicus



Curiae appointed to assist the Court owing to non-appearance by the 8th to 12th respondents/legal heirs of the plaintiff.

22. Let me address the parties as plaintiff and defendants. The defendants are the appellants in the second appeal. The plaintiff was the 1st respondent. During the pendency of the second appeal he died and his legal representatives have been impleaded as the 8th to 12th respondents.

Let me address the 3rd substantial question of law first. This revolves around *ess* ‘*readin and willingness*’ of the plaintiff to perform his part of the agreement. It is seen that both the Courts below had not addressed this issue. However, Ex. A 11 had been produced by the plaintiff which is the challan for deposit of the balance sale consideration into Court. Naturally, this would indicate ‘*readiness and willingness*’ unless disputed, which dispute had not been raised by the defendants. I would therefore answer the 3rd substantial question of law that there is no irregularity in the procedure of the Courts below, on the facts of this case, in not examining the issue of ‘readiness and willingness’.

23. The 1st and 2nd substantial questions of law however require

deep consideration. Differing opinions have been given by the District



Munsif and by the Principal Sub Judge regarding Ex. A1, the agreement of sale. It must be kept in mind that the suit had been instituted well after the death of Govindaraja Naicker, the executant of the agreement. His signature had been denied and disputed by the defendants.

24. The District Munsif had given cogent reasons for holding that Ex. A1 is shrouded with suspicions and is therefore invalid. She had pointed out the closeness of the words in the writings and the difference in spacing between the words in *pages 1 & 2*. She was of the definite opinion that the words had been written with intent to accommodate the signatures in the respective pages. She therefore held that the signatures had been appended first and then the agreement had been written. The manner in which the last word in *page 1* was written, to adjust with the signature of Govindaraja Naicker had also been pointed out. The fact that a very crucial aspect of payment of advance sale consideration had been inserted in the left side margin of *page 1* had also been noted. The fact that the agreement was entered into at Tambaram, where neither the plaintiff nor Govindaraj Naicker resided was also pointed out. The contradictions in the evidence of P.W.2 and P.W.3 had been carefully brought out in the



judgment. It was also pointed out that the suspicions surrounding the agreement had not been explained by the plaintiff.

25. All these observations had been unfortunately brushed aside by the Principal Sub Judge in his judgment who claimed that they would not affect the validity of the agreement. It was pointed out that cross examination of the witnesses went beyond the pleadings.

26. It must be pointed out that the written statement had been filed by the legal representatives of Govindaraja Naicker, who had died even before institution of the suit. There was a denial about the truthfulness of the agreement in the written statement. The signature of Govindaraja Naicker was disputed.

27. The burden was on the plaintiff to establish the truthfulness and validity of the agreement.

28. Section 101 of the Indian Evidence Act, 1872 is as follows :

“Section 101. Burden of proof — Whoever



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desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) *A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.*

(b) *A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.*

29. In ***Rao Saheb v. Rangnath Gopalrao Kawathekar, (1972) 4 SCC 181*** at page 183 it had been held as follows :

“5.What facts and circumstances have to be established to prove the execution of a



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document depend on the pleas put forward. If the only plea taken is that the executant has not signed the document and that the document is a forgery, the party seeking to prove the execution of a document need not adduce evidence to show that the party who signed the document knew the contents of the document. Ordinarily no one is expected to sign a document without knowing its contents but if it is pleaded that the party who signed the document did not know the contents of the document then it may in certain circumstances be necessary for the party seeking to prove the document to place material before the Court to satisfy it that the party who signed the document had the knowledge of its contents.”

(Emphasis Supplied)

30. In *Ramji Dayawala & Sons (P) Ltd. v. Invest Import, (1981) 1 SCC 80 at page 91*, it had been held as follows :

“16. Incidentally it was urged by Mr Majumdar that even if the court proceeds on the



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*assumption that the letter and the cable were received, it is not open to this Court to look into the contents of the letter and the cable because the contents are not proved as the Managing Director of the appellant Company who is supposed to have signed the letter and the cable has neither entered the witness-box nor filed his affidavit proving the contents thereof. Reliance was placed on **Judah v. Isolyne Shrojibasini Bose [AIR 1945 PC 174 : 1945 MWN 634 : 26 PLT 279]**. In that case a letter and two telegrams were tendered in evidence and it was observed that the contents of the letter and the telegram were not the evidence of the facts stated therein. The question in that case was whether the testatrix was so seriously ill as would result in impairment of her testamentary capacity. To substantiate the degree of illness, a letter and two telegrams written by a nurse were tendered in evidence. The question was whether in the absence of any independent evidence about the testamentary capacity of the testatrix the contents of the letter could be utilised to prove want of testamentary capacity. Obviously, in these circumstances the Privy Council observed that the fact that a letter and two telegrams were sent by itself would not prove the truth of the contents*



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of the letter and, therefore, the contents of the letter bearing on the question of lack of testamentary capacity would not be substantive evidence. Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue.”

(Emphasis Supplied)

31. In *Narbada Devi Gupta v. Birendra Kumar Jaiswal*, (2003) 8

SCC 745 at page 751, it had been held as follows :



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*“16. Reliance is heavily placed on behalf of the appellant on the case of **Ramji Dayawala & Sons (P) Ltd.** [(1981) 1 SCC 80] The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the “evidence of those persons who can vouchsafe for the truth of the facts in issue”. The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court.”*

(Emphasis Supplied)

32. In the instant case, in the written statement, the agreement had been denied and disputed. Receipt of advance amount had been denied. The signature of Govindaraja Naicker had been disputed. Naturally, a burden was cast on the plaintiff to prove the signature. He had not taken any effective steps to prove the signature and *consensus ad idem*. P.W.2 and P.W.3 contradicted themselves in their evidence. The District Munsif



had meticulously analysed the evidence and had pointed out the inconsistencies.

33. I hold that the Principal Sub Judge had erred in overlooking the observations of the District Munsif on the evidence surrounding the execution of Ex. A1. I would therefore answer the 1st and 2nd substantial questions of law by holding that the Principal Sub Judge had erred in his appreciation of evidence available over the suspicious circumstances pointed out by the District Munsif relating to the document in Ex. A1 itself and over its execution. The burden to prove Ex. A1 was overwhelmingly on the plaintiff, particularly since the suit was instituted well after the death of Govindaraja Naicker. I hold that such burden was not discharged and that the plaintiff failed to "*place material before the Court to satisfy it that the party who signed the document had the knowledge of its contents.*" I further hold that Ex. A1 had not been proved in manner known to law by the "*evidence of those persons who can vouchsafe for the truth of the facts in issue.*" I therefore hold that the judgment and decree in A.S. No. 66 of 1987 will necessarily have to be set aside and the judgment and decree in O.S. No. 81 of 1996 will have to be restored and



confirmed.
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34. In the result :

- i. The second appeal is allowed with costs.*
- ii. The judgment and decree dated 31.03.1999 in A.S. No. 66 of 1987 passed by the Principal Sub Judge, Chengelpet is set aside.*
- iii. The judgment and decree dated 11.07.1997 in O.S. No. 81 of 1996 passed by the District Munsif, Chengelpet is restored and confirmed.*
- iv. Any one of the 8th to 12th respondents/legal representatives of the deceased plaintiff, R. Premchand, are at liberty, by producing necessary identification, to apply to the District Munsif Court, Chengelpet, for return of the sale consideration deposited in Court as per Ex. A.11.*

C.V.KARTHIKEYAN, J.



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v. Connected Miscellaneous Petition if any, is closed.

35. I must place on record the invaluable assistance provided by Mr. K. Venkatasubban, learned Amicus Curiae in presenting a difficult case where the opinions of both the District Munsif and the Principal Sub Judge on the same evidence vertically differed.

23.08.2022

Index :Yes/No

Internet:Yes/No

vsg

To

1. Principal Subordinate Court, Chinglepet.
2. District Munsif Court, Chinglepet.

**Pre-Delivery Judgment made in
S.A.No. 137 of 2000**