

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2017

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY

A.S.No.688 of 2010

Arunagirinathan

.. Appellant /Plaintiff

vs.

1. Dhanabagiyam @ Bagialakshmi

2. Kala @ Gandhimathi

3. Madumala

4. Geetha

5. Deepa

6. Ramasamy

7. Suresh

8. Santh

9. Vijayalakshmi

10. Padma

11. Ramya

12. Sasikala

13. M. Rathinam

14. S. Sadhasivam

.. Respondents/Defendants

APPEAL filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 10.11.2009 made in O.S.No.52 of 2008 on the file of I Additional District Court, Erode.

For Appellant : Mr. G.Ethirajulu

For Respondents : A.K.Kumarasamy, Senior Counsel
for Mr.Kaithamalai Kumaran - for R1 to R12

No appearance - for R13 & R14

J U D G M E N T

The above appeal arises against the judgment and decree passed in O.S.No.52 of 2008 on the file of I Additional District Court, Erode.

2. The plaintiff is the appellant and the respondents are the defendants in the suit.

3. The plaintiff filed the suit in O.S.No.52 of 2008 for recovery of a sum of Rs.10,62,250/- (Rupees ten lakhs sixty two thousand two hundred and fifty only) together with interest at the rate of 9% per annum and to create a charge on the suit property in respect of the suit claim.

4. The brief case of the plaintiff is as follows:-

(i) According to the plaintiff, he entered into a sale agreement on 14.09.1995 with Nachammal and Chinnasamy for the purchase of the property for a total sale consideration of Rs.22,00,000/- (Rupees twenty two lakhs only). On the same day, the plaintiff paid a sum of Rs.5,00,000/- (Rupees five lakhs only) as advance to them. According to the plaintiff, the sale is to be completed on or before 14.03.1996. After the demise of Nachammal and Chinnasamy, the defendants 1 to 12 became the owners of the suit property.

(ii) Though the plaintiff was ready and willing to perform his part of the contract, the defendants were not willing to perform the contract. The defendants agreed to settle the amount and requested the plaintiff not to take any action. Believing the words, the plaintiff kept quiet and finally on 06.03.2008, sent a legal notice. Subsequently, the plaintiff came to know that the defendants 1 to 12 sold a portion of the property to the defendants 13 and 14.

(iii) The defendants are liable to return the advance money of Rs.5,00,000/- with interest. In these circumstances, the plaintiff filed the suit.

5. In the written statement, the defendants have stated that the suit is barred by limitation and that there is no agreement to claim interest in the agreement dated 14.09.1995. The defendants have also disputed the averments stated in the plaint.

6. Before the trial Court, on the side of the plaintiff, 2 witnesses were examined and 19 documents, Ex.A-1 to Ex.A-19 were marked and on the side of the defendants also, 2 witnesses were examined and 14 documents, Ex.B-1 to Ex.B-14 were marked.

6. The trial Court, after taking into consideration, the oral and documentary evidences let in by both sides, dismissed the suit on the ground of limitation.

7. Aggrieved over the judgment and decree of the trial Court, the plaintiff has filed the above appeal.

8. Heard Mr.G.Ethirajulu, learned counsel appearing for the appellant and Mr. A.K.Kumarasamy, learned Senior Counsel appearing for the respondents 1 to 12..

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the only issue that has to be decided in the present appeal is whether the suit filed by the plaintiff is barred by limitation or not.

10. Admittedly, Ex.A1 Sale agreement is dated 14.09.1995. As per the agreement, the parties should complete the sale on or before 14.03.1996. The defendants 3 and 10, by Ex.B1 reply notice dated 27.03.1999, refused to execute the sale in favour of the plaintiff. Therefore, when the defendants have refused to execute the sale deed in favour of the plaintiff by Ex.B1 notice dated 27.03.1999, the plaintiff should have filed the suit within 3 years from the date of Ex.B1. However, the plaintiff has filed the present suit only on 13.03.2008. Since the plaintiff has filed the suit after a lapse of nearly 9 years, the suit is clearly barred by limitation. The trial Court has rightly dismissed the suit on the ground of limitation.

11. In these circumstances, I do not find any ground to interfere with the judgment and decree of the trial Court. The appeal liable to be dismissed. Accordingly, the appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

Rj
To

The I Additional District Court
Erode.

Copy to

The Section officer, VR Section, High Court, Madras(2 copies)

+1 CC to Mr.A.K. Kumarasamy, Advocate sr 88698.

A.S.No.688 of 2010

SP(19/01/2018)