



A.S.No.106 of 2014

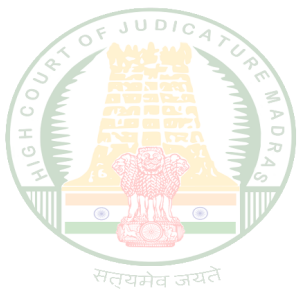
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S.S. SUNDAR, J.
and
P.B. BALAJI, J.

[Order of the Court was made by **S.S. SUNDAR, J.**]

This appeal is directed against the judgment and decree in O.S.No.43 of 2010 on the file of II Additional District Court, Salem, granting a decree for specific performance against the appellant herein, who is the defendant in the suit.

2.The suit is based on an agreement of sale dated 30.07.2007. It is the specific case of appellant/defendant in the written statement that the sale agreement and the receipts showing prior payments are forged and created. It is further stated that the plaintiff, who is doing real estate business and who is having political support, used to obtain signatures in blank papers and blank stamp papers and to fabricate the same. The receipt of a sum of Rs.20,00,000/- as per the suit agreement is also specifically denied by the defendant in the written statement. An additional written statement was also filed by the defendant reiterating the stand taken by the defendant regarding forgery of suit agreement.



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3. After hearing the arguments of respective learned counsel on either side, this Court found that the issue regarding genuineness of the suit agreement is one of the main issues considered before the trial Court. The trial Court, based on the evidence, held that the sale agreement is true and genuine and was executed as an agreement of sale. Therefore, the suit was decreed. Aggrieved by the same, defendant has preferred the above appeal.

4. After hearing the arguments, this Court also suggested a compromise. Stating that the defendant disputed her thumb impression in the stamp paper used for the suit agreement, learned Senior Counsel submitted that plaintiff is unable to pay the amount as per the agreement under Ex.A3. Learned Senior Counsel appearing for the appellant/defendant submitted that the trial Court failed to consider several aspects and evidence to show that the suit agreement is not a *bona fide* transaction. Learned Senior Counsel submitted that the defendant never put her thumb impression in stamp paper. He also suggested that the thumb impression of defendant in her deposition may also be sent for Expert opinion. Learned counsel appearing for the



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plaintiff/respondent readily accepted and he has no objection for sending the document for comparison of fingerprints in Ex.A3 and the fingerprints of defendant (D.W.1) found in her deposition.

5. Therefore, this Court, in order to shorten the litigation and to get Expert's opinion, is inclined to send the suit agreement containing the thumb impression of defendant for Expert opinion. Accordingly, Mr.T.A.Shagul Hameed, Advocate (Enrollment No.MS.110/1994), Office at AL.218/10, 14th Main Road, Anna Nagar, Chennai-40 [Mobile No.80561 12102] is appointed as Advocate Commissioner to collect Ex.A3 and the deposition copy of D.W.1 and to get opinion of Fingerprints Expert on the following aspects :

- i. Whether the thumb impression found in the first and second pages of Ex.A3 are one and the same ?
- ii. Whether the thumb impression found in the deposition of defendant (D.W.1) tallies with the thumb impression found in Ex.A3 ?

6. The Advocate Commissioner may produce the order of this Court for getting the report of the Fingerprints Expert on the aforesaid



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aspects, at the earliest. The Advocate Commissioner is also directed to

submit the report of the Fingerprints Expert on or before 27.04.2023.

The original document filed as Ex.A3 and the original deposition of appellant shall be furnished by Registry to the Advocate Commissioner after taking xerox copy of the sale agreement and deposition and the enlarged photos of thumb impression. The appellant is directed to pay a sum of Rs.30,000/- towards initial remuneration to the Advocate Commissioner for executing the warrant. The entire expenses that may be required for executing the warrant shall be reimbursed by the appellant.

7.Post the matter on 27.04.2023.

(S.S.S.R., J.) (P.B.B., J.)
21.03.2023

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and
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(Next Hg. Date : 27.04.2023)

21.03.2023