

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 31.07.2015

Coram:-

The Hon'ble Mr. **Justice T.RAJA**

Review Application Nos.46 to 53 of 2015

in

S.A. Nos.930 to 937 of 2014

Rev. Application No.46 of 2015:-

R.Madhavan

... Petitioner

vs.

1. M/s.Amaravathi Cranes and
Structural Ltd.,
Rep. By its Director
T.Ankineed Prasad,
Having its office at
Indian Chambers Buildings,
Esplanade, Chennai 600 001.

2. A.K.Jose

3. Uma Devi

4. Mani Mala

5. C.V.Ramaswamy

6. R.Ramaswamy

... Respondents

Rev. Appln. No.46 of 2015: Filed under Section 114 read with Order 41 Rule 1 CPC. As against the judgment and

decree, dated 17.09.2014, passed in S.A. No.930 of 2014.

For Review Applicants : Mr.D.Ravichander

Common Order

By raising some vague contentions that the suit for re-conveyance of the suit properties without a consequential prayer for recovery of possession is not maintainable and further, the suit is liable to be rejected on the ground of limitation as well; and that the other vital aspect, namely, *the review applicant was ready and willing to perform his part of the contract which aspect is evident from the fact he had taken a D.D. on 10.01.2015 for Rs.1,11,650/- towards the balance sale consideration plus interest*, was not appreciated, learned counsel urged this Court to allow the Review Applications.

2. It is not in dispute that the plaintiff/first respondent herein, who is the owner of the suit properties in question, had sold the same to the first defendant/review applicant by executing 7 sale deeds dated 06.08.1979. It is also not in dispute that the

review applicant herein, having paid only a sum of Rs.1000/- as advance and another sum of Rs.10,000/- on 10.09.1981, had miserably failed to pay the remaining sale consideration with interest @ 12 % per annum as specified in the document. Because of such failure in payment within the time-limit provided, the plaintiff is entitled either to claim re-conveyance of the properties or to file a suit for recovery of the sale consideration. The plaintiff, who was waiting all along from 06.08.1979, had issued a Notice, dated 29.07.1983, calling upon the review applicant herein to pay the balance sale consideration, however, the review applicant did not come forward to pay the same. In such circumstances, by taking into account the date of the sale deed viz., 06.08.1979, and the failure of the review applicant in making payment even after the Notice issued by the plaintiff on 29.07.1983, calling upon the review applicant to pay the balance sale consideration by making it clear, as otherwise, legal action would be initiated for re-conveyance of the suit properties, this Court proceeded to hold that the bar of limitation cannot be applied to the suit filed by

the plaintiff on 13.03.1985. Therefore, the repeated contention made by the learned counsel that the suit was filed belatedly is absolutely misconceived. This Court, relying upon a decision of the Apex Court in Mangalam Pillai vs. C.S. Appavu Udayar (AIR 1976 Madras 260) has already pointed out that if one year time is fixed for re-conveyance and if the parties to the agreement fail to perform their part of the contract, it is open to the party aggrieved to approach the court for re-conveyance. In that line, the plaintiff had rightly approached the trial court by filing the suit. When the courts below, by accepting the case of the plaintiff, concurrently found that the plaintiff is entitled for re-conveyance of the land, it is not open for the review applicant, who never seriously came forward to perform his part of the contract as stipulated in the document, to say that the plaintiff cannot seek for recovery of possession in a subsequent suit without asking for recovery of possession. As such, this Court finds no scope at all for review of the Judgment and Decree passed in the Second Appeals.

3. Consequently, the Review Applications stand dismissed as devoid of any merit.

31.07.2015.

JI.

T.Raja, J.

Rev. Appln. Nos.46
to 53 of 2015 in
S.A.Nos.930 to 937
of 2014.

31.07.2015.