



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD)No.787 of 2019

J.Michael Visuvasa Raj

... Petitioner

vs.

S.Pasupathi

... Respondent

Petition filed under Article 227 of the Constitution of India, to set aside the order of return dated 25.02.2019 passed in unnumbered O.S.SR.No.1152 of 2019 on the file of the Principal District Court, Thoothukudi.

For Petitioner

: Mr.J.Barathan

ORDER

Against the return of plaint, this revision petition is filed.

2.The facts of the case are that the respondent/defendant entered into a sale agreement with the petitioner/plaintiff on 19.04.2014 agreeing to sell his property for a sale consideration of Rs.22,95,000/-. On 19.04.2014 itself, the respondent received Rs.20,00,000/- towards part of sale consideration from the petitioner and agreed to execute the sale deed on receipt of the balance amount within three months from 19.04.2014 that is 19.07.2014. Thereafter, when the petitioner approached the respondent, he refused to execute the sale deed and therefore, finding that the respondent will not come forward to execute the sale deed and that the right of the petitioner to file specific performance suit got extinguished due to the limitation which ended on 19th July 2017 itself, the petitioner filed the present suit for refund of Rs.31,54,000/- being the advance sale consideration of Rs.20,00,000/- with 12% interest. The Court below returned the plaint with the following endorsement:-

"It is nothing but plaint refund of money and it is coming in the category of money suit. There is no prayer sought for charge over any property because no mortgage issue raised in this suit. Since the suit filed based on specific performance of contract instead of seeking relief under Specific Relief Act, present suit filed as an alternative remedy to refund money only. Here for recovery of money suit must be filed from the date of cause of action within three years. In this case admittedly in the plaint interest claimed for four years nine months and twenty one days in the prayer page under the heading details of valuation. Hence, this suit is clearly barred by limitation. Since the reasons assigned after return of



plaint is not legally acceptable this court returning this plaint to enable the plaintiff to get back 3% court fee, if the plaint is represented again on the same reason this suit will be rejected under Order 7 Rule 11 of Civil Procedure Code. In view of the earlier return and explanation submitted and cited 2016 (4) TNLJ 513 (Civil) does not arise and hence, returned.

Time one month granted.'

As against the said return, this revision is filed.

3. Assailing the impugned return, learned counsel for the petitioner would submit that in respect of the relief of alternative prayer namely, for refund of advance amount in a specific performance suit, Article 62 of the Limitation Act alone has to be applied and not the limitation period fixed for specific performance and Article 62 of the Limitation Act grants 12 years time for enforcing payment of money secured by a Mortgage or otherwise charged upon immovable property. In support of his contention, he relied upon paragraphs 25 and 27 of the judgment reported in **2016 (6) CTC 740, P.Muthusamy vs. K.Arumugam and others**. Thus, he prays for setting aside the impugned return and for a direction to the Court below to number the suit.

4. Heard the learned counsel for the petitioner and perused the records.

5. It is relevant to extract below paragraphs 25 and 27 of the judgment reported in 2016 (6) CTC 740:-

'25. Perusal of Articles 54 & 62 of the Limitation Act would certainly indicate that both are not acting on the same field and on the other hand, they are to be applied only in respect of the suit for which respective Article is meant for. Needless to say that as per Article 54 of the Limitation Act, a suit for Specific Performance of a Contract has to be filed within a period of three years from the date fixed for the performance or if no such date is fixed, from the date of refusal of such performance. At the same time, it is to be noted that the plaintiff is not precluded from seeking an alternative prayer for refund of the advance amount. Such alternative prayer, certainly, is not a consequential prayer to the other relief of Specific Performance and on the other hand, such alternative prayer itself will have the character of the main relief, however, alternatively sought for. If such prayer for refund of advance amount is also sought for in a Suit for Specific Performance, certainly, the period of limitation to be considered in respect of that relief is concerned, Article 62 of the Limitation Act alone has to be applied and not the limitation period fixed for Specific Performance. Article 62 of the Limitation Act grants 12 years time for enforcing payment of money secured by a Mortgage or otherwise charged upon immovable property.



27. The question, that in an Agreement for Sale in respect of an immovable property, whether a Statutory charge is created on such property in favour of the buyer/the Agreement holder is answered by the relevant Statute itself under Section 55(6)(b) of the Transfer of Property Act, which I have extracted supra. Under the said provision of law, the Statutory charge is created on the subject matter property in an Agreement for Sale, unless a Contract to the contrary is specifically referred to in the said Agreement itself or in a circumstance where the buyer has improperly declined to accept the delivery of the property. The creation of such Statutory charge under Section 55(6)(b) of the Transfer of Property Act and consequently, the application of Article 62 of the Limitation Act have been, in clear and categorical terms, dealt with by the Apex Court in Delhi Development Authority's case, thereby holding that 12 years is the time limit for enforcement of the charge and not three years.'

6. Perusal of the above judgment clearly states that once a sale agreement is entered into between the parties, a statutory charge is automatically created on the agreement holder, by which, Article 62 of the Limitation Act applies for the purpose of limitation which has been clearly held by this Court in the above judgment reported in 2016 (6) CTC 740. Article 62 of the Limitation Act grants 12 years time for enforcing payment of money secured by a Mortgage or otherwise charged upon immovable property.

7. Therefore, the impugned return order of the learned Judge dated 25.02.2019 passed in unnumbered O.S.SR.No.1152 of 2019, is set aside and the learned Judge is directed to number the suit and dispose of the same in accordance with law.

8. Accordingly, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To
The Principal District Judge,
Thoothukudi.

+1 CC to Mr.T.R.JEYAPALAM, Advocate SR-68016.

C.R.P (NPD) (MD) No.787 of 2019