

A.S.NO.279 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29 / 07 / 2025

JUDGMENT PRONOUNCED ON : 29 / 10 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.279 OF 2017
AND CMP NO.10521 OF 2017

K.Ganesan

... Appellant / Plaintiff

Vs.

Ms.S.Selvi

... Respondent / Defendant

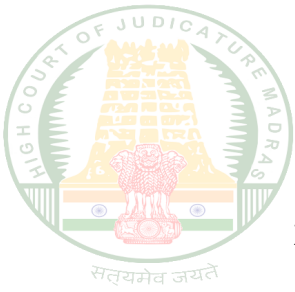
PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree in O.S.No.221/2014 dated March 28, 2017 on the file of the Second Additional District Judge, Erode.

For Appellant : MsV.Srimathi
For Respondent : Mr.R.Bharanidharan

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated March 28, 2017 passed in O.S.No.221 of 2014 by the 'Second Additional District Court, Erode' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

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2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The case of the plaintiff is that the defendant is the owner of the suit property by virtue of Sale Deed dated June 10, 2002. The defendant offered to sell the suit property to the plaintiff for a sum of Rs.15,00,000/- and the plaintiff agreed. A registered Sale Agreement dated July 2, 2014 was entered between them and on the same date, an advance of Rs.10,00,000/- was paid by the plaintiff to the defendant as a part of the sale consideration under the Sale Agreement. As per the terms of the Sale Agreement, the plaintiff has to pay the balance sale consideration before January 31, 2015 and upon such payment, the defendant has to execute the Sale Deed free from encumbrances.

3.1. The plaintiff expressed his readiness and willingness to execute the Sale Deed to the defendant on several occasions, whereas the defendant postponed the same without assigning any valid reasons. Hence, the plaintiff issued a legal notice on October 23, 2014 calling upon the defendant to execute the Sale Deed on October 30, 2014. Instead of



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executing the Sale Deed, the defendant sent a reply notice on October 31, 2014 with false allegations. The defendant in her reply notice averred that, using the long standing relationship between the plaintiff and her husband, her husband borrowed a sum of Rs.6,00,000/- from the plaintiff in the year 2013 and paid a sum of Rs.5,83,316/- as principal and interest and as on the date of Suit Sale Agreement, he had to pay a sum of Rs.3,00,000/- to plaintiff, in respect of which the Suit Sale Agreement was entered into as a security. The defendant averred that the suit property will be worth above Rs.1.50 Crores at present.

3.2. According to the plaintiff, all these facts are concocted and no iota of truth is present in it. With a view to defeat and defraud the rights of the plaintiff and to get unlawful gains, the defendant along with her husband is making hectic arrangements to sell the suit property. Hence, the plaintiff came up with the present Suit for specific performance of the Sale Agreement after the receipt of balance sale consideration along with a permanent injunction restraining the defendant from alienating or encumbering the suit property. The plaintiff has alternatively prayed for refund of advance amount of Rs.10,51,000/- along with interest at the rate of 12% per annum by creating a charge over the suit property and costs.

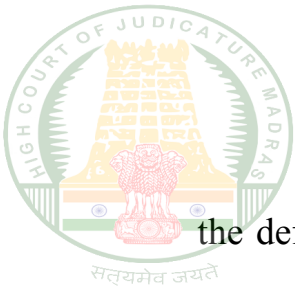
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DEFENDANT'S CASE

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4. The defendant filed written statement denying all the allegations made by the plaintiff in the plaint. The defendant admits the execution of the Suit Agreement but denies the nature and contents of it. According to the defendant, it is a loan agreement in the guise of Sale Agreement. The case of the defendant is that the plaintiff is a professional money lender. From the year of 1998, the defendant's husband was involved in the business of cement trading. In 2002, with a dire need of money the defendant's husband obtained loans from the plaintiff. After repayments, a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) was the balance loan amount, for which, the plaintiff, his son and his son-in-law constantly caused trouble to the defendant and her husband. The plaintiff also obtained four signed blank cheques of the defendant as a security and the same is under his custody. The plaintiff gave a complaint before Deputy Superintendent of Police on July 1, 2014 and the same was forwarded to North Police Station, Erode for enquiry and report. On the same day evening, a compromise was made by the other elders of the village, the plaintiff came forward with a demand of execution of mortgage deed and general power of attorney or a sale agreement in respect of suit property. The plaintiff and other members who stood for compromise have assured



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the defendants that the agreement is merely for a security and none other purpose serves for it. The plaintiff further assured the defendant for cancellation of the Sale Agreement in the event of repayment. The defendant paid a sum of Rs.5,83,316/- to the plaintiff as interest and part of the principal on various dates. Before the due date, the plaintiff has caused a legal notice and initiated this Suit and further, the plaintiff along with his son and son-in-law have initiated complaints under Section 138 of Negotiable Instruments Act, 1881 by using the aforesaid cheques as if the defendant had borrowed money from them and issued cheques. The defendant had no necessity for selling the suit property at a meagre amount when it is actually worth more than Rs.1.5 Crores. The plaintiff has filed this Suit with a sole intention to usurp the suit property. He has not approached the Court with clean hands. Stating so, the defendant sought for dismissal of the Suit along with costs.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- '1. *Whether the Suit Sale Agreement dated 2.7.2014 was intended*

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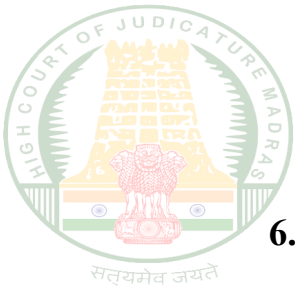
for the purpose of sale of suit property?

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2. *Whether the plaintiff is entitled to the relief of specific performance?*
3. *Whether the payment of advance amount of Rs.10,00,000/- as alleged is true?*
4. *To what other relief the plaintiff is entitled?*

6. At trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1, marked Ex-A.1 to Ex-A.10 and during his cross examination, Ex-B.1 was marked. One Mr.Thangavel was examined as P.W.2. One Mr.Murugaboobathi was examined as P.W.3 and during his cross-examination Ex-B.2 was marked. One Mr.Ramalingam, Document Writer was examined as P.W.4.

6.1. On the side of the defendant, the defendant was examined as D.W.1 and Ex-B.3 to Ex-B.7 were marked by him and in cross examination Ex-A.11 was marked. Mr.Subramaniam, husband of the defendant, was examined as D.W.2 and through him, Ex-B.8 to Ex-B.11 were marked. One Mr.Kuppusamy was examined as D.W.3 and through him Ex-B.12 was marked.



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6.2. After full-fledged trial, the Trial Court found that it is unbelievable that without seeing the suit property, the plaintiff entered into the Sale Agreement. The plaintiff failed to prove the payment of advance amount to the defendant under Ex-A.1 - Suit Sale Agreement. Ex-A.1 was not intended for Sale of suit property. After finding all the issues in favour of the defendant, the Trial Court concluded that the plaintiff is neither entitled to the relief of specific performance nor to the refund of advance amount. Holding so, the Trial Court dismissed the Suit.

7. Feeling aggrieved, the plaintiff has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

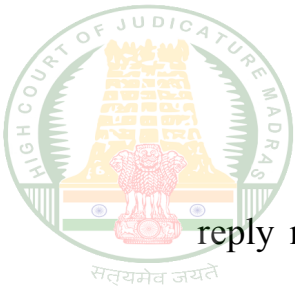
ARGUMENTS:

8. Ms.V.Srimathi, learned Counsel appearing for the appellant / plaintiff would argue that the Trial Court failed to consider the fact that Ex-A.1 – Sale Agreement is a registered document and the defendant is precluded from leading oral evidence contrary to the terms contained in Ex-A.1 under Sections 91 and 92 of Indian Evidence Act, 1872; that the defendant did not prove that a financial / money transaction took place between the plaintiff and the defendant; that since the defendant admitted



the execution of Ex-A.1 – Sale Agreement, the burden is upon the defendant to prove that Ex-A.1 was executed altogether for the different transaction; that the Trial Court's findings that no consideration was passed under Ex-A.1 is erroneous. Further, she would rely on *M/s.Siddamsetty Infra Project Pvt. Ltd's Case* [Judgment of Hon'ble Supreme Court in *M/s.Siddamsetty Infra Projects Pvt. Ltd -vs- Katta Sujatha Reddy*, reported in 2024 SCC OnLine 3214) to contend that the relief of specific performance is no longer an equitable relief. Accordingly, she would pray to allow the Appeal Suit, set aside the Decree and Judgment of the Trial Court, and decree the Suit as prayed for.

9. Per contra, Mr.R.Bharanidharan, learned Counsel appearing for the defendant would argue that Ex-A.1 – Sale Agreement was executed altogether for a different transaction; that there was no intention to sell the suit property under Ex-A.1, it was rather executed as a security for money transaction; that the plaintiff is a money lender and the defendant's husband borrowed money from the plaintiff; that the defendant paid a sum of Rs.33,316/- through cheque on January 9, 2014 and the remaining amount to be paid was Rs.6,00,000/- (Rupees Six Lakhs Only) at the time of Sale Agreement, which was later paid to the plaintiff; that in Ex-A.5 -

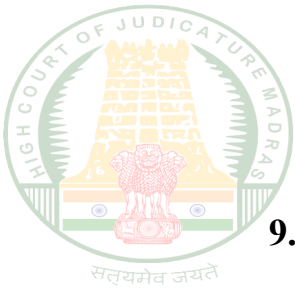


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reply notice, it has been clearly averred that Ex-A.1 was executed as a security for a money transaction; that the plaintiff filed Ex-B.8 - Police Complaint against the defendant's husband on July 1, 2014, wherein the plaintiff stated that the transaction between them is a money transaction and on the next day Ex-A.1 - Sale Agreement was entered into as per the decision of a panchayat; that Ex-A.1 – Sale Agreement was executed at the request of the panchayatdars only for the purpose of security; that the passing of consideration under Ex-A.1 was not proved; that the plaintiff failed to prove his wherewithal to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) in cash at the time of execution of Ex-A.1 – Sale Agreement; that the Trial Court after considering the available records, rightly concluded that there was no consideration passed under Ex-A.1; that there is no warrant to interfere with it. He would further argue that the relief of specific performance is a discretionary relief under Section 20 of the ‘Specific Relief Act, 1963’ [‘S.R. Act’ for short] and the Trial Court after evaluating the documents and evidence, came to the conclusion that the Suit deserves to be dismissed. There is warrant to interfere in it. Accordingly, he prayed to dismiss the Appeal Suit.

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9.1. He would rely on the following decisions in support of his

contentions:

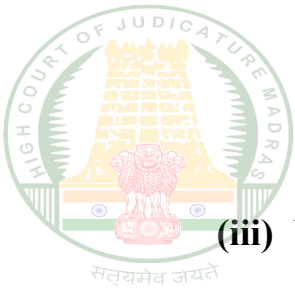
- (i) ***Ishwar Dass Jain's Case*** - Judgment of Hon'ble Supreme Court in *Ishwar Dass Jain (Dead) Through LRS -vs- Sohan Lal (Dead) by LRs*, reported in (2000) 1 SCC 434;
- (ii) ***P.Mannathan's Case*** - Judgment of this Court in *P.Mannathan -vs- B.Baskaran*, having neutral citation in 2025/MHC/1636;
- (iii) ***K.L.Damodaran's case*** - Judgment of this Court in *K.L.Damodaran -vs- Venkatappa Naidu* reported in 2018-5-L.W.84.

DISCUSSION:

10. Heard on either side. Perused the evidence available on record.

The points that arise for consideration in this Appeal Suit are:

- (i) Whether Ex-A.1 – Suit Sale Agreement was intended for the purpose of sale of the suit property?
- (ii) Whether the finding of the Trial Court that no consideration was passed under Ex-A.1 - Suit Sale Agreement is correct?



(iii) Whether the plaintiff is entitled to the relief of specific
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(iv) To what other relief, the plaintiff is entitled?

Point Nos.(i) and (ii)

11. The Suit Sale Agreement in Ex-A.1 is a registered document. In the said document, the defendant's husband (D.W.2) and one Thangavel (P.W.2) have signed as witness. It was drafted by one Ramalingam and he has been examined as P.W.4.

12. The plaintiff through his evidence as P.W.1 and by examining one of the attesting witness as P.W.2 namely Thangavelu has proved the execution of Suit Sale Agreement. Moreover, the defendant / D.W.1 in her written statement as well as in her evidence has clearly admitted the execution of Ex-A.1- Suit Sale Agreement. D.W.2 / her husband has also deposed admitting the execution of Ex-A.1 by the defendant.

13. While the defendant admits the execution of Ex-A.1, it is her case that there were money transactions between the plaintiff and her husband. The plaintiff preferred the police complaint in Ex-B.8 against the defendant on July 1, 2014 stating that the defendant's husband borrowed



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money and is refusing to return the same. Upon police complaint, on the night of the same day, a panchayat was convened at D.W.2 - Thangavelu's house. In the said panchayat, a compromise was reached and only as per the compromise, the defendant executed the Suit Sale Agreement as a security for the money transaction. It was agreed in the compromise that the defendant shall return Rs.6,00,000/- (Rupees Six Lakhs Only) on or before January 31, 2015, upon which the plaintiff shall cancel the Suit Sale Agreement. As per the compromise, the plaintiff totally paid a sum of Rs.5,83,316/-. A small amount alone was due to the plaintiff. In breach of the terms of compromise, the plaintiff has filed this Suit and further, on the basis of blank signed cheques obtained by the plaintiff from the defendant before the panchayat, the plaintiff through his son-in-law and agents, filed a complaint against the defendant in the Courts in Dharapuram and Karur.

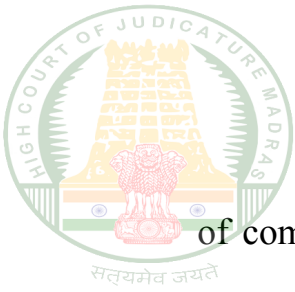
14. The defendant produced Ex-B.7 - Bank Passbook which shows that on January 9, 2014, the plaintiff was paid Rs.33,316/- via cheque. According to the defendant, the said payment was in lieu of interest. The plaintiff in his evidence as P.W.1 admitted the receipt of the said amount but contends that the payment was in repayment of a different hand loan obtained by the defendant's husband.

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15. Ex-B.8 is the information obtained under the Right to Information Act, 2005 [RTI] by the defendant's husband. On July 1, 2014, the plaintiff lodged a complaint before the Deputy Superintendent of Police, Erode stating the defendant's husband was running a business namely 'S.S.S. Chamber' and for the same, have obtained lakhs in loan in small quantities in various instances; that the defendant's husband sold the business for 1 Crore 35 Lakh, about 1 ½ Years before the complaint; that upon learning about the said fact, the plaintiff demanded repayment of the loan amount; that the defendant's husband refused and even threatened the plaintiff, taking advantage of the fact that the plaintiff had no loan / security document with him. The said complaint was forwarded to Erode North Police Station on the same day by the Deputy Superintendent of Police for necessary action and report. Another document in Ex-B.8 is a letter dated July 15, 2014 written by plaintiff, whereby he has not-pressed the complaint stating that a panchayat was held and it was agreed to sort out the issues between them within 6 months. In the said letter, the plaintiff's son-in-law namely Sathyamoorthy has also signed as a witness. Though the documents in Ex-B.8 were obtained through RTI, the plaintiff denied them. By Ex-B.8, the defendant has *prima facie* proved the factum



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of complaint by plaintiff calling it a loan transaction and the subsequent panchayat compromise. Hence, the onus shifts upon the plaintiff to disprove Ex-B.8 documents. But the plaintiff has not taken any steps to do so. In these circumstances, this Court holds that the complaint dated July 1, 2014 and the letter not-pressing the same, both in Ex-B.8, are proved.

16. The Suit Sale Agreement is dated July 2, 2014 *i.e.*, one day after the aforesaid police complaint. This Court wonders whether such conduct would be consistent with ordinary human conduct. Would a person execute a Sale Agreement in favour of someone who had lodged a police complaint against them or their spouse just the previous day? Ideally, no prudent person would do so.

17. Further, P.W.1 in his evidence has deposed that on July 2, 2014 he gave Rs.10,00,000/- (Rupees Ten Lakhs Only) in cash to one Natrayan, who in turn gave it to one Murugaboopathy, who handed it over to the defendant's husband (D.W.2). He has further deposed that P.W.2 - Thangavelu was not present at that time. Further that he does not have any document to show that he possessed Rs.10,00,000/- in cash at that time.



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18. Neither Natrayan nor Murugaboopathy have signed as witness in the Suit Sale Agreement. But Murugaboopathy has deposed as P.W.3. In his evidence, he has deposed that P.W.4 - Document Writer prepared Ex-A.1 - Suit Sale Agreement in P.W.4's office, at that time, the plaintiff gave Rs.10,00,000/- to Natrayan and he along with Natrayan gave the amount to the defendant and defendant's husband. Further deposed that only after receiving the amount, they signed in the Suit Sale Agreement. Contrary to his statement that consideration was passed in the Document Writer's office, in his cross-examination, he has deposed that consideration was passed at the time of registration inside the Sub-Registrar Office.

19. P.W.2 - Thangavelu has deposed that at the request of the plaintiff and the defendant's husband, he signed the Sale Agreement outside the Sub-Registrar Office and most importantly that he did not witness any passing of consideration.

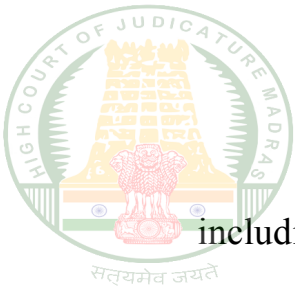
20. P.W.4 - Document Writer has deposed that no advance was paid in his presence but the defendant signed Ex-A.1 - Suit Sale Agreement stating that she has received the advance of Rs.10,00,000/-.



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21. From a cogent and conjoint reading of the above, it could be seen that there is no clear and sufficient evidence to show that the plaintiff had Rs.10,00,000/- with him in cash at the time of Ex-A.1 and to show that the said amount was paid as advance under Ex-A.1. P.W.2 has deposed that he did not witness the advance amount being paid. P.W.3's presence is itself doubtful as had he really been present, he would have signed as a witness. That apart, his evidence as to the location where the advance was paid is contradictory. P.W.4 who is the document writer has deposed that he did not witness passing of consideration, but the defendant signed the Sale Agreement stating that she received the advance. Thus, there is no satisfactory evidence to prove the passing of consideration under the Sale Agreement.

22. Further, the plaintiff's son-in-law namely Sathyamoorthy filed a cheque bounce case in C.C. No.2 of 2016 on the file of Judicial Magistrate, Dharapuram *inter alia* alleging that on January 27, 2014, the defendant borrowed certain amount from him. Interestingly, the plaintiff's side suggested to D.W.1 / defendant that there are four cheque cases



including the aforesaid pending against her and D.W.1 admitted the factum of four case lying against her. To be noted, in Ex-B.8 said Sathyamoorthy has signed as witness stating to be the son-in-law of the plaintiff.

23. The fact that the plaintiff filed Ex-B.8 complaint alleging that the defendant's husband obtained loan and the plaintiff had no security for the loan, and on the very next day the Suit Sale Agreement was executed by the defendant in favour of plaintiff, coupled with the above finding that the passing of consideration under Ex-A.1 is not proved and also the factum of cheque case filed by plaintiff's son-in-law against the defendant makes the defence theory that the Suit Sale Agreement was executed not for sale of suit property but as a security for the loan transaction as per the compromise arrived at a panchayat held on July 1, 2014 is probable.

24. The learned Counsel for the appellant / plaintiff would contend that Sections 91 and 92 of the Indian Evidence Act, 1872 act as a bar against leading oral evidence contrary to the registered document viz., Suit Sale Agreement.

25. In this regard, this Court deems fit to refer to ***R. Janakiraman -vs- State***, reported in ***(2006) 1 SCC 697***, wherein Hon'ble Supreme Court



after an elaborate discussion held that the bar under Section 92 of Indian Evidence Act, 1872 would operate only against the terms of the contract and not the contract itself. Relevant portion of the Judgment reads as hereunder:

“18. The contention that the evidence of PW 11 and PW 15 is contrary to the documentary evidence (Exts. P-64 to P-81) and therefore, should be excluded under Section 92 of the Evidence Act, 1872 is not tenable.

19. In Tyagaraja Mudaliyar v. Vedathanni [AIR 1936 PC 70 : 63 IA 126] the Privy Council observed that oral evidence is admissible to show that a document executed by a person was never intended to operate as an agreement, but was brought into existence solely for the purpose of creating evidence about some other matter.

20. In Krishnabai Bhritar Ganpatrao Deshmukh v. Appasaheb Tuljaramarao Nimbalkar [(1979) 4 SCC 60 : AIR 1979 SC 1880] this Court observed: (SCC p. 72, para 27)

“[W]hen there is a dispute in regard to the true character of a writing, evidence dehors the document can be led to show that the writing was not the real nature of the transaction, but was only an illusory, fictitious and colourable device which cloaked something else, and that the apparent state of affairs was not the real state of affairs. ”

21. We may next refer to the following observations in Gangabai v. Chhabubai [(1982) 1 SCC 4] interpreting Section 92: (SCC pp. 9-10, para 11)



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“11. [...] Section 91 of the Evidence Act provides that when the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself. Sub-section (1) of Section 92 declares that when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives-in- interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms. And the first proviso to Section 92 says that any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law. It is clear to us that the bar imposed by sub-section (1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the

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parties to such document for the purpose of contradicting or modifying its terms. The sub-section is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties. ”

(emphasis supplied)

22. The above view was reiterated in ***Ishwar Dass Jain v. Sohan Lal [(2000) 1 SCC 434]*** and it was held that the bar under Section 92(1) would arise only when the document is relied upon, but, at the same time, its terms are sought to be varied and contradicted.

23. In *Parvinder Singh v. Renu Gautam [(2004) 4 SCC 794]* this Court observed: (SCC P. 800, para 9)

“The rule as to exclusion of oral by documentary evidence governs the parties to the deed in writing. A stranger to the document is not bound by the terms of the document and is, therefore, not excluded from demonstrating the untrue or collusive nature of the

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document or the fraudulent or illegal purpose for which it was brought into being. An enquiry into reality of transaction is not excluded merely by availability of writing reciting the transaction. ”

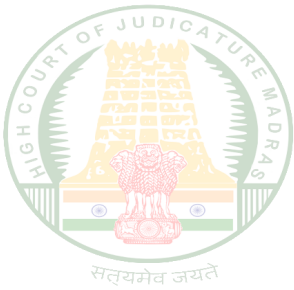
24. We may cull out the principles relating to Section 92 of the Evidence Act, thus:

(i) Section 92 is supplementary to Section 91 and corollary to the rule contained in Section 91.

(ii) The rule contained in Section 92 will apply only to the parties to the instrument or their successors-in-interest. Strangers to the contract (which would include the prosecution in a criminal proceeding) are not barred from establishing a contemporaneous oral agreement contradicting or varying the terms of the instrument. On the other hand, Section 91 may apply to strangers also.

(iii) **The bar under Section 92 would apply when a party to the instrument, relying on the instrument, seeks to prove that the terms of the transaction covered by the instrument are different from what is contained in the instrument. It will not apply where anyone, including a party to the instrument, seeks to establish that the transaction itself is different from what it purports to be. To put it differently, the bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different.**

Applying the aforesaid principles, it is clear that the bar with Section 92 will apply to a proceeding inter partes to a



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document and not to a criminal proceeding, where the prosecution is trying to prove that a particular document or set of documents are fictitious documents created to offer an explanation for disproportionate wealth. Oral evidence can always be led to show that a transaction under a particular document or set of documents is sham or fictitious or nominal, not intended to be acted upon.”

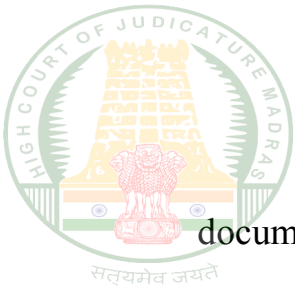
(emphasis supplied by this Court)

26. Relying on ***R. Janakiraman's Case***, the Hon'ble Supreme Court in ***Vimal Chand Ghevarchand Jain -vs- Ramakant Eknath Jadoo***, reported in ***(2009) 5 SCC 713*** held that Section 91 read with Section 92 would not act as a bar to oral evidence as to true nature of a document. Relevant extract is hereunder:

*“31. Indisputably when the true character of a document is questioned, extrinsic evidence by way of oral evidence is admissible. (See *R. Janakiraman v. State* [(2006) 1 SCC 697 : (2006) 1 SCC (Cri) 442] , SCC para 24; *Roop Kumar v. Mohan Thedani*, (2003) 6 SCC 595] , SCC para 19 and *SBI v. Mula Sahakari Sakhar Karkhana Ltd.* [(2006) 6 SCC 293] , SCC paras 23 to 32.) We would, therefore, proceed on the premise that it was open to the respondent to adduce oral evidence in regard to the nature of the document ... ”*

27. ***R. Janakiraman's Case*** and ***Vimal Chand Ghevarchand Jain's Case*** make it clear that Sections 91 and 92 of the Indian Evidence Act, 1872 does not act as a bar to attack the true nature of a registered

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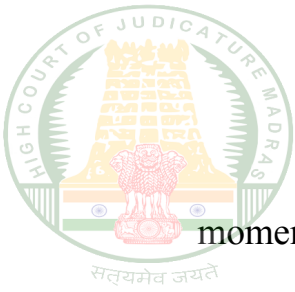
document by adducing oral evidence; it bars adducing oral evidence against the specific terms of the registered document only.

28. There is no quarrel with the case laws relied on by the learned Counsel for the respondent / defendant. They too advance the same proposition of law advanced by the *R. Janakiraman's Case* and *Vimal Chand Ghevarchand Jain's Case*.

29. In short, Ex-A.1 - Suit Sale Agreement was not intended for sale but a security to a loan transaction with no passing of consideration thereunder, in the guise of a Sale Agreement. **Point Nos.(i) and (ii) is answered accordingly in favour of defendant and against the plaintiff.**

Point No.(iii)

30. As already stated *supra*, Ex-A.1 - Suit Sale Agreement was intended as a security to a loan transaction and not for the sale of suit property and no consideration was passed thereunder. Hence, the plaintiff is not entitled to the relief of specific performance. As the Suit Sale Agreement was never intended for sale of suit property, the question of prospective / retrospective application of the Specific Relief (Amended) Act, 2018 (Act 18 of 2018) does not arise in this case. Assuming the



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moment that Ex-A.1 – Sale Agreement is true and valid, the plaintiff has to prove his 'readiness and willingness' to perform the contract. Admittedly, the plaintiff has not deposited the balance sale price into Court. It is settled law that it is not essential for the plaintiff to actually tender to the defendant or to deposit the balance sale price in Court deposit, unless the Court directs to do so. However, the plaintiff should prove that he was having sufficient wherewithal or source to pay the balance sale price during the currency of agreement by producing account statment or Bank statement or any other acceptable documentary evidence. It is settled law that even in the absence of specific plea by the defendant, it is mandatory on the part of the plaintiff to prove his readiness and willingness to perform his part of the contract [See *J.P. Builders -vs- A.Ramadas Rao*, reported in (2011) 1 SCC 429]. In this case, the plaintiff did not file any document to show his readiness to pay balance sale consideration. **Point No.(iii) is answered accordingly in favour of defendant and against the plaintiff.**

Point No.(iv)

31. The Suit Sale Agreement reads that Rs.10,00,000/- (Rupees Ten Lakhs Only) was paid to the defendant as advance towards the total sale

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consideration. As stated *supra*, the nature of Ex-A.1 - Suit Sale Agreement is a security for the loan transaction. Thus, in the facts and circumstances of this case, it could only be construed that the defendant owed Rs.10,00,000/- to the plaintiff. Anything contrary has to be proved by means of sufficient evidence.

32. The defendant in her reply notice (Ex-A.5) written statement averred that her husband owed a sum of Rs.3,00,000/- to the plaintiff. In her cross examination, she deposed she was liable to pay a sum of Rs.6,00,000/-. The defendant's side suggested to P.W.1 that Rs.5,50,000/- has been paid to the plaintiff towards the said debt of Rs.6,00,000/-, and the plaintiff denied the same. The defendant has neither disproved that the loan amount is Rs.10,00,000/- as it could be gathered from the Suit Sale Agreement nor she has proved the discharge plea satisfactorily. Ex-A.1 is a registered document, and as per Sections 91 and 92 of Indian Evidence Act, 1872, the defendant can challenge the nature of Ex-A.1 but not its specific terms especially *qua* advance amount. She can contend that Ex-A.1 was executed for altogether a different transaction *viz.*, loan transaction, but at the same time, when Ex-A.1 says that the amount paid to her was Rs.10,00,000/-, she cannot vary the terms of Ex-A.1 to contend



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that she was liable to pay Rs.6,00,000/- only. If really the defendant or her husband owed only Rs.6,00,000/-, then there is no reason for the parties to write Rs.10,00,000/- as the advance amount and no alternate theory or reason has been assigned by the defendant in this regard. The defendant cannot be unjustly enriched at the cost of the plaintiff. Hence, this Court is of the view that the defendant owed Rs.10,00,000/- and she has not made any repayment towards the same so far.

33. Though the Trial Court rightly dismissed the Suit *qua* specific performance and injunction by observing that the Suit Sale Agreement was never intended for sale of suit property but intended only to be a security for a loan transaction, it failed to consider the above facts and failed to grant the alternate relief of return of money. Upon its finding that the Suit Sale Agreement is a security for the loan obtained, it ought to have awarded return of money. Hence, this Court is inclined to award return of money of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the plaintiff. Plaintiff claimed 12% interest per annum in case of granting the alternate relief. This Court is of the view that awarding 12% interest is a higher side. Hence, this Court is inclined to award interest at the rate of 7.5% per annum. **Point No.(iv) is answered accordingly in favour of plaintiff**

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and against the defendant.

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CONCLUSION:

34. Resultantly, the Appeal Suit is partly allowed. The Judgment and Decree of the Trial Court is modified as hereunder:

- (i) The Suit *qua* specific performance and injunction is dismissed;
- (ii) The alternate relief of return of money is granted;
- (iii) Money Decree is passed in favour of the plaintiff for Rs.10,00,000/- (Rupees Ten Lakh only) along with 7.5% interest (simple interest) per annum from the date of Suit till the date of realisation;
- (iv) Charge is created upon the suit property under the Transfer of Property Act, 1882 to enable the plaintiff to realise the aforesaid amount and interest.

34.2. In view of the facts and circumstances of this case, the defendant shall pay proportionate cost throughout. Connected Civil

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Miscellaneous Petition is closed.

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Index : Yes

Speaking Order : Yes

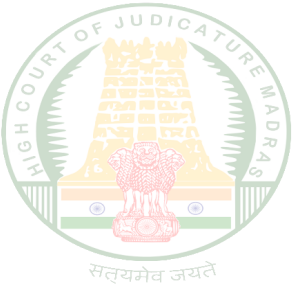
Neutral Citation : Yes

PAM/TK

To

The Second Additional District Judge,
Erode.

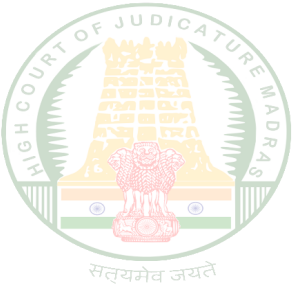
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R. SAKTHIVEL, J.

PAM/TK

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