



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-08-2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

CRP No. 186 of 2024

and

CMP No.873 of 2024

S.M.Selvaraj

Petitioner(s)

Vs

1. D.Ramakrishnan

2.D.Janarthanan

Respondent(s)

PRAYER

Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.4.2023 passed in IA.No. 2/2019 in OS.No. 317 of 2019 on the file of III Additional District Judge of Coimbatore.

For Petitioner(s): Ms. S.Pooja Shree
for M/s. A.Parthasarathy and
Associates

For Respondent(s): Mr.D.Sreenivasan for R2

No appearance for R1



ORDER

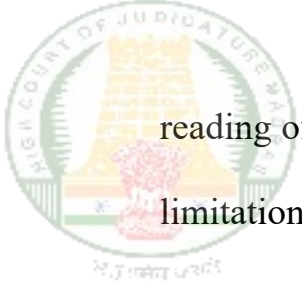
This Civil Revision petition has been filed under Article 227 of Constitution of India challenging the fair and decretal order passed in IA.No. 2 of 2019 in OS.No. 317 of 2019, on the file of III Additional District Judge of Coimbatore, dated 20.04.2023, wherein the application filed by the petitioner under Order VII Rule 11 of CPC, to reject the plaint came to be dismissed by the Court below.

2.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the 2nd respondent.

3.This Court carefully considered the submissions made on either side and the materials available on record. This Court also went through the order passed by the Court below.

4.The respondents are the plaintiffs, who filed the suit in OS N.317 of 2019, seeking for the relief of refund of the advance amount paid under an agreement of sale dated 15.09.2012 and for creating a charge over the suit property and for permanent injunction restraining the defendant from alienating or encumbering the suit property.

5.The petitioner, who is the defendant in the suit, filed IA. No.2 of 2019 under Order VII Rule 11 for rejection of plaint on the ground that a plain



reading of the averments in the plaint shows that the suit is hopelessly barred by limitation.

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6.The Court below while dealing with this application came to the conclusion that the issue of limitation cannot be dealt with while considering an application under Order VII Rule 11 of CPC since there were disputed questions of fact and accordingly, dismissed the application. Aggrieved by the same, the present Civil Revision petition has been filed before this Court.

7.The cause of action pleaded in the plaint filed in OS No.317 of 2019 is extracted hereunder:-

19.The cause of action for the suit arose on 15.09.2012 when the defendant agreement to sell the suit property to Mr. Duralsamy and acknowledged the receipt of advance of Rs. 23,25,000/- and received a further sum of Rs. 75,000/- and acknowledged and endorsed in the back of agreement and signed by him and agreed to convey within one month and committed default and on 5.11.2012 when Mr. Duraisamy issued a legal notice for Specific Performance and on 5.11.2012 when the defendant pleaded a loan transaction and denied to execute the sale deed and pleaded to settle within four months time with the interest @ 24% p.a., and thereafter failed to pay the amounts due all at Saravanampatty Village, Combatore North Taluk, Combatore District within the jurisdiction of the Hon'ble Court where the agreement was entered into and where the suit property is situate within the jurisdiction of this Hon'ble Court.



8. It is clear from the above that the cause of action had arisen pursuant to the agreement of sale entered into between the parties and subsequently, the plaintiffs were seeking for the refund of the advance amount, which was not repaid by the defendant.

9. The learned counsel for the petitioner submitted that the present suit will be construed only as a suit for recovery of money and the limitation for the present suit is traceable to Article 54 and not to Article 62 of the Limitation Act. The learned counsel also relied upon Section 55 (6) (b) of the Transfer of Property Act, 1882 [hereinafter referred to as 'the Act'] and submitted that no charge is created over the property as against the seller for the refund of the advance amount when the agreement holder has not chosen to seek for the substantive relief of specific performance.

10. Per contra, the learned counsel for the respondents submitted that in the present case, the agreement was entered into in the year 2012 and the original documents were also handed over to the respondents and subsequently, when the defendant refused to refund the advance amount, the suit came to be filed and charge has been created over the property and therefore, the period of limitation prescribed under Article 62 will come into play.



11. The judgement of the Division Bench in AS. No.801 of 2012 dated 07.04.2026 was relied upon by the learned counsel for the petitioner. The relevant portions are extracted hereunder:-

6. In this connection, the learned counsel placed reliance on Section 55(6) (b) of the Transfer of Property Act, 1882 which is as follows:

55(6)(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 properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he 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. An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

7. He therefore contended that a charge could be created on the property for refund of the advance amount.

8. The learned Senior Counsel for the respondents pointed out that no specific relief was sought in the plaint seeking refund of the advance amount paid and stated that seeking such a relief after nearly two decades would be unfair and would affect the rights of the respondents herein.

9. We also had the benefit of hearing Mr. P. Valliappan, learned Senior Counsel, who came forward to assist the Court on this issue. The learned Senior Counsel pointed out Section 54 of the Property Act, 1882, particularly, relating to Contract of Sale, which is as follows:



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54. “Sale” defined.— Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

10. The learned Senior Counsel pointed out that an agreement by itself would not create any interest or charge over the property and the provision under Section 55 of the Transfer of Property Act, 1882 would stand attracted only in contemplation of sale, presupposing decree to be passed and not otherwise. An agreement simpliciter would does not create any charge over the property.

11. The learned counsel for the appellant pointed out Article 62 of the Limitation Act, 1963 which provides for 12 years to enforce payment of money secured by a mortgage or otherwise on a charge upon immovable property.

12. Article 62 of the Limitation Act, 1963 is as follows:

12. Article 62 of the Limitation Act, 1963 is as follows:

Description of suit	Period of limitation	Time from which period begins to run
62. To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years	When the money sued for becomes due.



13. But however, this provision contemplates a charge having been already created over the property and as pointed out, a mere agreement of sale does not by itself create any charge. Moreover, the relief sought stands extinguished under Article 54 of the Limitation Act, 1963 which is as follows:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>54. For specific performance of a contract.</i>	<i>Twelve years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.</i>

14. When substantial relief seeking specific performance stands barred by law, and when no charge had been created over the property, the relief for refund of advance amount also stands extinguished.

12. The primary issue that arises for consideration in the present case is whether Section 55(6)(b) r/w Section 54 and the Scheme of the Limitation Act, can be invoked to give a purchaser/agreement holder 12 years to recover advance amount, when the law gives him only three years to enforce the contract under which that advance was paid.

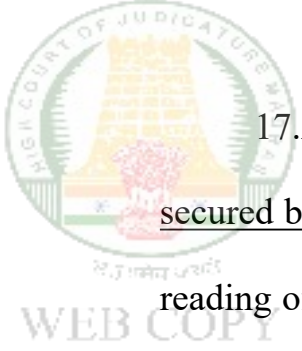
13. The payment of advance money is an essential feature of an agreement for sale of an immovable property. The agreement holder may seek specific performance or may decide to only seek for refund of the advance amount paid.



14. Section 54 of the Act, draws a fundamental distinction between a sale and a contract for sale. This provision on a careful reading expressly declares that such a contract does not by itself create any interest in or charge on such property. Even though an agreement holder pays an advance amount, that by itself does not transfer the ownership to the agreement holder or create a proprietary interest in the property. An agreement for sale creates a contractual right to obtain a sale.

15. Article 54 of the Limitation Act prescribes 3 years for a suit for specific performance from the date fixed in the agreement or when no date is fixed, from the date when the plaintiff has notice that performance is refused. There is no specific article governing a scenario where the agreement holder seeks only refund of the advance amount. The only Article in which this Court can place its hands is Article 113 which is a residuary provision which prescribes three years from the date when the right to sue accrues.

16. On a careful reading of the limitation Act, it is seen that the Scheme of the Act clearly makes a distinction between the contractual claims and proprietary claims. Article 61 – 67 specifically deals with claims pertaining to immovable property. A contractual claim by no stretch can be brought within these Articles merely because the subject matter of the contract is an immovable property.



17. Article 62 provides 12 years for a suit to enforce payment of money secured by a mortgage or otherwise charged upon immovable property. A plain reading of this Article shows that it presupposes the existence of a charge and it prescribes a limitation not for creating a security but for enforcing the security.

18. Section 55 (6)(a) speaks about a buyer where the ownership of the property has passed on to him and Section 55(6)(b) provides for a charge for purchase money properly paid in anticipation of delivery and for interest thereon. The provision specifically deals with the statutory consequences of the transaction of sale and the adjudication of the contractual rights. The provision does not create an automatic proprietary security immediately after an agreement of sale is executed.

19. The legislature has thought it fit that an agreement holder shall have three years time to enforce the contract for sale. While so, it will be absurd if an interpretation is given to the effect that the same agreement for sale will provide 12 years limitation to recover the advance paid under the same contract merely because an agreement holder chooses to confine his relief and seek only for refund of advance amount. Article 62 cannot be made applicable to enlarge the limitation period where the cause of action is traceable to a contract. This Article will apply only where the enforcement of money is secured by a charge. Such enforcement by itself does not create a charge.



20. In the light of the above discussion, it can be safely held that a suit seeking for specific performance of an agreement of sale is governed by an Article 54 of the Limitation Act. Where the purchaser seeks only for refund of the advance amount, the claim is contractual in nature and Article 113 will apply where the limitation period will be three years from the date when the right to sue accrues. To put it in simple terms, agreement for sale creates a contractual right and a completed sale creates a proprietary right. Only where the cases fall in the later category, Article 61 - 67 will apply.

21. In the case in hand, the agreement for sale dated 15.09.2012, merely created a contractual right in favour of the plaintiffs. In view of the same, Article 62 of the limitation Act will not be applicable. In the absence of any specific Article, Article 113 must be applied and the period is three years from the date when the right to sue accrues. The three year period in this case started from 15.09.2012 and whereas the suit itself came to be filed only in the year 2019 and therefore the suit is hopelessly barred by limitation. The same is evident even on a plain reading of the averments made in the plaint and it is not necessary to though the rigmarole of a trial.

22. The Court below failed to take into consideration these crucial aspects and has dismissed the application. The order passed by the Court below suffers



from perversity warranting the interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

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23. Accordingly, the Order passed by the Court below in IA.No.2 of 2019, in OS.No. 317 of 2019, on the file of III Additional District Judge, Coimbatore, dated 20.04.2023, is hereby set-aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

19-08-2026

Index:Yes
Speaking
Internet:Yes
Neutral Citation:Yes
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To

III Additional District Judge
Coimbatore.



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N.ANAND VENKATESH J.

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