

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.09.2017

Judgment Pronounced on : 24.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.131 of 2006

1.Murugasami Gounder

2.M.Arumugham

3.K.P.Subramaniam

... Appellants/Defendants 1,3 & 16

Vs.

1.M.Periyasami

2.S.Narayanasamy

... Respondents 1 & 2/
Plaintiffs 1 & 2

3.M.Palanisami

4.Samathal

5.Kittappa Gounder

6.Ponnammal

7.Kandaswami

8.Balamani

9.Subbathal

10.Thangavel

11.Balasubramaniam

12.Banumathi

13.Rajeswari

14.K.Kumarasamy

15.V.Palanisamy

16.S.Govindaraj

17.Banumathi

18.Minor Dinesh Kumar

19.Minor Soundarya

(Minors 18 & 19 rep. by their

Court guardian K.G.Manickam

Advocate, Erode)

(RR 3,5 to 15 given up)

and 17 to 19. ... Respondents/Respondents/defendants

2,4 to 7,9 to 15, 17,18 and Lrs of the 9th Defendant

20.R.Krishnamoorthy

(R-20 impleaded as party

respondent vide order of this

Court dated 21.02.2014 made in

CMP.No.1229/2010 in

S.A.No.131 of 2006)

... Respondents

This second appeal has been filed under Section 100 of CPC, against the judgment and decree dated 28.01.2005 passed by the learned Principal District Judge, Erode, made in A.S.No.139 of 2003, reversing the Judgment and decree dated 18.11.2002 passed by the learned II Additional Subordinate Judge, Erode in O.S.No.686 of 1992.

For Appellants : Mr.A.K.Kumarasamy S.C.,
for Mr.S.Kaithamalaikumaran

For Respondents : Mr.S.Silambanan S.C.
for Mr.G.Saravanakumar for R1
Mr.A.Gokulakrishnan for R-2
R-4 No appearance
R-3, 5 to 17 given up

JUDGMENT

This second appeal arises out of the judgment and decree dated 28.01.2005 passed by the learned Principal District Judge, Erode, made in A.S.No.139 of 2003, reversing the Judgment and decree dated 18.11.2002 passed by the learned II Additional Subordinate Judge, Erode in O.S.No.686 of 1992.

2.Before the trial Court, the suit in O.S.No.686 of 1992 was tried in common with O.S.No.506 of 1998, O.S.No.534 of 1999 and O.S.No.536 of 1999 and common judgment was pronounced on 18.11.2002. While in O.S.No.686 of 1992, the relief sought for in respect of Specific Performance, Partition and Possession was rejected. The alternate relief of refund of advance paid by the plaintiffs therein by defendants 1 to 3 was decreed. The other suits in O.S.No. 506 of 1998, O.S.No.534 of 1999 and O.S.No.536 of 1999 were dismissed. Aggrieved over the same, the appeal in A.S.No.98 of 2003 filed against the decree and judgment passed in O.S.No.536 of 1999, the appeal in A.S.No.139 of 2003 filed against the judgment and decreed in O.S.No.686 of 1992 and the appeal in A.S.No.147 of 2003 filed against the judgment and decree passed in O.S.No.534 of 2003. The first appellate Court by its common judgment dated 28.01.2005 allowed the Appeal in A.S.No.139 of 2003 and thereby set aside the decree and judgment of the trial Court suit in O.S.No.686 of 1992 and decree the suit as prayed for granting the relief of specific performance, partition and other reliefs. The other appeals in A.S.No.98 of 2003 and A.S.No.147 of 2003 were dismissed. Aggrieved over the said finding of the first appellate Court, the defendants 1,3 and 16 in O.S.No.686 of 1992 have preferred the present second appeal. As stated, no other second appeal is preferred in the judgment and decree passed in other appeal suits by the lower

appellate Court.

3. Brief facts of the case is as follows:-

The plaintiffs filed the suit for Specific Performance, Partition and for Separate Possession. The suit property belongs to the defendants 1 to 3 and they have entered into a sale agreement with the plaintiffs on 12.02.1987. The sale price was fixed at Rs.4,46,810/- and on the date of agreement, a sum of Rs.1,00,000/- is paid as advance and the balance to be paid within one year. The above said agreement was reduced in to writing. The plaintiffs have demanded the defendants 1 to 3 to execute the sale deed through legal notice. Since the defendants 1 to 3 failed to execute the sale deed, the plaintiffs filed the suit for specific performance, partition and for separate possession in O.S.No.686 of 1992.

4.The defendants contended that the defendants denied the allegations of the plaintiffs and stated that on 12.02.1987, sale agreement was entered into by them with the plaintiffs is true and advance amount of Rs.1,00,000/- was received by them is also correct. However, the claim of the plaintiffs that the time mentioned in the agreement is not essence of the agreement is not correct. The plaintiffs never ready to pay the balance amount and to complete the sale transaction. It was only five years after entering the agreement, the plaintiffs have filed the suit only because of the market value of the property has increased. The suit is now filed by the plaintiff following the reply notice dated 05.02.1988 issued by the defendants 1 to 3. The plaintiff has given up the sale agreement and as such they are not entitled to seek execution of sale deed by the defendants. The plaintiffs are aware that the defendants 4 and 5 are the sisters of the first defendant. The plaintiffs also aware that the father of the first and fourth defendant passed away only after the Hindu Succession Act,1956 came into force. Knowing well that the defendants 1, 4 and 5 are the legal heirs of deceased Subbiah Gounder. The plaintiffs entered into a sale agreement and now they cannot contend that there is encumbrance in the suit property. The first defendant alone is in possession and enjoyment of the suit property and the patta stands in his name. Knowing of details only the plaintiffs entered into a sale agreement, 4 and 5th defendants have no right in the suit property filing of O.S.No.278 of 1987 by the defendants 4 and 5 seeking partition will not create any encumbrance of the property. On receipt of notice dated 01.02.1988 from the plaintiffs, the defendants expressed their readiness to execute the sale deed in the reply notice dated 05.08.1988. But, the plaintiffs in their re-joinder dated 09.02.1988 mentioned about the pendency of O.S.No.278 of 1987 and expressed their unwillingness to complete the sale. In the notice dated 01.02.1988 sent by the plaintiffs itself time limit to execute the sale deed fixed and inspite of that the

plaintiffs have not come forward to complete the sale. As such, the plaintiffs are not entitled to seek the relief of specific performance. Thus, the suit is barred by limitation. Thus, the defendants seeks dismissal of the suit.

5. At the time of admission, this Court framed the following Substantial Questions of law for consideration.

a)When admittedly the plaintiffs abandoned their right to specific performance under Ex.A1 agreement of sale by calling upon the defendants under Ex.A2 re-joinder to pay damages would conclusively establish that the plaintiffs are not always ready and willing to perform their part of contract?

2.Is not the suit bared by Section 54 of the Limitation Act as the suit was filed only on 04.11.1992 to enforce the agreement of sale dated 12.02.1987.

6.The learned counsel appearing for the appellants/defendants 1,3 & 14 would submit that the Legal Notice Ex.A2 dated 01.02.1988 was issued by the plaintiffs calling upon the defendants to clear all the encumbrances on or before 12.02.1988 and if the defendants failed to clear the encumbrance within the stipulated period, the plaintiffs will be constrained to take appropriate steps for recovery of the damages with all incidental loss and for compliance three days time to be given by the plaintiffs. The plaintiffs have not demanded the defendants to execute the sale deed and they have not offered to pay the balance sale consideration and never asked the defendants to come to the Sub Registrar Office to execute the sale deed. In Ex.A2 Notice, the plaintiffs simply demanded the defendants to clear encumbrances. For the above said notice, the defendants replied on 05.02.1988 and stated that the defendants 1 to 3 are ready and willing to execute the sale deed and asked the plaintiffs to purchase the stamp papers and inform the defendants 1 to 3 for registration and also further informed that they will wait at Sub Registrar Office, Tuticorin from 08.02.1988 to 12.02.1988, at any time whenever they were called for the said purpose. For the above said reply notice, the plaintiffs issued re-joinder on 09.02.1988, in which the plaintiffs have specifically stated that on account of litigation, the plaintiffs are not prepared to purchase the property. These are the exchange of notice between the plaintiffs and defendants 1 to 3 in the year,1988. Subsequent to that on 17.02.1992, the plaintiffs sent a notice again calling upon the defendants 1 to 3 to execute the sale deed, for which the defendants sent a reply on 02.03.1992 stating that since the plaintiffs failed to complete the sale, the sale agreement automatically stands cancelled and the defendants forfeited the advance amount and refused to execute the sale

deed. Even thereafter, the plaintiffs filed the suit only on 04.11.1992, that it is after 8 months from the date of refusal by the defendants. It was clearly show that the plaintiffs are not ready and willing to perform their part of contract. Hence, the plaintiffs are not entitled to the relief of specific performance. Thus, the learned counsel for the appellants/defendants seeks to entertain the appeal and to set aside the judgment and decree passed by the lower appellate Court.

7. On the other hand, opposing the plea of the appellants, the learned counsel appearing for the respondents 1 and 2/plaintiffs submit that the trial Court did not entertain the claim of the plaintiffs on the ground that the suit was barred by limitation under Article 54 of the Limitation Act, 1963, but the first appellate Court reversed the findings of the trial Court on the ground that the pendency of the litigation is the root cause for the delay for the plaintiffs to proceed with the sale agreement and after the disposal of the suit for partition between the defendants 1 to 3 and their sisters, the plaintiffs has come forward with the suit seeking to entire Ex.A2 sale agreement. Further more, the plaintiffs were also one of the parties in the suit for partition between the defendant and their sisters. Hence, the question of limitation was not arise. Further more, only after the refusal of the defendants to execute the sale deed, the plaintiffs can come forward with the suit for specific performance and also partition and separate possession. It is further pointed out that the plaintiffs continuously expressed their readiness and willingness to perform their part of the contract. Hence, there is no question of non compliance of Section 16(c) and that issue does not arise. After elaborate discussion of both oral and documentary evidences, the lower appellate Court came to the correct conclusion to decree the suit as prayed for and there is no infirmity in the findings of the lower appellate Court. Hence, the plaintiffs prays that the second appeal is to be dismissed.

8. I have heard the rival contentions and perused the materials available on record.

9. On perusal of the records, it is clear that the suit property belongs to the defendants 1 to 3 and the plaintiffs entered into a sale agreement Ex.A1 with the defendants 1 to 3 with regard to the suit property on 12.02.1987 and the sale consideration was fixed at Rs.4,86,810/-. Thereafter, the plaintiffs paid Rs.1,00,000/- as advance and the sale was to be completed within one year, i.e., on or before 12.02.1988. The same facts are all not disputed. The stipulated period of agreement to complete the sale transaction was fixed as 12.02.1988. The plaintiffs demanded the defendants 1 to 3 to clear the encumbrance on or before 12.02.1988 through Ex.A2 notice. For which the defendants 1 to 3 sent a reply through

Ex.A6 on 05.02.1988, in which the defendants 1 to 3 have demanded the plaintiffs to purchase the stamp paper and inform the defendants that the date for registration of the sale deed and also asked the plaintiffs to come to the Sub Registrar Office, Tuticorin any day between on 08.02.1988 to 12.02.1988 at any time. For which the plaintiffs sent a re-joinder through Ex.A7 dated 09.02.1988, in which they have stated that that on account of litigation, the plaintiffs are not prepared to purchase it. Due to the litigation with regard to the suit property they are not willing to purchase since there was no marketable title to the property. Unless and until it is done, the defendants 1 to 3 cannot ask for registration for sale deed. This is the specific contention on the side of the plaintiffs.

10. In such situation, we have to analyse what are the encumbrances which prevented the execution of sale deed and whether the plaintiffs were ready and willing to perform their part of contract and whether the suit was barred by limitation and whether Ex.A2 disclosed the unwillingness of the plaintiffs to complete the sale transaction. Let us discuss the said issues one by one.

11. Let us first discuss about the alleged encumbrance which prevented the plaintiffs from completing the sale transaction. Let us first see the recitals of sale agreement Ex.A1, which runs as follows:-

“பாக்கி கிரயத் தொகை ரூபாய் 3,46,810/- மூன்று லட்சத்தி நாற்பத்தி ஆறாயிரத்தி எட்டுற்றி பத்தையம் நாளது தேதி முதல் 1(ஒரு) வருடக் கெடுவிற்குள் நீங்கள் எங்களுக்குச் செலுத்தினால் நாங்கள் தொகையை பெற்றுக் கொண்டு சர்வ வில்லங்க சுத்தியாய் உங்கள் செலவில் உங்கள் பெயருக்கோ அல்லது உங்கள் எழுத்து மூலமாக அதிகாரம் பெற்ற வேறு நபர்கள் பெயருக்கோ கிரயம் எழுதி பதவு, செய்து கொடுத்து சொத்துக்களையம் சுவாதீனம் செய்து கொடுக்க கடமைப்பட்டவர்கள். வில்லங்கம் ஒன்றும் இல்லை. அப்படி ஏதாவது வில்லங்க விவகாரம் இருக்கும் பட்சத்தில் அதை நாங்களே முன்னின்று எங்கள் சொந்தப் பொறுப்பிலும் சொந்த செலவிலும் தீர்த்துக் கொடுக்கக் கடமைப்பட்டவர்கள்”

In the above said recitals, the specific words “without any encumbrance. Subsequently, it has been specifically mentioned that no encumbrance. However, the plaintiffs have stated that the defendants' sisters filed a suit for partition in O.S.No.278 of 1987, in which the plaintiffs were also made parties to that suit and the suit was decreed on 29.11.1991. In the suit, the sisters of the defendants 1 to 3 are declared to be entitled to 1/8 shares each and the remaining 5/8 shares alone is the defendants 1 to 3 are entitled. Therefore, the pendency of the partition suit is alleged to be the root cause for the delay on

the side of the plaintiffs to complete the sale. This is the specific contention on the side of the plaintiffs.

12. On the other hand, according to the defendants 1 to 3, the reason adduced by the plaintiffs for the delay is not acceptable. Refuting the same, it is stated that in the partition suit O.S.No.278 of 1987, the plaintiffs are also parties and in such situation, there is no possibility for the plaintiffs to invest the money before knowing the result of the partition suit. Therefore, the reason adduced by the plaintiffs for the delay is to be accepted, but the delay occurred only due to pending litigation in respect of the suit property. The suit was decreed on 29.11.1991 and after that the plaintiffs demanded the defendants 1 to 3 through Ex.A12 notice on 17.02.1992 i.e., after 2-1/2 months from the date of decree to complete the sale. On the side of the plaintiffs, the learned counsel has relayed on a ruling reported in CDJ 1990 KAR HC 392 in K.VENKOJI RAO Vs. M.ABDUL KHUDDUR KURSHI in support of his contention. However, the above said ruling is not applicable to the facts of this case, since the above said rulings dealt with continuous cause of action. The suit sale agreement marked as Ex.A1 was entered into between the parties on 12.02.1987. The suit for partition O.S.No.278 of 1987 was filed in the year 1987 itself. The stipulated agreement of sale period ends on 12.02.1988. Thus, it is clear that during the stipulated period, the question of title of the suit property disputed by the sisters of the defendants was pending before the Court. In such situation, any ordinary prudent man will certainly hesitate to purchase the property, As such on that ground as well as on the basis of recitals of Ex.A1 sale agreement, the litigation period is to be excluded. After the declaration of the shares of the defendants, i.e., 5/8 shares, the plaintiffs demanded the defendants 1 to 3 to perform their part of contract within the period of limitation of three years as per Article 54 of the Limitation Act, 1963. The plaintiffs came forward with the present suit in O.S.No.686 of 1992 for specific performance within three years excluding the litigation period. So, the question of law raised by the appellants that the suit is barred by limitation under Article 54 of the Limitation Act, 1963 is not sustainable. Thus, the first substantial question of law is answered against the appellants.

13. The next substantial question of law raised by the appellant, it is with regard to readiness and willingness. According to the plaintiffs/respondents, they expressed their readiness and willingness through Ex.A2 notice sent through their counsel. On the other hand, according to the defendants, even though Ex.A2 was issued, the plaintiffs have not demanded the defendants to execute the sale deed and failed to express their readiness and willingness in the said notice. The learned counsel for the appellants/defendants has relied upon the ruling

reported in 2010 (2) MLJ 253 in R.RAJARAM VS. T.R.MAHESWARAN, wherein it is held as follows:-

".....The trial Court also proceeded on the basis that the plaintiff was always ready and willing, which was substantiated by the fact that he has obtained a lodgment schedule. However, the fact remains that plaintiff has not deposited the amount though he has taken the challan. Therefore, there was a deliberate attempt on the part of the plaintiff to mislead the Court."

14.The appellants/defendants relied on another ruling reported in 2003(2) CTC 109 in MANJUNATH ANANDAPPA URF SHIVAPPA HANASI Vs. TAMMANASA AND OTHERS, wherein it is held as follows:-

"30.There is another aspect of the matter which cannot be lost sight of. The plaintiff filed the suit almost after six years from the date of entering into the agreement to sell. He did not bring any material on records to show that he had ever asked defendant No. 1, the owner of the property, to execute a deed of sale. He filed a suit only after he came to know that the suit land had already been sold by her in favour of the appellant herein. Furthermore, it was obligatory on the part of the plaintiff for obtaining a discretionary relief having regard to Section 20 of the Act to approach the court within a reasonable time. Having regard to his conduct, the plaintiff was not entitled to a discretionary relief."

15.Likewise, in the ruling reported in 2011 (1) SCC 429 in J.P. BUILDERS AND ANOTHER Vs. A.RAMADAS RAO AND ANOTHER, it is held as follows:-

"27.It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the

parties."

16. Similarly, in the ruling reported in 2004 (4) L.W. 807 in SAHADEVA GOUNDER AND OTHERS Vs. RENGANATHA KOUNDER AND OTHERS, it is held as follows:-

"The discretion of the court must be sound and reasonable. While dealing with the relief of specific performance, the Court shall take into consideration the circumstances in each case, the conduct of the parties and the respective interest under the contract."

17. The appellants/defendants also relied upon the ruling reported in 1997 (1) CTC 628 in K.S. VIDYANADAM AND OTHERS Vs. VAIRAVAN, wherein it is held as follows:-

"13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 112 years in clear violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices - according to the defendants, three times - between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff."

"It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the

agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20."

In other words, the court should look at all the relevant circumstances including the time-limits specified in the agreement and determine whether its discretion to grant specific performance should be exercised."

18. It is clear that the above said rulings reflected the precedents of the Apex Court with regard to main ingredient under Section 16(c) that is readiness and willingness. In the above said ruling in K.S. VIDYANADAM case (supra), the Apex Court clearly and categorically held that mere filing of suit for specific performance within the period of limitation of three years alone is not sufficient to prove the readiness and willingness. It is clearly stated that the Court should look at all the relevant circumstances including the time limit specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Thus, on the basis of above guidance let us analyse the readiness and willingness of the plaintiffs in the present case on hand.

19. Admittedly, the plaintiffs and defendants 1 to 3 have entered into a sale agreement on 12.02.1987 as per Ex.A1 and stipulated agreement period of one year ended on 12.02.1988. It is clear from the records that for the first time, the plaintiffs demanded the defendants 1 to 3 to clear the encumbrance through Ex.A2 notice, which is dated 01.02.1988 that is just 11 days before the stipulated period ends on 12.02.1988. After the payment of advance amount of Rs.1,00,000/- on the date of Ex.A1 agreement on 12.02.1987 itself, what the plaintiffs have done in furtherance of the agreement, Ex.A2 notice was sent is not stated by the plaintiffs. In Ex.A2 also, the plaintiffs have not demanded the defendants to execute the sale deed after receiving the balance sale consideration, but the plaintiffs have only stated that as the sisters of the defendants 1 to 3 have filed a suit for partition demanding share in the suit property, the plaintiffs asked the defendants to clear the encumbrance over the property. The purchasers, namely, the plaintiffs/respondents ought to have taken steps to ascertain before entering into an agreement whether the defendants/appellants are having marketable title to the suit property and having full right over the suit property. There is nothing on record to show as to whether they have looked into and whether the defendants suppressed the same. It is not the

case of the plaintiffs that inspite of verification, the facts was supported by the defendants.

20. Even then, in response to Ex.A2 notice, the defendants expressed their readiness and willingness to perform their part of contract in Ex.A6 reply notice, to which the plaintiffs sent a re-joinder through Ex.A7, which they have specifically stated that "my clients have got money, on account of the litigation my clients are not prepared to purchase it. Your clients, after executing the agreement, have set up their sisters to file the suit for the reasons best known to them. My clients are not prepared to purchase it with litigation. The measurements were deferred at the time of execution and registration of the sale deed. Thus, it is clear from Ex.A7 reply notice that the plaintiffs were not ready to purchase the suit property as litigation was pending. Then the plaintiffs kept quite till the disposal of the partition suit on 29.11.1991. After the said suit O.S.No.278 of 1987 was disposed, the plaintiffs again demanded the defendants on 17.02.1992 through Ex.A12 notice to execute the sale deed. For which the defendants sent a reply on 02.03.1992 through Ex.A16, in which they refused to execute the sale deed. Even after such refusal by the defendants, the present suit was filed by the plaintiffs/respondents only on 04.11.1992 i.e., after 9 months. On the side of the plaintiffs, they have not explained the 9 months delay in filing the suit. The original sale agreement was entered into between the parties on 12.02.1987 and only after five years, the plaintiffs came forward the suit for specific performance. As statede earlier, the stipulated period of agreement entered on 12.02.1988 itself. As such, even though, the suit was filed within the prescribed period of limitation, as per the verdict of K.S.VIDYANADAM case (supra) mere filing of suit within the period of limitation alone is not sufficient to grant the relief of Specific Performance. In addition to that the Court should look at all the relevant circumstances including the time limit. Admittedly, Ex.A1 agreement was entered into on 12.02.1987 stipulating one year period for furnishing the sale agreement if really the plaintiffs were ready and willingn to get the sale deed, they could have get the sale deed within the said stipulated period of one year i.e., 12.02.1988. However, till Ex.A2 notice was issued on 01.02.1988, the plaintiffs never demanded the defendants to perfect their part of contract and only at the fag end of the stipulated period, the plaintiffs came forward with Ex.A2 notice, in which also they have not demanded the defendants to execute the sale deed. As stated above ever after the confirmation of the details to the plaintiffs 5/8 shares, the plaintiffs failed to rush to the Court, as the defendants refused to execute the sale deed on 02.03.1992 itself. In such circumstances, the plaintiffs ought to have rushed to the Court immediately for the relief of specific performance, but they have not done so. The plaintiffs

have also not explained the delay from 02.03.1992 to 04.11.1992 in filing the present suit. The unexplained delay on the side of the plaintiffs clearly shows that the plaintiffs were not ready and willing to perform their part of contract. The relief of specific performance is the discretionary relief. Rising prices of the property is also one of the factors to be taken into account while exercising the discretionary relief of specific performance. Hence, relying on the K.S.VIDYANADAM case (supra), which is identical to the fact of this case, considering the fact that there is a unexplained delay of more than eight months in filing the suit by the plaintiffs, the same is certainly fatal to the case of the plaintiffs. However, the first appellate Court without considering these aspects arrived at the conclusion that the period of litigation has to be excluded and as the plaintiffs have come forward with the suit within the period of limitation, the suit is to be entertained and on that ground reversed the findings of the trial Court and decreed the suit. The above said finding of the first appellate Court is certainly against the law laid down by the Apex Court which is reported in 1997 (1) CTC 628 in K.S.VIDYANADAM case (supra). Hence, the first substantial question of law raised by the appellants is sustainable and the same is answered in favour of the appellants/defendants.

21. Therefore, from the above discussion of the position of law and the decisions rendered by the Apex Court earlier, I am of the view that the contention of the Appellants/Defendants is to be entertained and the conclusion of the first appellate Court is unsustainable and liable to be set aside. The point is answered accordingly.

22. In the result, the second appeal is allowed. No costs. The decree and judgment dated 28.01.2005 made in A.S.No.139 of 2003 passed by the learned Principal District Judge, Erode is hereby set aside and the judgment and decree dated 18.11.2001 made in O.S.No.686 of 1992 passed by the learned II Additional Subordinate Judge, Erode is hereby confirmed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

rrg

To

1. The Principal District Judge,
Erode.

2. The II Additional Subordinate Judge,
Erode.

+1 CC to Mr.A. Gokulakrishnan, Advocate sr 58151.

+1 CC to Mr.A.K. Kumarasamy, Advocate sr 58209.

+2 CCS to Mr.G. Saravanakumar, Advocate sr 58228.

S.A.No.131 of 2006

RSI (CO)
SP(08/01/2019)