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SA(MD)No.343 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	25/07/2024
Date of Pronounced	21/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOAN**

SA(MD)No.343 of 2021
and
CMP(MD)No.4576 of 2021

Suresh : Appellant/Appellant/
Defendant

Vs.

Mookkan : Respondent/Respondent/
Plaintiff

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 22/12/2020 passed in AS No.30 of 2019 on the file of the Additional District Judge, Fast Track Court, Paramakudi, confirming the judgment and decree passed in OS No.43 of 2014, dated 26/03/2019 on the file of the Sub Court, Paramakudi.

For Appellant : Mr.S.A.Ajmal Khan

For Respondent : Mr.D.Senthil



SA(MD)No.343 of 2021

J U D G M E N T

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This second appeal is filed against the judgment and decree, dated 22/12/2020 passed in AS No.30 of 2019 by the Additional District Judge, Fast Track Court, Paramakudi, confirming the judgment and decree passed in OS No.43 of 2014, dated 26/03/2019 by the Sub Court, Paramakudi.

2.Plaint averments in brief:-

The suit property belonged to the defendant. He agreed to sell the property to the plaintiff on 14/02/2011. An agreement was entered between them. Rs.500/- was fixed for per square feet. The property must be measured and the amount must be paid. Agreeing the above said terms, the defendant received Rs.1,50,000/- as advance. Time was fixed as three months. The plaintiff was always ready and willing to perform his part of contract. But the defendant evaded. So, the plaintiff issued a notice on 15/04/2014 expressing his willingness and readiness. That was not received by the defendant. Later, on enquiry, it came to his notice that the property was already sold by the defendant to the third party. So, the plaintiff demanded back the advance amount of Rs.1,50,000/-. For which also, there is no proper



SA(MD)No.343 of 2021

reply from the defendant. So, the suit is laid for recovery of Rs.1,50,000/- with interest and for costs.

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3.The suit was resisted by the defendant by filing written statement contending that in the plaint, no schedule of property is mentioned. The defendant is not informed in respect of which property, the plaintiff purchased. As stated in the plaint, there was no agreement between the parties on 14/02/2011. No advance amount was received by him. Even as per the case of the plaintiff, time fixed for the performance of contract expired. The suit is barred by limitation. Even though the time expired, no demand was made, either for the execution of the sale or after receiving the advance amount. The defendant wanted to sell the property. So, he handed over the title document to the plaintiff. Since he was transferred to Sivakasi, he sold the property to the third party to meet out his urgent needs. Since, the plaintiff was not able to get the commission, he created a document of sale agreement and foisted this suit.

4.On the basis of the pleadings, the trial court formulated the following issues:-

(1)Whether the defendant executed a sale deed on 14/02/2011 and received



WEB COPY



SA(MD)No.343 of 2021

Rs.1,50,000/- towards advance from the plaintiff?

(2)Whether the suit is barred by limitation?

(3)Whether the plaintiff is entitled to get back the amount as prayed for?

(4)To what other reliefs, the plaintiff is entitled to?

5.On the side of the plaintiff, 2 witnesses were examined and 2 documents marked. On the side of the defendant, one witness was examined, but no document was marked.

6.At the conclusion of the trial process, the trial court decreed the suit and directed the defendant to pay a sum of Rs.1,50,000/- along with interest at 6% pa from the date of the petition till realization.

7.Against which, appeal was preferred by the defendant in AS No.30 of 2019 on the file of the Sub Court, Paramakudi. The first appellate court dismissed the appeal.



WEB COPY



SA(MD)No.343 of 2021

on the side of the defendant; He is referring to para 12 of the judgment; The co-owner also supported the case of the plaintiff; The suit was filed within three months from the date of demand; So, it is filed well within time; He is referring to the date of presentation of the plaint before the Vacation Court, etc, facts. According to him, a mistake was committed by the trial court in mentioning the date of the filing the suit as 12/06/2014. But actually the suit was filed on 02/06/2014. It was returned on 05/06/2014 due to some defects. Later it was re-presented after compliance of the defects. It is further submitted that signature as well the execution of the document was established before the trial court. So, according to him, no interference is called for.

13.In reply to the above said argument, the learned counsel appearing for the appellant would submit that the decree indicates that the date of filing of the suit is 12/06/2014. There is no reason assigned by the plaintiff for continuous three years inaction in taking steps. No transfer of money or consideration was established by the plaintiff.

14.Now, we will go to the first aspect of execution of Ex.A1, which is dated 14/02/2011.



SA(MD)No.343 of 2021

WEB COPY

15.The plaintiff would say that the defendant agreed to sell the property to him at the rate of Rs.500/- per square feet. Evidencing the same on 14/02/2011, sale agreement was entered in which PW2 signed as attesting witness.

16.It is contended on the part of the appellant that Ex.A1 was not a genuine document. He handed over the title document for the purpose of arranging sale. The plaintiff acted as an Mediator. Taking advantage of the signature available in the document, he created Ex.A1 by forging his signature.

17.The trial court has given a finding that there is contradiction in the stand of the appellant. In the written statement as well as in the chief affidavit, he has stated that he handed over the title document to the plaintiff for the purpose arranging sale. But during the course of cross examination, he has candidly admitted that he never knew the plaintiff, but the title document was handed over to PW2 Ravi for arranging sale. So, this itself shows that the defendant is not telling the truth before the Court. The vernacular portion of his evidence in the chief is extracted as under:-



WEB COPY



SA(MD)No.343 of 2021

"11.எனக்கு பாத்தியப்பட்ட சொத்தை வாதியிடம் விற்றுத்தர சொல்லி என்னுடைய ஆவணங்களை கொடுத்தேன். பின்னிட்டு நான் என்னுடைய அலுவல் நிமித்தம் சீவகாசிக்கு மாறுதலாகி சென்று விட்டேன். பின்பு என்னுடைய தேவைக்கு பிராதில் கண்ட சொத்தை நான் வேறு நபர் மூலம் விற்பனை செய்துவிட்டேன். அதனால் என்னை பழிவாங்க வேண்டுமென்றும் வாதிக்கு என் சொத்தை விற்பதால் கிடைக்கக்கூடிய கமிஷன் போய் சேரவில்லை என்பதற்காகவும் அதனை மனதில் வைத்துக் கொண்டு வாதி என்னை போல ஏற்கனவே நான் வாதியிடம் கொடுத்து வைத்திருந்த ஆவணங்களில் இருந்த என் கையெழுத்தை பார்த்து கையெழுத்து போட்டு கிரைய ஒப்புந்தத்தை உருவாக்கி இவ்வழக்கை தாக்கல் செய்திருக்கிறார். அந்த வகையில் இந்த வழக்கு நிலைக்கத்தக்கதில்லை"

18.Further the vernacular portion of his evidence during the course of the cross examination is extracted herein.

"உறுமனை பற்றி என்ன தெரியும் என்றால் சாட்சி ரவி உறுமனை மூலம் சொத்தை விற்று தருவதாக என்னிடம் சொல்லி இருந்தார். உறுமனை நான் நேரில் பார்த்ததில்லை. சாட்சி ரவி இந்நீதிமன்றத்தில் விசாரிக்கப்படும் போது நான் நீதிமன்றத்தில் இல்லை. 2011ல் சாட்சி ரவியிடம் சொத்தை விற்க ஏற்பாடு செய்ய சொன்னேன். சொத்தை விற்க ரவி ஏற்பாடுகள் செய்தாரா என்று



WEB COPY



SA(MD)No.343 of 2021

எனக்கு தெரியாது. என்ன ஏற்பாடு செய்தார் என ரவி என்னிடம் எதுவும் சொல்லிக்கொள்ளவில்லை. ரவி என்பவரிடம் சொத்தை விற்க ஏற்பாடு செய்ய சொன்னதாகவும் அவர் சொத்தை விற்று கொடுக்க முயற்சி செய்யவில்லை என்று எதிர் வழக்குரையிலும் முதல் விசாரணை வாக்கு மூலத்திலும் சொல்லவில்லை என்றால் சரிதான். எனது சொத்து உரிமை ஆவண நகலை ரவியிடம் கொடுத்திருந்தேன். தாவா சொத்து தொடர்பான ஆவணங்களை வாதியிடம் கொடுத்து சொத்தை விற்று தர சொன்னேனா என்றால் இல்லை. எனது எதிர் வழக்குரை மற்றும் முதல் விசாரணை வாக்குமூலத்தில் அவ்வாறு சொல்லப்பட்டிருந்தால் அந்த விவரம் தவறு. என்னை பழி வாங்கும் அளவிற்கு வாதிக்கு விரோதம் உண்டா என்றால் வாதியை எனக்கு தெரியாது என்பதால் பழி வாங்கும் விரோதம் இருக்க வாய்ப்பில்லை. எனது எதிர்வழக்குரை மற்றும் முதல் விசாரணை வாக்குமூலத்தில் மூக்கனுக்கு கமிஷன் தொகை கொடுக்கவில்லை என்பதால் என்னை பழி வாங்கும் நோக்கில் வழக்கு தாக்கல் செய்திருப்பதாக நான் சொல்லி உள்ளேன் என்றால் அந்த விவரம் தவறு. எனது எதிர் வழக்குரை மற்றும் முதல் விசாரணை வாக்குமூலத்தில் வாதியிடம் நான் கொடுத்து வைத்திருந்த ஆவணத்தில் உள்ள என் கையெழுத்து பார்த்து கையெழுத்து போட்டு கிரைய ஒப்பந்தம் உருவாக்கி வழக்கு



SA(MD)No.343 of 2021

போட்டுள்ளதாக சொல்லியிருப்பது தவறு.
வாதியிடம் நான் எந்த ஆவணமும்
கொடுக்கவில்லை. நான் சொன்ன விவரம்
அடிப்படையில் தான் எதிர் வழக்குரை மற்றும்
முதல் விசாரணை வாக்குமூலம் தயார்
செய்யப்பட்டது. வழக்குரை மற்றும் முதல்
விசாரணை வாக்குமூலத்தை மேலோட்டமாக
படித்து பார்த்து கையெழுத்து போட்டேன்.”

19.The portion extracted above clearly indicates that the defendant is not true even to his own conscience. Nothing more is required to anything about his evidence and his plea.

20.With regard to the signature also in Ex.A1, his evidence runs like this:-

“அரைகுறையாக படித்து பார்த்து
கையெழுத்துபோட்டேன். நான் எம்.காம் படித்து
உள்ளேன். ஆவணங்களை படிக்காமல் கையெப்பம்
போடுவது தவறு என்பது எனக்கு தெரியும்.
வா.சா.ஆ.1 கிரைய ஒப்புந்தத்தில் உள்ள எழுதி
கொடுப்பவரின் கையெப்பத்திற்கும் எனது
கையெப்பத்திற்கும் ஏதாவது முரண்பாடு உள்ளதா
என்றால் இல்லை. வா.சா.ஆ.1ல் உள்ள கையொப்பம்
எனது கையெப்பம் மாதிரி உள்ளது.”



SA(MD)No.343 of 2021

WEB COPY

21. In a half-hearted manner, he has given the said evidence. He is not an ordinary person of standing. He was working as Assistant Professor during the relevant time in Sivakasi. On the date of his evidence, he is working as Professor in the Government College in Sivakasi. We cannot expect that such a person to speak inconsistently. His evidence does not inspire any confidence at all. Probably on that reason only, he has mentioned in the grounds of appeal that the trial court as well as the first appellate court wrongly cast the burden of proof on him.

22. Now, we will go to the evidence of PW2 to know the execution of Ex.A1, keeping aside the evidence of PW1 for sometime. He has stated that on the date of Ex.A1, he was very much available and in his presence only, consideration was passed. Agreement was entered, terms were finalized and he signed as witness in the document and the plaintiff's son namely Urumanan also signed. During the course of the cross examination, nothing was brought on record to discard his evidence. Only during the course of cross examination, defence was taken by the defendant stating that through him only, the defendant arranged the sale of the property with Urumanan. According to the defendant, PW2 is the benami of



SA(MD)No.343 of 2021

Urumanan, except the above said fact of linking PW2 to the transaction. Apart from the above said evidence of PW1, PW2 also supported the case of due execution of Ex.A1.

23.Now, it is contented on the part of the appellant that the trial court as well as the first appellant court wrongly cast the burden of proof upon him is completely out of place and not correct on record.

24.Now coming to the limitation point, even though, no substantial question of law was framed, it was also argued as mentioned above, Ex.A1 is dated 14/02/2011. Time was fixed as three months. But it is admitted by the defendant that within three months time, he sold the property to some other person. Time for filing the suit for specific performance starts only from the date of refusal. So, we can take the date of sale if known to the plaintiff, the time would start from running that date.

25.In the plaint, it has been stated that from 13/05/2011, the limitation starts. It expired on 12/05/2014. The date of demand is 15/05/2014. The date of filing of the suit as per decree is 12/02/2014. If we calculate the time from 14/05/2011, the suit ought to



WEB COPY



SA(MD)No.343 of 2021

have filed within three years from the date of expiry of the three months time or from the date of demand or refusal. The date of notice is 15/04/2014. But the notice was returned as un-served. The plaintiff has stated that he came to know that the defendant sold the property on 05/05/2014. Even though, the plaintiff has stated that it was presented before the Vacation Court, there is no endorsement. It was presented before the Court only on 02/06/2014. So, from the date of demand, the suit is well within the time.

26. Referring to the judgment of the Hon'ble Supreme Court in ***Delhi Development Authority Vs. skipper Construction Co.(P) Ltd and others 2000(1) CTC 507***, it was held in that case that as per section 55(6) (b) of the Transfer of Property Act, a charge is created over the property of the seller. It was also held that the period of limitation is 12 years. Proper Article is only 62, since the buyer got the right of charge to be enforced against the subsequent purchaser. The relevant portion may be extracted herein:-

"29. These points depend upon the effect of the provisions in Sub-clause (6) of Section 55 of the Transfer of Property Act. That Section starts with



WEB COPY



SA(MD)No.343 of 2021

the words in the absence of a contract to the contrary", and reads thus (insofar as it is material for our purpose):

"Section 55(6) (b): The buyer is entitled (a).....

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money property paid by the buyer in anticipation of the delivery and for interest on such amount; and, when the properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel-specific performance of the contract or to obtain a decree for its rescission."

It is plain from the above provision that, in the absence of a contract to the contrary, the buyer will have a charge on the seller's interest in the property which is the subject matter of the sale agreement insofar as the purchase money and interest on such amount are concerned, unless the buyer has improperly declined to accept



WEB COPY



SA(MD)No.343 of 2021

delivery. The charge is available against the seller and all persons claiming under him. This charge in favour of the buyer is the converse of the seller's charge under Section 55(4) (b).The buyer's charge under this Section is a statutory charge under Section 55(4) (b).The buyer's charge under this Section is a statutory charge and differs from a contractual charge which a buyer may be entitled to claim under a separate contract *Chettiar Firm v. Chettiar*, AIR 1941 P.C 47. No charge is available unless the agreement is genuine. *T.N.Hardas v. Babulal*, AIR 1973 SC 1363. As pointed out in Mulla's Commentary on Transfer of Property Act, 8th Ed (P.411), the charge on the property under Section 55(6) (b) is enforceable not only against the seller but against all persons claiming under him. Before the amending Act of 1929, the words 'with notice of payment' occurred after the words "all the persons claiming under him". These words were omitted as they allowed a transferee without notice to escape. After the Amendment of 1929, notice to the purchaser has not become irrelevant. 30. When the property upon which the charge is created gets converted into another form, the buyer will be entitled to proceed against the substituted



WEB COPY



SA(MD)No.343 of 2021

security. This is a general principle of law and [Section 73](#) of the Transfer of Property Act is only an example of the said principle. The above principle has been applied to enforce mortgage on substituted securities (see *Barham Deo Prasad v. Tara Chand*, 1913 (41) I.A.45 (PC) and *Muniappa v. Subbaiah*, AIR 1917 Mad. 880. The same principle which is applicable mortgages applies to cases of statutory charge under [Section 55\(6\)\(b\)](#). If immovable property is charged and is converted into another property or money, then the charge will fasten on the property or money into which the subject matter of the agreement is converted.

31.The above sub-section of [Section 55](#) also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase money to the seller till date of delivery of property to the purchasers or till the execution of the sale deed, whichever is earlier. Points 1 and 2 are decided accordingly in favour of the buyers.

Point 3:

32.[Article 62](#) of the [Limitation Act, 1963](#) (which corresponds to [Article 132](#) of the Limitation Act, 1908)



WEB COPY



SA(MD)No.343 of 2021

provides a period of 12 years "to enforce payment of money secured by a mortgage or otherwise charged upon immovable property". Time runs from the date "when money became due."

27.Further, in ***K.Shanmugam and another Vs. C.Samiappan & others (2013-5-LW.253)***, it has been held as follows:-

"23.The ratio laid down by the Supreme Court is that the the buyer shall have a statutory charge over the immovable property under [Section 55 \(6\) \(b\)](#) of the Transfer of Property Act, 1882. The said view has been followed by various High Courts including the Division benches of this Court. Citing all those decisions shall not be necessary. Suffice to state that now it is a settled position of law that limitation for refund of advance money with interest under an agreement for sale of immovable property is governed by [Article 62](#) of the [Limitation Act](#) as the buyer has got a statutory charge over the property to the extent of



WEB COPY



SA(MD)No.343 of 2021

interest of the seller and that hence the period of limitation shall be 12 years from the date on which the right to sue for the refund of advance amount accrues. Therefore, the lower appellate Court is definitely wrong in holding that the limitation for filing a suit for refund of advance amount shall be governed by Article 54 of the Limitation Act and hence, the period shall be three years from the date of accrual of the right to sue. Consequently, the lower appellate Court has committed an error in holding that the suit filed by the appellants/plaintiffs for refund of the advance amount is barred by limitation. The said finding of the lower appellate Court is erroneous and the same deserves interference and reversal."

28. In view of the statement of law laid down by the Hon'ble Supreme Court, as followed by this court, I am of the considered view that even though charge is not sought



WEB COPY



SA(MD)No.343 of 2021

for in the plaint, by virtue of section 55(6)(b) of the Transfer of Property Act, charge is available. I am of the considered view that limitation point raised by the appellant is not sustainable in law. So, the substantial question of law is answered against the appellant.

29. In the result, the second appeal fails and the same is **dismissed** with costs, confirming the judgment and decree passed by the courts below. Consequently, connected Miscellaneous Petition is closed

21/10/2024

Index:Yes/No
Internet:Yes/No
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To,

1. The Additional District Court/
Fast Track Court,
Paramakudi.
2. The Sub Court,
Paramakudi.
3. The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Maudrai.

G.ILANGOVAN, J

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WEB COPY



SA(MD)No.343 of 2021

SA(MD) No. 343 of 2021

21/10/2024