

## N.Ranganathan vs Angammal on 7 August, 2014

**Author: T.Raja**

**Bench: T.Raja**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.08.2014

Coram:-

The Hon'ble Mr. Justice T.RAJA

Second Appeal No.948 of 2010

N.Ranganathan

... Appellant

vs.

Angammal

... Respondent

Second Appeal filed under Section 100 CPC., as against the judgment and decree, dated 26

For Appellant : Mr.A.Thiagarajan, SC  
for M/s.S.Ramesh Kumar

For Respondent : Ms.P.Veena

### J U D G M E N T

The defendant in O.S.No.109 of 2003 on the file of the Subordinate Judge, Arni, is the appellant, and the respondent was the plaintiff before the trial Court. The plaintiff/respondent herein filed a suit with a following prayer;

i. to direct the defendant to execute the sale deed in favour of the plaintiff and have the same registered by accepting the balance amount of sale consideration of Rs.80,000/- to be deposited by

the plaintiff through the Court, in default, permit the plaintiff to have the sale deed executed and registered through the Court;

ii. in the alternative, direct the first respondent to pay the plaintiff a sum of Rs.1,00,000/- with a subsequent interest and further create a charge over the suit properties till the amount is paid by the defendant;

iii. to direct the defendant to delivery the suit property through the Court, in default, permit the plaintiff to take possession as such;

iv. to grant a permanent injunction against the defendant restraining him from in any manner alienating or encumbering the suit property; The suit was decreed by judgment and decree dated 07.12.2004, passed in O.S.No.109 of 2003, on the file of the Subordinate Judge, Arni, and on appeal, the same was confirmed by the learned Principal District Judge, Tiruvannamalai, in A.S.No.12 of 2007, dated 26.02.2010. Aggrieved by the concurrent findings of the Courts below, the present second appeal has been filed. In this second appeal, the parties are referred according to their litigative status before the trial Court for the purpose of convenience.

2. Learned Senior counsel appearing for the appellant/defendant submitted that the defendant is the owner of the suit property. The plaintiff is running a chit and finance business, where-from the defendant availed a loan from the plaintiff to purchase a lorry in the name of his wife-R.Rajeswari and for the said transaction, signature of the defendant was obtained in an unfilled blank stamp paper by the plaintiff as security for the loan availed. However, without there being any agreement of sale between the defendant and plaintiff as alleged on 06.03.2002, taking advantage of an unfilled blank stamp paper, the plaintiff and five others came to the defendant's house and forced him to pay the loan amount of Rs.1,80,000/-. Thereafter, when a police complaint was made against the plaintiff, the plaintiff did not come forward, however, the defendant had paid the entire loan amount, but the plaintiff did not return the signed blank stamp papers to the defendant. It is further contended by the learned Senior counsel that there was no sale agreement between the plaintiff and the defendant as alleged on 06.03.2002 in respect of the suit property. Moreover, the defendant had not received any advance much less Rs.1,00,000/- from the plaintiff . On that basis, he resisted the prayer as sought for by the plaintiff.

3. Learned Senior counsel further contended that the learned trial Court, disbelieving the case of the defendant, wrongly decreed the suit holding that the defendant alone was examined as D.W.1 and no other witnesses were examined and that no document was produced on his side to substantiate his defence. Assailing the approach of the learned trial Court, when appeal was filed, the learned first appellate Court repeating the same mistake affirmed the judgment of the learned trial Court, with a result, the defendant has filed the present second appeal. Learned Senior counsel further submitted that the Courts below have failed to take note that the alleged agreement of sale dated 06.03.2002 was admittedly signed only by the defendant, therefore, if the case of the plaintiff is accepted that there has been a sale agreement with consent free from any coercion, both parties to the agreement should have appended their signatures, but, in the present case, only the signature of the defendant was appended in the alleged agreement of sale dated 06.03.2002, marked as Ex.A1.

However, without looking into the signature appended in the sale agreement dated 06.03.2002, the learned trial Court improperly admitted the same and on appeal, the same has been wrongly confirmed by the learned first appellate Court. Therefore, on this count, learned Senior counsel pleaded, the judgments and decrees passed by the Courts below cannot be sustained.

4. By referring to Section 10 of the Indian Contract Act, 1872, learned Senior counsel contended that as per Section 10 of the Act, all agreements are to be considered as contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object. In the present case, the defendant from the date of filing written statement has denied the execution of sale agreement, therefore, without there being any signature of the plaintiff affixed as required under law, both the Courts below ought not to have accepted the execution of the alleged sale agreement dated 06.03.2002. But, though the learned first appellate Court referred Section 10 of the Act, it has wrongly given a finding against the defendant holding that the suit for specific performance is maintainable even if the sale agreement has been signed by only one party. When the defendant right from the date of filing the written statement, till now, has denied the execution of sale agreement, as per Section 10 of the Act, the findings given by the learned first appellate Court holding that the suit for specific performance is maintainable even if the sale agreement signed by only one party, is liable to be set aside. Adding further, he has submitted that a mere perusal of the alleged sale agreement dated 06.03.2002 would raise several doubts; firstly, the said sale agreement does not carry the signature of the plaintiff; secondly, amount of Rs.1,80,000/- mentioned in the sale agreement dated 06.03.2002 has been re-written to suit the convenience of the plaintiff; thirdly, the said agreement does not carry the schedule of property. Thus, these errors have not been properly gone into by the Courts below.

5. Again, referring to Section 35 of the Indian Stamp Act, it was argued that, unless an instrument is duly stamped, it cannot be registered or received in evidence or authenticated by any person who had, by law or consent of parties, authority to receive evidence, however, learned trial Court, as against the said provision, has wrongly admitted the alleged sale agreement, which was not even affixed with required stamps, as acceptable evidence, therefore, when there was no such finding by the Courts below with regard to the compliance of Section 35 of the Act, the alleged sale agreement dated 06.03.2002 ought not to have been admitted by the Courts below.

6. Replying to the readiness and willingness said to have been proved by the plaintiff, learned Senior counsel contended that the plaintiff knowing pretty well that the defendant was out of station during the relevant point of time has deliberately sent a notice dated 05.03.2003 to his address, unfortunately, since he was out of station, the same was returned to the plaintiff. When this aspect was rightly brought to the notice of the Courts below, unfortunately, both the Courts below have wrongly come to the conclusion that the notice sent by the plaintiff expressing her willingness and readiness has not been properly responded by the defendant.

7. In support of his submissions, he has also relied upon a judgment of this Court in *Caterpillar Inc. 100 NE v. Jorange* and another (AIR 1998 MADRAS 171) to contend that as per Section 2(b) of the Indian Contract Act, 1872, a proposal becomes a promise only when the person to whom the proposal is made signifies his assent thereto and when the proposal is accepted. As per Section 2(e),

every promise and every set of promises forming the consideration of each other is an agreement.

8. Learned Senior counsel has also relied upon yet another judgment in the case of Bondar Singh v. Nihal Singh (2003 (2) CTC 635) to contend that the High Court, while exercising power under Section 100 of the Code of Civil Procedure, had no jurisdiction to upset the findings on the question recorded by the lower appellate Court, but, at the same time, an appeal under Section 100 CPC can be entertained by the High Court only on a substantial question of law. If the findings of the subordinate Courts on facts are contrary to evidence on record and are perverse, such finding can be set aside by the High Court in appeal under Section 100 CPC. Therefore, when the Courts below have repeatedly committed serious error and flaws one after another, in wrongly accepting the un-registered alleged sale agreement dated 06.03.2002, this Court, by exercising power conferred under Section 100 CPC, learned Senior counsel, may set aside the same as the findings of the Courts below are contrary to evidence on record.

9. Per contra, learned counsel for the respondent submitted that when the plaintiff has agreed to buy the suit property for a sum of Rs.1,80,000/- from the defendant, an agreement of sale was executed and at the time of execution, the plaintiff has also paid an advance amount of Rs.1 lakh and it was also further agreed that on payment of balance amount, the defendant has to execute a sale deed in favour of the plaintiff. It is further contended that after executing the sale agreement dated 06.03.2002, the plaintiff was ready and willing to perform her part of the contract and therefore, she had approached the defendant to pay the balance amount of Rs.80,000/- on 27.03.2003 along with attestors of the agreement of sale. But, sadly, the defendant attempted to alienate the suit property in favour of the third party for a higher price. After knowing the same, the plaintiff had issued a legal notice dated 05.05.2003 expressing her readiness and willingness to execute the part performance of the contract and thereafter, the defendant, having acknowledged the notice dated 05.05.2003, wantonly returned the same unserved as if he was out of station. When the plaintiff came to know that the defendant is evading to perform his part of the contract, she has filed the present suit with a prayer cited supra.

10. Learned counsel further stated that when the defendant has taken a specific plea that the sale agreement was created by the plaintiff for the purpose of filing a suit, no acceptable proof whatsoever placed by the defendant to substantiate the same, more particularly, when the plaintiff was able to establish the execution of sale agreement dated 06.03.2002 on the basis of two vital witnesses, namely, P.W.2 Santhanammal, attestor to the agreement of sale, and P.W.3 Chakravarthy, a scribe of the sale agreement, and both of them have deposed that the plaintiff and defendant have entered into an agreement of sale with reference to the suit property and thereby, the defendant received a sum of Rs.1 lakh from the plaintiff as advance amount and executed the sale agreement dated 06.03.2002, marked as Ex.A1. During cross-examination, although the defendant put lot of questions to the P.Ws. 1 to 3, namely, the plaintiff, attestor and scribe, nothing has been elicited from them. Therefore, it is not open to the defendant, after suffering concurrent findings of the Courts below, to challenge the same repeating the earlier stand taken before the Courts below that the sale agreement dated 06.03.2002 was not at all executed.

11. While replying to the argument of the learned Senior counsel for the appellant on the correctness of the sale agreement dated 06.03.2002 that it was not signed by the plaintiff, therefore, the same should not be taken into account as acceptable evidence, learned counsel for the respondent, taking support from a judgment of this Court in Lakshmi Ammal and others v. J.Victor and others (1998 (1) MLJ 740), contended that even if the sale agreement had been signed by only one party, the suit for specific performance is maintainable, therefore, he pleaded, the above said contention of the appellant cannot be countenanced.

12. In support of his submissions, he has also relied upon a judgment of the Hon'ble Apex Court in the case of Alka Bose v. Parmatma Devi and others (2008 (6) CTC 509) for a proposition that Section 10 of the Indian Contract Act provides all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. Therefore, when the proviso of Section 10 makes it clear that the Section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents, the Apex Court, while dealing with an identical and same argument, held that even an oral agreement to sell the property is also valid and if so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. Therefore, when the plaintiff has categorically established before the Courts below the execution of sale agreement dated 06.03.2002 with two witnesses, namely, Pws 2 and 3 (attestor and scribe to the sale agreement dated 06.03.2002), it is not open to the defendant to once again go into the issue that the sale agreement dated 06.03.2002 has not been executed by the defendant. With these submissions, he prayed for dismissal of the second appeal.

13. This Court, sitting under Section 100 CPC, is not inclined to interfere with the concurrent findings of the Courts below for the reasons stated below:

It is true that the present second appeal has been filed on the ground that the defendant/appellant herein has not executed the sale agreement, but the Courts below, on perusing the documents produced by the plaintiff and also on taking note of the deposition of P.W.2 and 3, attestor and scribe to the sale agreement dated 06.03.2002, have decreed the suit. It is not in dispute that the defendant, who has examined himself as only witness before the trial Court, has taken a specific plea not to accept the sale agreement dated 06.03.2002, on three grounds; firstly, it was not executed by him as alleged by the plaintiff on 06.03.2002; secondly, the defendant did not receive a sum of Rs.1 lakh as part of the sale consideration; thirdly, the said sale agreement dated 06.03.2002 was not properly stamped. But, the learned trial Court, after examining the case of both sides with reference to the sale agreement dated 06.03.2002 and also by taking note of the deposition of P.Ws. 2 and 3 (attestor and scribe to the sale agreement), who have deposed that the plaintiff and defendant have entered into a sale agreement on 06.03.2002 and on the date of sale agreement, the defendant received a sum of Rs.1 lakh towards sale consideration, rightly came to the conclusion that sale agreement has been executed on 06.03.2002, therefore, such finding of fact cannot be interfered by this Court, sitting under Section 100 CPC.

14. It is also pertinent to state that the defendant, after filing a written statement, took a stand that he has paid back the loan amount and thereby he denied the execution of sale agreement dated 06.03.2002. While dealing with the said aspect, learned trial Court came to the conclusion that the defendant has not mentioned as to the amount which he borrowed from the plaintiff and on what date he has paid back the same. When it was the case of the defendant that he has paid back the entire amount, he should have produced some documents to substantiate the date on which he has paid back the said amount to the plaintiff to wipe out the loan transaction. Even, with reference to the loan transaction, no proof whatsoever was placed by the defendant before the trial Court. By looking into all these aspects, the Courts below have rightly decreed the suit, therefore, this Court is not inclined to interfere with the such findings of facts recorded by the Courts below.

15. With regard to the contention of the learned Senior counsel for the appellant that only the defendant has appended his signature in the sale agreement dated 06.03.2002, not the plaintiff, therefore, it is not a valid sale agreement, it is more appropriate to refer to a judgment of the Apex Court in Alka Bose's case (cited supra), wherein it held thus:

..... An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. Section 10 of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale. A mere perusal of the above said ratio laid down by the Apex Court depicts that even an oral agreement to sell the property is valid. If so, a written statement signed by one of the parties, if it

evidences, such an oral agreement will also be valid. Likewise, in the case on hand, the plaintiff entered into a sale agreement dated 06.03.2002, marked as Ex.A1, with the defendant for a sale consideration of Rs.1,80,000/- and on the date of sale agreement, the plaintiff had also paid a sum of Rs.1,00,000/- towards part of sale consideration. In the said sale agreement, the defendant had appended his signature and two other witnesses had also appended their signatures, therefore, it is not open to the defendant to say that only the defendant had appended his signature, hence, the sale agreement is void. Hence, looking at from any angle, the judgment and decree passed by the learned Principal District Judge, Tiruvannamalai, made in A.S.No.12 of 2007, dated 26.02.2010, confirming the judgment and decree passed by the learned Subordinate Judge, Arni, in O.S.No.109 of 2003, dated 07.12.2004, do not warrant any interference by this Court.

16. In fine, from the above discussions, it follows that except the above question of law no substantial question of law arises for consideration in this appeal. Consequently, the Second Appeal is dismissed as devoid of any merit at the admission stage itself. No costs.

Index : yes/no  
Internet : yes/no  
rkm

07.08.20

To  
1.The Principal District Judge, Tiruvannamalai.  
2. The Subordinate Judge, Arni.

T.RAJA,

Judgment in

