

**IN THE COURT OF THE HON'BLE SENIOR CIVIL JUDGE, RANGA
REDDY DISTRICT**

AT: MEDCHAL

O.S. No. 535 of 2015

BETWEEN:

B. Chakradhari

Plaintiff

AND

C. Shashir & Ors.

Defendants

**BRIEF NOTE ON ARGUMENTS ADVANCED ON BEHALF OF THE
DEFENDANT NO. 3**

Facts by Plaintiff (Disputed):

1. Loan in a sum of Rs. 12 Lakhs was paid to Defendant No. 3 by way of cheque no. 690492 on 12.11.2010 and that the said cheque was encashed (deposited in the bank account) for financial requirement of Defendant 1 and 2. **(Ref. Exhibit A6)**
2. As the Defendant No. 3 was unable to repay the loan, she agreed to sell the Suit Schedule Property belonging to her minor children, Defendant No. 1 and 2 for a nominal consideration of Rs. 15 Lakhs and executed Agreement of Sale dated 24.01.2015 **(AOS/Ref. Exhibit A1)** by adjusting Rs. 12 Lakhs towards refund of alleged loan and payment of Rs. 3 Lakhs as additional consideration.
3. Upon alleged failure on part of the Defendant No. 3 to obtain requisite permissions from the court and executing sale deed, the Plaintiff filed a suit for specific performance of Exhibit A1, in alternative, relief of refund of the loan amount of Rs. 12 Lakhs.

Facts by Defendants:

1. The facts narrative by the Plaintiff are entirely false and based on a concocted story, created in collusion with the Defendant No. 3's estranged husband after the divorce of Defendant No. 3 and her husband.

2. The Defendant has never met the Plaintiff or the witnesses to the alleged Exhibit A1.
3. The Defendant No. 3 never took any loan from the Plaintiff and never executed Exhibit A1. (**Ref. Pr. 3 and 4 of WS of D3 and Exhibit A3 reply notice**)
4. The signatures of Defendant No. 3 on Exhibit A1 are forged as they are evidently different from Defendant No. 3's signature.
5. The Exhibit A1 is executed by Plaintiff in collusion with the estranged Ex-Husband of Defendant No. 3 i.e. C. Rajesh.

Arguments Advanced:

1. **The facts on record establish that the story created by the Plaintiff is concocted –**
 - (i) It is a settled legal position that, in absence of glaring evidence, a suit has to be decided on the principle of **preponderance of probabilities**. The High Court of Calcutta in ***Lakshmi Rani Dhar v. Falakata Industries Ltd. 2022 SCC Online Cal 2345 (Cal HC) at Pr. 28*** held that, when execution of an agreement is denied, the burden of proof is on the plaintiff to prove the existence of the agreement by offering evidence of surrounding circumstances leading to a probable conclusion of existence of the agreement. The principle of preponderance of probabilities is explained by the High of Calcutta in the above case at Pr. 59.
 - (ii) The Hon'ble High Court of Andhra Pradesh has also held in ***Mutyala Nageshwara Rao v. Reddy Rajasekhar 2024 (2) ALD 224 (APHC) @ Pr. 34, 35***, that in cases of specific performance court should meticulously consider all facts and circumstances of the case.
 - (iii) In light of the above legal position, it is submitted that, The Plaintiff and C. Rajesh, taking advantage of close proximity of Defendant No. 3 has fabricated an agreement of sale. Thus,

this Hon'ble Court ought to take into consideration that for the following reasons, the circumstances surrounding the execution of Exhibit A1 show that the entire suit and the storyline build by the Plaintiff is a concoction and afterthought arising out of collusion between Plaintiff and C. Rajesh (estranged ex-husband of Defendant No. 3) –

- a) The suit was filed on 04.11.2015 after the divorce of Defendant No. 3 and C. Rajesh (**Ref. Exhibit B1 and B2**).
 - b) The Exhibit A1 is allegedly executed in respect of a loan paid in the year 2010, which, by 2015 was hopelessly time-barred and not recoverable.
 - c) PW1 and PW2 have admitted that C. Rajesh was their friend and in such circumstances, if the alleged loan was sought for welfare of Defendant No. 1 and 2, it is unlikely that loan was sought by Defendant No. 3 and not C. Rajesh, who was infact known to the Plaintiff.
 - d) C. Rajesh, taking advantage of having access to the original Gift Deeds when he was living with Defendant No. 3 in the matrimonial home, must have handed over the same to the Plaintiff, only for filing the present false suit.
 - e) A bank entry of 2010 for an alleged undocumented, unsubstantiated loan is being used as sale consideration without any proof of whether such loan was paid to the Defendant No. 3.
 - f) The signatures of the Defendant No. 3 and the signatures on the Exhibit A1 do not match.
 - g) Exhibit A1 is witnessed by persons known to Plaintiff, even though it is stated by PW2 in his cross examination that parents of Defendant No. 3 were present at the time of alleged execution of Exhibit A1.
- (iv) Apart from the above, in the present case, the Defendant No. 3 having denied execution of the AOS and receipt of the loan in her reply notice as well as the written statement, the burden of proof to establish genuinity of the AOS lies with the Plaintiff. The High Court of Bombay, setting out the burden of proof, in **Bank of India v. Alibhpy Mohammed & Ors. AIR 2008 Bom 81 (Bom HC) Pr. 25, 33, 34, 36, 38, held –**

- When execution of a document is denied, it has to be proved;
 - Production of a document is not evidence of its authorship;
 - Signature of a person signing a document has to be proved by producing evidence that the signature is of the executant;
 - A document cannot be proved by merely thorough the witness
- (v) Thus, the Plaintiff has not been able to produce proof beyond reasonable doubt that the execution of Exhibit A1, by the Defendant No. 3 is proved by the Plaintiff. It is submitted that, while determining the principle of preponderance of probabilities, the High Court of Calcutta in ***Lakshmi Rani Dhar v. Falakata Industries Ltd. 2022 SCC Online Cal 2345 (Cal HC) at Pr. 70, 71*** held that, after entire evidence is adduced, when court feels it cannot make up its mind as to which of the version is true, it should be held that the party on whom the burden lies has not discharge the burden.

2. **Exhibit A1 is not an enforceable contract -**

- (i) It is settled legal position that existence of a valid contract is a sine qua non for grant of relief of specific performance. The courts ought to see that it is not used as an instrument of oppression to have an unfair advantage to the Plaintiff. This has been confirmed by the Supreme Court and various High Courts time and again. (***Satish Kumar v. Karan Singh (2016) 4 SCC 352 (SC), Pr. 8, 9, 10*** and ***Mutyala Nageshwara Rao v. Reddy Rajasekhar 2024 (2) ALD 224 (APHC) Pr. 37, 38***). In the present case, the Defendant No. 3 submits that Exhibit A1 is not a valid contract.
- (ii) In addition to the above, it is relevant to note that Exhibit A1 is not registered. Non-registration of Exhibit A1 supports the submission of the Defendant No. 3 that the said AOS is created as an afterthought. It is further submitted that, Exhibit A1 is neither registered not duly stamped and hence unenforceable and can be taken into evidence only for collateral purposes.
- (iii) Further, the Plaintiff has failed to establish payment of Rs. 12 Lakhs to the Defendant No. 3 for loan. There is no shred of document to prove that the Defendant No. 3 was in need of money

or that the Defendant No. 3 has obtained loan from the Plaintiff. It is relevant to note that –

- a) In the cross examination of PW1, the PW1 has stated that the cheque of Rs. 12 Lakhs was an account payee cheque and that the Defendant No. 3 had deposited money in her bank account. Whereas, the entry in Exhibit A6 shows that the cheque of Rs. 12 Lakhs was encashed at the counter i.e. used for cash withdrawal.
 - b) Firstly, the entry reflecting in Exhibit A6 i.e. the Bank Statement, firstly, cannot be relied upon as it is not corroborated, secondly, refers to encashment of a whopping amount of Rs. 12 Lakhs, which was allegedly deposited in the bank account of Defendant No. 3, but neither Exhibit A6 nor any other document corroborates such deposit.
 - c) Even assuming it was an amount which was withdrawn by Defendant No. 3 in cash, such a statement is not probable and also does not establish that the said withdrawal is made by the Defendant No. 3.
 - d) The Defendant No. 3 was always financially secured and was taken care off by her father who was a reputed builder. In as much as, the Suit Schedule Property was also gifted by Defendant No. 3's father to the Defendant No. 1 and 2.
- (iv) In absence of sufficient proof to show payment of consideration, as in the present case, in a similar fact situation where there was collusion by father in execution of agreement taking advantage of his close proximity with the mother and where the payment of consideration was not sufficiently proof, the APHC in ***Mutyala Nageshwara Rao v. Reddy Rajasekhar 2024 (2) ALD 224 Pr. 67, 68, 75***, refused to grant specific performance and also refused to grant the relief of refund of the alleged money paid.

3. **Examination of signatures of Defendant No. 3 on Exhibit A1 –**

- (i) The Defendant No. 3 has denied her signature on the alleged AOS. In such cases, the Hon'ble Supreme Court has clarified that, in absence of any expert evidence, by exercising power under Section 73 of the Indian Evidence Act courts ought to compare the

signatures. (*Thiruvengada Pillai v. Navaneethammal & Ors. AIR 2008 SC 1541 (SC) Pr. 17, 14*)

- (ii) Thus, even in the present case, this Hon'ble Court shall compare the disputed signature on the Exhibit A1 with the signature of Defendant No. 3.

4. **Specific Performance cannot be granted when the Agreement is executed towards repayment of loan and not for purposes of sale of land –**

- (i) Without Prejudice: Even assuming that the alleged loan was taken by the Defendant No. 3, the alleged AOS was not executed with the intention of sale of the Suit schedule property, but for purposes of repayment of the loan amount. When the purpose of execution of the agreement which is sought to be specifically performed is not for purchase of the said property, but for other financial arrangement, specific performance cannot be granted. (*Kallathil Sreedharan v. Komath Pandiyala Prasanna, (1996) 6 SCC 218, Pr. 9,10* and *Tejram v. Patirambhau (1997) 9 SCC 634, Pr. 4*)

5. **Minor's property cannot be sold without obtaining permission from Court under Hindu Minority & Guardianship Act, 1956.**

- (i) In addition to the submissions made by the Counsel for the Defendant No. 1 and 2, it is submitted that as the Suit Schedule Property is owned by the Defendants 1 and 2, who at the time of execution of Exhibit A1 were minors, Exhibit A1 is null and void and cannot be enforced.
- (ii) Under Section 8 of the Hindu Minority & Guardianship Act, 1956, it is categorically stated that immovable property of belonging to the minors cannot be sold without prior permission of the court. In such cases, courts have refused to grant relief of specific performance as an agreement of sale of minor's property, in absence of court permission is not valid in law. (*Jayanti Paul v. Ranadhir Chandra Dey (2012) 1 GLR 214 (Gau HC) Pr. 17, 20, 21, 22, 24,2 5* and *Mutyala Nageshwara Rao v. Reddy Rajasekhar 2024 (2) ALD 224 (APHC) Pr. 40, 77, 78, 79*).

For the reasons stated above, it is most humbly submitted that the Plaintiff is not entitled to the relief as sought for and the suit as filed is liable to be dismissed with costs on law and on facts of the case.

DATE: 14.11.2024

PLACE: MEDCHAL

COUNSEL FOR THE DEFENDANT No. 3

**IN THE COURT OF THE HON'BLE
ADDITIONAL SENIOR CIVIL
JUDGE, MEDCHAL MALKAJGIRI
AT MEDCHAL**

O.S. No. 535 of 2015

Between:

B.Chakradhari

Plaintiff

AND

C.Shahsir and another

Defendant

**BRIEF NOTE ON ARGUMENTS
ADVANCED ON BEHALF OF THE
DEFENDANT NO. 3**

Filed on:

Filed by:

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COUNSEL FOR THE DEFENDANT NO. 3

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REDDY DISTRICT**

AT: MEDCHAL

O.S. No. 535 of 2015

BETWEEN:

B. Chakradhari

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AND

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Defendants

MEMO OF CITIATIONS FILED ON BEHALF OF DEFENDANT NO. 3

It is most humbly submitted that in furtherance of the submission made on behalf of the Defendant No. 3, the Counsel for the Defendant No. 3 is placing reliance on the following decisions of the Apex Court and various High Court –

Sl. No.	Citation	Relevant Paragraphs	Pg. Nos.
1.	Lakshmi Rani Dhar v. Falakata Industries Ltd. 2022 SCC Online Cal 2345 (Cal HC)	28, 58, 59, 70	
2.	Mutyala Nageshwara Rao v. Reddy Rajasekhar 2024 (2) ALD 224 (APHC)	34, 35, 37, 38, 67, 68, 75, 40, 77, 78, 79	
3.	Bank of India v. Alibhpy Mohammed & Ors. AIR 2008 Bom 81 (Bom HC)	25, 33, 34, 36, 38,	
4.	Satish Kumar v. Karan Singh (2016) 4 SCC 352 (SC)	8,9,10	
5.	Thiruvengada Pillai v. Navaneethammal & Ors. AIR 2008 SC 1541 (SC)	17, 14	
6.	Kallathil Sreedharan v. Komath Pandyala Prasanna, (1996) 6 SCC 218	9,10	
7.	Tejram v. Patirambhau (1997) 9 SCC 634	4	
8.	Jayanti Paul v. Ranadhir Chandra Dey (2012) 1 GLR 214 (Gau HC)	17, 20, 21, 22, 24,25	

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COUNSEL FOR THE DEFENDANT NO. 3

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JUDGE, MEDCHAL MALKAJGIRI
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O.S. No. 535 of 2015

Between:

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**MEMO OF CITIATIONS FILED
ON BEHALF OF DEFENDANT
NO. 3**

Filed on:

Filed by:

**DUVVA PAVAN KUMAR
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