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T.Raman Vs. A.Devaraj

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Court : Chennai

Decided On : Jun-24-2013

Judge : P.R.Shivakumar

Appellant : T.Raman

Respondent : A.Devaraj

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

24. 06.2013 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR S.A.No.41 of 2008 1.T.Raman 2.R.Davamani .. Appellants -Vs- 1.A.Devaraj 2.Kandhammal .. Respondents Second Appeal filed under section 100 of C.P.C to set aside the decree and judgment passed by the learned Additional District Judge, (Fast Track Court), Kallakkuruchi dated 09.10.2007 made in A.S.No.109 of 2004 reversing the decree and judgment passed by the learned Subordinate Judge, Kallakkurchi dated 02.12.2003 made in O.S.No.114 of 1998. For appellant : Mr.V.Bhiman For Respondents : Mrs Mythili Suresh for M/s.Sarvabhauman Associates -----

JUDGMENT

The defendants 1 and 3 in the original suit are the appellants in the second appeal. The plaintiff is the first respondent and the second defendant is the second respondent. Devaraj, the first respondent /plaintiff filed the suit O.S.No.114 of 1998

on the file of Sub-Court, Kallakkuruchi against the appellants and the second respondent for the relief of specific performance based on an alleged agreement for sale dated 27.01.1998. After trial, the trial Court dismissed the suit with costs by its judgment and decree dated 02.12.2003. The first respondent herein/plaintiff preferred an appeal on the file of the Additional District Judge, (Fast Track Court), Kallakkuruchi, against the decree of the trial Court dismissing the suit and the said appeal was taken on file as A.S.No.109 of 2004. The learned Additional District Judge (Fast Track Court), Kallakurichi, after hearing, allowed the appeal and granted the relief of specific performance by directing the first appellant herein and the second respondent herein/defendants 1 and 2 to execute a sale deed in favour of the first respondent herein/plaintiff in accordance with the terms of the suit agreement for sale in respect of the suit property after getting a sum of Rs.10,000/- being the balance amount of sale consideration and granted two months time for the said purpose. The said judgment and decree of the lower appellate Court dated 09.10.2007 made in A.S.No.109 of 2004 is challenged in the present second appeal. For the sake of convenience and to avoid confusion, the parties are referred to in accordance with their ranks in the original suit.

2. Second defendant Kandhammal is the wife of first defendant Raman. Plaintiff Devaraj is the brother's son of the first defendant. The third defendant Davamani is the person who has purchased 31 cents of land being a part of the property described as 5th item in the plaint schedule. According to the plaintiff, all the properties described in the plaint schedule belong to Raman and his wife Kandhammal, namely Defendants 1 and 2 and they entered into an agreement with the plaintiff Devaraj on 27.01.1998 for the sale of the suit properties to the plaintiff for a sale consideration of Rs.50,000/- and received a sum of Rs.40,000/- as advance. Further case of the plaintiff is that though the plaintiff was ever ready and willing to perform his part of the contract and expressed his readiness and willingness to pay the balance sale consideration of Rs.10,000/- within the time (6 months) stipulated in the agreement, the defendants 1 and 2 were reluctant and were evading the same; that at last the plaintiff came to know that the defendants 1 and 2 were trying to cheat the plaintiff and execute a sale in favour of a third party and that hence, the plaintiff was constrained to file the suit against the defendants 1 and 2 for the relief of specific performance. It is the further contention

of the plaintiff that since a part of the suit properties has been sold by the first defendant in favour of the third defendant subsequent to the date of execution of the suit sale agreement, the third defendant is also bound by the agreement dated 27.11.1998 and hence the third defendant has also been made a party to the suit so that a decree binding all the defendants, including third defendant, could be passed.

3. The first defendant Raman has resisted the suit contending that the suit sale agreement dated 27.11.1998 is a fabricated and forged one and that the signature found in the said agreement is not that of the first defendant. It is his further contention that since he and the second defendant had no issues, he wanted the second defendant to give her consent for his second marriage, pursuant to which alone the plaintiff and the second defendant colluded together, created the suit sale agreement and filed the suit and that hence the suit should be dismissed with costs.

4. The second defendant Kandhammal, in her written statement, supported the case of the plaintiff admitting the plaint averment that the suit sale agreement was executed by herself and her husband, namely the first defendant agreeing to sell the suit properties for a sum of Rs.50,000/-. It is her further contention that since a portion of the 5th item of the suit property belonged to the first defendant and the rest of the suit properties belonged to the second defendant, both of them being husband and wife jointly executed the suit sale agreement in favour of the plaintiff on 27.01.1998. However, she would contend that the entire advance amount of Rs.40,000/- was received and appropriated by the first defendant and that hence, she would be prepared to execute a sale deed in accordance with the agreement, provided the balance sale consideration of Rs.10,000/- is paid to her.

5. The third defendant Davamani in her written statement has supported the defence plea of the first defendant by contending that the agreement dated 27.01.1998 appears to be a fabricated document for the purpose of litigation to grab the properties of the first defendant including a residential house. She has contended further that she purchased 31 cents of land in R.S.No.232/2 forming part of items 5 and 6 of the suit properties including half share in the Well, Electric

Motor and Pumpset for a consideration of Rs.19,000/- under a registered sale deed dated 20.07.1998 from the first defendant; that the said purchase was made without having any knowledge of the suit sale agreement and that, being a purchaser for value without notice of the suit sale agreement, her interest in the purchase under the said sale should be protected.

6. Based on the above said pleadings, the necessary issues were framed and in the trial, two witnesses were examined as Pws 1 and 2 and 52 documents were marked as Exs.A1 to A52 on the side of the plaintiff. D1 and D3 were examined as Dws 1 and 2, one Kuppusamy was examined as Dw3 and the second defendant Kandhammal was examined as Dw4. Four documents were marked as Exs.D1 to D4 on the side of the defendants.

7. At the conclusion of the trial, the learned trial Judge dismissed the suit with costs holding that the suit agreement for sale dated 27.11.1998 was not a genuine and valid document and it was not supported by consideration. On appeal, the learned lower appellate Judge reappraised the evidence and came to the conclusion that the suit sale agreement was genuine and valid and that the plaintiff was entitled to the relief of specific performance. Accordingly, the learned lower appellate Judge set aside the decree passed by the trial Court and decreed the suit for specific performance as prayed for. The said judgment and decree of the lower appellate Court dated 09.10.2007 is challenged by the defendants 1 and 3 in the present second appeal on various grounds set out in the grounds of second appeal.

8. The second appeal has been admitted on the following substantial questions of law. ".1) Whether the appellants could execute a sale deed with regard to the property worth more than Rs.5,00,000/- having entered into an agreement for sale for a paltry sum of Rs.50,000/-?. 2) Whether stamps for Ex.A1 dated 27.01.1998 would have been purchased at Chennimalai which is 200 Kms from Sankarapuram, when the witnesses on the side of the plaintiff categorically state that the stamp paper was purchased on the same date of execution?. 3) Whether the Lower Appellate Court is right in rejecting the claim of the appellant with regard to the signature without any comparison (or) from any opinion from an expert?.".

9. The arguments advanced by Mr.V.Bhiman, learned counsel for the appellants and by Mr.Mythili Suresh learned counsel for the respondents were heard and the materials available on record were also perused.

10. Of course at the time of admission, the above said questions were identified and formulated as substantial questions of law. It is obvious from the grounds of second appeal that the questions formulated and incorporated in the grounds of appeal itself have been reproduced as substantial questions of law in the order of this Court dated 10.01.2008. However, at the time of advancing arguments, learned counsel appearing on both sides pointed out the mistakes in those questions and the need for correction of those questions. Hence, the questions are recast as follows: ".1) Whether the lower appellate Court has rendered a perverse finding that the suit sale agreement is a genuine one without properly appreciating the defence plea of the defendants 1 and 3 that the value of the suit properties was more than Rs.5,00,000/- and the defendants 1 and 2 could not have entered into an agreement for sale of the same for a paltry sum of Rs.50,000/-?. 2) Whether the lower appellate Court has rendered a perverse finding by holding Ex.A1 sale agreement to be genuine without properly considering the fact that the stamps were purchased at Chennimalai, which is 200 km away from Sankarapuram when the testimonies of witnesses examined on the side of the plaintiff are to the effect that the stamp paper was purchased on the same day on which the agreement was executed?. 3) Whether the lower appellate Court has committed an error in holding that the signature found in Ex.A1 to be that of the first defendant without getting the opinion of a handwriting expert?.".

11. After the line of recasting of the substantial questions was indicated, the learned counsel for the appellants and the respondents advanced their arguments. Mr.V.Bhiman, learned counsel for the appellants made the following submissions: ".When a defence plea had been taken by the defendants 1 and 3 that the value of the suit property was more than Rs.5,00,000/- even as on the date of suit agreement for sale, the learned lower appellate Judge committed an error in not considering the improbability of the defendants 1 and 2 agreeing to sell the suit properties for a sum of Rs.50,000/-. The circumstances narrated by the first defendant, which according to him, led to the fabrication of the suit sale

agreement, was not properly appreciated by the lower appellate Court and the same resulted in a perverse finding. Many improbabilities found in the evidence of the witnesses examined on the side of the plaintiff were not properly considered by the learned lower appellate Judge. The stamp paper used for preparing Ex.A1 agreement was purchased at Chennimalai, which is 200 km away from Sankarapuram, the place of alleged execution of the same. Witnesses examined on the side of the plaintiff stated that the agreement was executed on the same day on which the stamp paper was purchased, but the stamp paper was purchased on 23.09.1997 and the agreement was dated 27.01.1998. The said aspect was not properly considered by the lower appellate Court and the same resulted in a perverse finding. The lower appellate Court chose to make a comparison of the signatures found in the vakalat and written statement to arrive at a conclusion that the signature found in Ex.A1 was that of the first defendant, but, while doing so, the lower appellate Judge failed to take a cautious approach. Such a comparison, without the help of an expert, shall be avoided. Even the apparent dissimilarities in the signatures were not noticed by the learned lower appellate Judge.". Based on the above said contentions, learned counsel for the appellant would submit that the judgment of the learned lower appellate Judge is erroneous in all respects and the decree passed thereon should be set aside and reversed.

12. Mrs Mythili Suresh, learned counsel for the first respondent (plaintiff in the suit) argued that the learned lower appellate Judge, being the final Court of appeal on facts, reappreciated the evidence and, on proper reappreciation, rendered a finding of fact that the suit sale agreement was genuine and the said finding, at no stretch of imagination, could be termed perverse. It is the further argument advanced on behalf of the respondents that the learned lower appellate Judge was right in drawing an adverse inference against the defendants pursuant to his failure to take steps to have the admitted and disputed signatures compared by a handwriting expert, more so since the first defendant, while deposing as DW1, had chosen to deny his own signatures found in his written statement and vakalat. It is also the contention raised on behalf of the plaintiff and 2nd defendant (Respondent) that in the absence of any proof that the value of the suit properties was not less than Rs.5,00,000/- as on the date of agreement, the learned lower

appellate Judge was right in holding that the contesting defendants did not prove that the consideration stipulated in the suit agreement was grossly inadequate to improbalize the case of the plaintiff. It is also contended on behalf of the plaintiff and the second defendant that the substantial questions of law projected by the contesting defendants, namely defendants 1 and 3 (appellants in the second appeal) are not in fact substantial questions of law and even if they could be accepted as substantial questions of law, the same should be decided in favour of the plaintiff and the second defendant and that the defendatns 1 and 3 (appellants in the second appeal) have not made out a case for interference with the judgment and decree of the lower appellate Court, by this Court in the second appeal.

13. The above said submissions made on behalf of the contesting parties were taken into consideration. The materials available on record were also considered.

14. The second appeal has been filed against the reversing judgment of the lower appellate Court. The suit was filed by the plaintiff (first respondent) for the relief of specific performance based on the suit agreement for sale dated 29.01.1998 marked as Ex.A1. Of course the second defendant Kandhammal (second respondent in the second appeal) sails with the plaintiff insofar as she has admitted the execution of Ex.A1 agreement for sale. As rightly pointed out by the learned counsel for the defendants 1 and 3(appellants), the said admission alone shall not be enough to prove the genuineness of Ex.A1 agreement. The burden of proving the execution of Ex.A1 agreement, passing of consideration and genuineness of the same lies on the plaintiff. In the absence of any explanation on the part of the contesting defendants narrating the circumstances under which the suit agreement came to be fabricated, according to the respondents, the admission of the second defendant, who supports the case of the plaintiff, shall have more weight and minimum evidence on the side of the plaintiff would be enough to cast the shifting of burden on the contesting defendants to disprove Ex.A1. In this case, the Defendant No.1, who is said to be one of the signatories of the suit agreement and also one of the vendors under the suit agreement for sale, has propounded a clear theory of concoction and fabrication of Ex.A1 agreement to wreak vengeance on him because of his separation with his wife, namely the second defendant, pursuant to the misunderstanding that arose when he asked

her permission for his contracting a second marriage. It is the clear and categorical stand taken by the first defendant Raman that he was not gifted with any child through his wife Kandhammal, the second defendant; that he wanted her consent for contracting a second marriage so that he could get a child of his own and that pursuant to the same, the second defendant colluded with the plaintiff, who is none other than her sister's son and also the brother's son of the first defendant and fabricated and created Ex.A1 agreement forging the signature of the first defendant, in order to keep the entire properties beyond the reach of the first defendant.

15. It is an admitted fact that though the first defendant and second defendant cohabited for a long time, they have not been gifted with a child. Though the contention of the first defendant that he wanted the consent of his wife Kandhammal for his second marriage, which resulted in the rift between the husband and wife making them part with each other and live separately, has not been directly admitted, there is a candid admission by PW1 (plaintiff) and DW4 (second defendant) in their testimonies that the second defendant is living in a separate house and she is not residing with her husband, namely the first defendant. In addition, the second defendant, who deposed as DW4, has stated in her evidence that her husband, namely the first defendant, is keeping the third defendant as his concubine and is living with her. The same will probablise the case of the first defendant that the husband and wife parted with each other when the husband wanted her consent for his contracting a second marriage for having a child of his own and only thereafter, the wife of the first defendant, namely the second defendant, colluded with the plaintiff for creating Ex.A1 agreement for sale.

16. Of course, the first defendant did not take a stand in the written statement that though out of the total extent of 8 = acres of land described as Items 1 to 10 in the plaint schedule, only an extent of 21 cents in Item No.5 stood in the name of the first defendant and rest of the properties were purchased in the name of his wife, namely the second defendant, all those purchases were made by him with his own funds in the name of his wife, namely the second defendant. But he has taken such a plea during the course of trial. Such a plea is nothing but a plea that the said properties were purchased by him benami in the name of his wife

Kandhammal, the second defendant. After the enforcement of the Benami Transaction Prohibition Act, 1988, such a plea shall not be available to the first defendant. Benami Transaction Prohibition Act, 1988 makes it a punishable offence to enter into any benami transaction. But Section 3 of the Act provides that if a person purchases a property with his own funds in the name of his wife or his unmarried daughter, unless the contrary is proved, the same shall not be a benami transaction and it shall be presumed that the purchase has been made for the benefit of the wife or unmarried daughter as the case may be. Section 3 gives rise to a presumption that any purchase made by a person in the name of his wife or in the name of his unmarried daughter shall not be a benami transaction and it shall be presumed that the wife or the daughter, as the case may be, shall be the real purchaser. But it makes it a rebuttable presumption by adding that in case it is proved that the purchase was made not for the benefit of the wife or unmarried daughter as the case may be, then it will come within the definition of benami transaction. In such an event it will attract the penal provisions and the other consequences. The said exemption cannot be read into Section 4 of the Benami Transaction Prohibition Act. It provides a total bar for the person claiming to be the real owner for filing a suit or other proceedings against the person in whose name the property was purchased and from taking any plea of defence based on the benami nature of such transaction and contend that he/she is the real purchaser. The proof of a transaction to be a benami one shall result in three consequences. They are:

1. if such transaction takes place after the commencement of the Act, it is a punishable offence; 2) if such a transaction is a benami transaction irrespective of the fact whether such a transaction took place before or after the commencement of the Act, the State shall have the power under Section 6 of the Act to acquire the same without compensation; 3) the person claiming to be the real owner cannot maintain a plea against the person in whose name the property stands.

17. In case the husband or the father, as the case may be, proves that the purchase made by him in the name of his wife or the unmarried daughter was not for the benefit of wife or unmarried daughter, then no further proof is needed to show that the transaction is a benami transaction and in such cases, the other

consequences of entering into a benami transaction as indicated supra will ensue. It shall be unnecessary to dwell on the above said aspect because in this case the said question has to be looked into only incidentally as it has not directly arisen in this case. First of all, the first defendant who failed to take such a stand in the written statement ought not to have been allowed to adduce evidence in this regard. No evidence without a plea shall be looked into by the Court. The consideration of the question whether the purchases made in the name of the second defendant under Exs.A2, A3, A4, A5 and A6 were in fact the purchases made by the first defendant out of his own funds in the name of his wife Kandhammal (the second defendant) has no relevance for the purpose of disposal of the case on hand. It shall be sufficient to note that major part of the properties stood in the name of the second defendant and only a minor part, namely 21 cents of land being part of Item No.5 of the plaint schedule stood in the name of the first defendant.

18. Be that as it may, the case of the plaintiff is that the defendants 1 and 2, being the owners of the suit properties, jointly entered into an agreement with the plaintiff for the sale of the suit properties for a sum of Rs.50,000/- and thus Ex.A1 agreement came to be entered into. It is an admitted fact that part of the suit properties stood in the name of the first defendant and part of the suit properties stood in the name of the second defendant. According to the plaintiff and the second defendant, the plaintiff entered into an agreement for sale under Ex.A1 with the defendants 1 and 2 for purchasing the suit properties for a sum of Rs.50,000/-. The plea of the first defendant that the properties standing in the name of his wife was purchased by him out of his own funds could not be sustained in view of the provisions of the Benami Transaction Prohibition Act. The same shall not lead to an inference that his denial of execution of Ex.A1 agreement for sale should also be rejected as not proved. It is the clear and categorical stand taken by the first defendant that he did not enter into any agreement with the plaintiff and that the signature found in Ex.A1 is not his signature. It is his further contention that Ex.A1 was fabricated and brought into existence forging the signature of the first defendant by the plaintiff in collusion with the second defendant. When such is the defence case, the plaintiff should have adduced clear and reliable evidence to prove due execution of Ex.A1 and

also should have proved that the signature found in Ex.A1 is that of the first defendant. In this regard, the plaintiff, besides deposing as PW1, has examined one Saravanan as PW2 as attestor of Ex.A1 and he is also supported by DW4. They have stated uniformly that the Ex.A1 suit agreement for sale was executed on 27.01.1998 in the office of one Prabhakaran situated in A.K.T Complex, Kallakurchi. At the same time, it is pertinent to note that the plaintiff is an advocate. The witnesses examined on the side of the plaintiff and the second defendant admit that on the date of Ex.A1, the plaintiff was an advocate clerk and he became an advocate subsequently and that the office of his senior was in the very same complex, namely A.K.T complex, Kallakurchi. Besides, there is also a discrepancy in the evidence of the said witnesses as to when and where the advance amount of Rs.40,000/- was paid. PW1 and DW4 say that the advance amount of Rs.40,000/- was paid on the date of agreement at the time of execution of Ex.A1 agreement. In this regard, the evidence of PW2 is not clear. During cross examination made by the counsel for the contesting defendants, namely defendants 1 and 3, PW2 stated that the advance amount of Rs.40,000/- had already been paid and Ex.A1 was executed for the amount already paid. That part of his testimony in vernacular is extracted hereunder for the purpose of better appreciation:- ".njtuh$; 1k; gpujpthjpf;F gzk; bfhLj;J ,Ue;jhh;/ mjw;fhf brhj;Jf;fis tpw;whh;/ U:/ 40.000-?. Vw;fdnt bfhLj;jjw;F mf;upbkz;l; Vw;gl;lJ/". However, when he was cross-examined by the second respondent /second defendant, who supports the case of the plaintiff, he stated that a sum of Rs.40,000/- was paid by the plaintiff to the first defendant and at that point of time, the wife of the first defendant was also present and that the said amount was not given to the wife of the first defendant. The said part of his evidence in vernacular is extracted hereunder: ".U:/ 40.000-?. ?.k; bfhLj;jhh;fs;. njtuh$;. uhkdplk; bfhLj;jhu;/ me;j rkaj;jpy; mtuJ kidtp ,Ue;jhh;/ me;j mk;khtplk; bfhLf;ftpy;iy/". Even the said part of his evidence does not say that the amount was paid on the date of agreement for sale. In this regard, there is a vital contradiction between his evidence on the one hand and the evidence of PW1 and DW4 on the other hand.

19. The stamp paper used for preparing Ex.A1 was purchased at Chennimalai from a stamp vendor by name Palanisamy. No doubt the plaintiff's name is found as the person in whose name the stamp paper was purchased. But the date of

sale of the stamp paper by the stamp vendor has been noted as 23.09.1997. It is obvious from Ex.A1 that Ex.A1 is dated 27.01.1998, i.e., after a gap of 4 months from the date of purchase of the stamp paper. The signature of the stamp vendor and the serial number of the stamp paper are written in blue ink whereas the name of the plaintiff and his village have been written in black ink and it is obvious that the same ink has been used for getting the signatures of parties to the agreement at the time of execution. Hence, it is quite obvious that an old stamp paper, which had been purchased without mentioning the name of the purchaser, has been used for the purpose of writing Ex.A1 agreement. Of course, there is no prohibition for using a stamp paper purchased sometimes back for the execution of a document. But the difference in ink, as indicated above, will create a doubt regarding the execution of Ex.A1. The said doubt gets strengthened by the further fact that the witnesses examined on the side of the plaintiff and the second defendant have deposed against the particulars found in Ex.A1. The plaintiff, who deposed as PW1, has stated that the stamp paper was purchased at the time of execution of the agreement and the agreement was typed on the date on which the stamp paper was purchased. PW2, who is an attestor of Ex.A1, also stated that the stamp paper was purchased on the date of execution of Ex.A1 agreement. The second defendant, who deposed as DW4, has stated that the stamp paper was purchased on the date of execution of the agreement. Though the said witnesses have stated in uniform voice that the stamp paper was purchased on the date on which Ex.A1 agreement was entered into, their evidence in this regard have turned out to be a false one. The repeated statement in their evidence that the stamp paper was purchased on the date of agreement itself shall be enough to improbalise the case of the plaintiff regarding execution of Ex.A1 agreement. As pointed out supra, the stamp paper was purchased on 23.09.1997 and Ex.A1 agreement is dated 27.01.1998. The same will show that the above said witnesses are not speaking the truth and their evidence in this regard is unreliable.

20. According to the contesting defendants, the properties dealt with in Ex.A1 were worth more than Rs.5,00,000/- and the first defendant would not have agreed to sell the same for a sum of Rs.50,000/-, which is only 1/10th of the market value and the fact that the total consideration noted in Ex.A1 is Rs.50,000/- alone will show that the suit agreement for sale marked as Ex.A1 is a fabricated one.

Besides restating what he has pleaded in his written statement regarding the value of the suit properties, the first defendant did not produce clinching documents to prove that the market value of the properties dealt with under Ex.A1 was more than Rs.5,00,000/- and that the value quoted therein was grossly inadequate. There is no sufficient evidence to prove that the value of the property was more than Rs.5,00,000/- and hence the defendants 1 and 2 would not have agreed to sell the property for a sum of Rs.50,000/-. Hence the first substantial question of law is answered accordingly against the defendants 1 and 3/appellants.

21. The fact that the first substantial question of law has been answered against the defendants 1 and 3 (appellants) and in favour of the plaintiff & 2nd defendant (respondents) shall not be enough to confirm the decree of the lower appellate Court. The ultimate result shall depend on the answer to the other substantial questions of law. The mere failure to prove the market value of the property by the first defendant, who has stoutly denied his signature found in Ex.A1, shall not be the ground on which the execution of Ex.A1 should be held to be proved. Apart from the contention that the value quoted in Ex.A1 is grossly inadequate, the first defendant has also taken a stand that there was no necessity for him to sell the entire property without leaving any property for himself or his wife. He has projected the same as a ground in support of his contention that the same was a measure taken by the second defendant in collusion with the plaintiff to wreak vengeance on him. PW1 and DW4 have admitted that the entire property belonging to the defendants 1 and 2, including the residential house in which the first defendant is living, was sought to be sold under Ex.A1. It is highly improbable that the first defendant would have come forward to sell his entire property without even reserving anything for his sustenance and for his residence. Though an attempt was made by the plaintiff to show that the first defendant had got some other properties in Soolangkurichi and that the defendants 1 and 2 came forward to sell the suit properties for their family expenses, the same was denied by the first defendant as DW1. There is no evidence to prove that either the first defendant or the second defendant had got any property other than the properties dealt with in Ex.A1 agreement. PW1 has also admitted that the entire properties of the first and second defendants were sought to be sold under Ex.A1 agreement. The very fact that there is no proof that the defendants 1 and 2 had got any other

property and that there is an admission that the agreement was entered into for the sale of the entire properties of the first defendant, including the residential house, will make the case of the first defendant probable and improbablize the case of the plaintiff and the second defendant.

22. A vital aspect clinching the issue shall be the proof or otherwise of the signature of the first defendant found in Ex.A1. The first defendant denies having executed Ex.A1 agreement and he has denied the signature found in Ex.A1. In the teeth of such denial, the burden shall be heavy on the plaintiff to prove the signature found in Ex.A1 to be that of the first defendant. In this regard, we have already seen that there are vital contradictions and discrepancies in the evidence of Pws 1 and 2 and DW4 compared with Ex.A1 regarding the date of purchase of stamp paper used for preparing Ex.A1. We have also seen that there are contradictions as to when and where the advance amount was paid. Under such circumstances, the trial Court was justified in making a comparison of the signature found in Ex.A1 with the admitted signatures found in Ex.B1. Ex.B1 is a registered sale deed under which 31 cents of land in S.No.232/2 along with the share in the Well and electric motor pumpset was sold by the first defendant to the third defendant. On a comparison of the signature found in Ex.B1 with the disputed signature found in Ex.A1, the learned trial Judge found unnatural variations and hence came to the conclusion that Ex.A1 agreement was not executed by the first defendant. When the first defendant has clearly denied having executed Ex.A1 and also denied the signature found therein, the plaintiff ought to have taken steps to have the admitted and disputed signatures compared by a handwriting expert. But the plaintiff has not chosen to do so. When discrepancies regarding the execution of Ex.A1 have been elicited from the witnesses examined on the side of the plaintiff and DW4 who supported the case of the plaintiff, the burden shall be heavy on the plaintiff to have the admitted and disputed signatures compared with the help of a handwriting expert. Though the plaintiff has not chosen to do it, the learned lower appellate Judge has erroneously cast the burden on the first defendant to disprove the signature found in Ex.A1 and found fault with him for not taking steps to have the disputed and admitted signatures compared by a handwriting expert.

23. It is true that the first defendant, while deposing as DW1, has denied his signatures in his written statement and vakalat. But the same shall not be enough to shift the burden of proving / disproving the signature found in Ex.A1 on the first defendant. Learned counsel for defendants 1 and 3 (appellants) has come forward with a clear explanation as to how the denial of signatures found in the written statement and vakalat came to be made. It is the submission of the learned counsel for the contesting defendants (appellants) that due to over enthusiasm not to admit anything against his defence, he denied those signatures when the learned counsel for the plaintiff folded the documents in such a way that the signatures alone were exposed and that in a cautious approach the first defendant seems to have denied the signatures. The said explanation is quite convincing. Even otherwise, the contesting defendants have produced Ex.B1 containing the admitted signature of the first defendant. The plaintiff had not taken steps to have the documents containing the admitted and disputed signatures referred to a handwriting expert for his opinion. Under such circumstances alone, the learned trial Judge compared the admitted and disputed signatures, noted the dissimilarity and came to the conclusion that the signature found in Ex.A1 was not that of the first defendant. The learned trial Judge also found the variations to be not natural and the same led to the above said finding that Ex.A1 was not genuine. Learned Lower Appellate Judge also chose to compare the signature found in Ex.A1 with the signatures found in the Vakalat and the written statement of the first defendant and express an opinion that both are similar. Based on the same, the lower appellate Judge has arrived at a conclusion that the signature found in Ex.A1 is that of the first defendant. The said finding can be even stated to be perverse. Even with bare eyes one can find the similarity of the signatures found in the written statement and vakalat of the first defendant and the signature of the first defendant found in Ex.B1 and the dissimilarity between those signatures and the signature found in Ex.A1. The letters ' u' & 'd;' in the admitted signatures totally differ from the same in the disputed signatures. The shape of ' u' in the admitted signatures is ' '. The inverted box is continued with an oblique line as the end portion of the letter. In the disputed signatures, end portion of the letter slanting from right to left is absent. In the admitted signatures, the first loop in the letter 'd;' does not protrude upwards , whereas in the disputed signature it protrudes

upwards like ". ".. The shape of the letter also drastically differs. The learned lower appellate Judge has brushed aside those obvious differences, which are not natural variations, and came to an erroneous and perverse conclusion that the signatures found in the admitted and disputed signatures are of one and the same person.

24. It is also pertinent to note that even as per the plaint pleadings, no pre-suit notice was issued after the alleged execution of Ex.A1 and before the filing of the suit calling upon the defendants 1 and 2 to come and execute the sale deed in accordance with the terms of Ex.A1 agreement. The plaintiff, who deposed as PW1, also admitted that no notice was issued. But the second defendant, who supports the case of the plaintiff, while deposing as DW4, stated that a notice was issued on the basis of the agreement and she was prepared to produce the same. But no such notice was produced. The mere fact that the first defendant has chosen to execute a sale deed conveying 31 cents of land whereas even as per his admission only 21 cents of land in S.No.232/2 stood in his name and that such a sale deed was executed in favour of the third defendant, who is said to be the concubine of the first defendant, shall not be enough to discharge the burden cast on the plaintiff to prove the genuineness of Ex.A1 and to cast the burden on the first defendant to disprove Ex.A1. Hence, second and third substantial questions of law are answered accordingly in favour of the defendants 1 and 3 (appellants).

25. For all the reasons stated above, this Court comes to the conclusion that the well considered judgment of the trial Court ought not to have been interfered with by the lower appellate Court; that the lower appellate Court rendered a perverse finding as indicated supra; that the judgment of the lower appellate Court is defective, infirm and discrepant which deserves interference by this Court in the second appeal and that accordingly, the decree of the lower appellate Court reversing the decree passed by the trial Court is bound to be set aside and the decree of the trial Court dismissing the suit with cost shall be restored. In the result, the second appeal is allowed with costs through out. The decree of the lower appellate Court dated 09.10.2007 made in A.S.No.109 of 2004 is set aside. The decree passed by the trial Court dated 02.12.2003 made in O.S.No.114 of 1998 is restored with the result that the suit shall stand dismissed with costs. gpa

To 1. The Additional District Judge, (Fast Track Court), Kallakkuruchi.

2. The Subordinate Judge, Kallakkurchi

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