



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD)No.1421 of 2019

K.Kumaraswamy

.. Petitioner /
Plaintiff

Vs.

C.Selva Rajappan

.. Respondent /
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to direct the Sub Court, Eraniel to number the O.S.No.(Unnumbered) of 2018 (Filing No.OS.752/2018 CNR No.TNKK-150016892018) on the file of Sub Court, Eraniel, and decide the same on merits.

For petitioner : Mr.V.George Raja

ORDER

Against the return of plaint, this revision petition has been filed.

2.According to the petitioner / plaintiff, the respondent / defendant agreed to sell his property having an extent of 10 cents in Re.Sy.No.183/10A (Old Sy.No.10139B) of Simon Colony, Colachel Village, Kalkulam Taluk for a sum of Rs.4,00,000/- to the petitioner / plaintiff and to that extent, he executed the suit sale agreement dated 25.03.2015. On the date of execution of the suit sale agreement, the respondent / defendant has received a sum of Rs.3,00,000/- as advance and further it has been agreed that balance of sale consideration should be paid within three months and the respondent / defendant should execute a sale deed in favour of the petitioner / plaintiff. The respondent / defendant has failed to perform his part of the contract, which culminated the issuance of the legal notice dated 13.01.2018 and the same was returned as refused. Subsequently, the respondent / defendant made false complaints with the police and finally, a compromise was arrived at and the respondent / defendant undertook to repay the said amount with interest at the rate of 12% per annum. Since, the respondent / defendant did not comply with the same, the petitioner / plaintiff has filed the present suit before the Court below for recovery of



money. The learned Judge has returned the plaint stating that the sale agreement is dated 25.03.2015 and hence, the suit is barred by limitation. Against which, the petitioner / plaintiff has filed the present revision seeking to set aside the order of return and also direct the learned Judge to number the plaint.

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3.The learned counsel for the petitioner / plaintiff 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. The petitioner / plaintiff has also represented the plaint with the above explanation. But, the Court below has returned the plaint on several times as the previous defect has not been complied with. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court in Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and others reported in 2000(I) CTC 507 and paragraphs 25 and 27 of the judgment of this Court reported in P.Muthusamy vs. K.Arumugam and others reported in 2016 (6) CTC 740, Thus, he prays for setting aside the impugned order of return and for a direction to the Court below to number the suit.

4.Heard the learned counsel for the petitioner / plaintiff and perused the materials available on record.

5.The Hon'ble Supreme Court in Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and others reported in 2000(I) CTC 507, has held as follows:

"... 32.Article 62 of the Limitation Act, 1963 (which corresponds to Article 132 of the Limitation Act, 1908) provides a period of 12 years "to enforce payment of money secured by a mortgagee or otherwise charged upon immovable property". Time runs from the date "when money became due".

33.From the above Article, it is clear that the period of limitation for enforcement of the statutory charge created under Section 55(6)(b) is 12 years from the date when becomes due and not 3 years. The period remains the same even for enforcement of the charge on the substituted security."

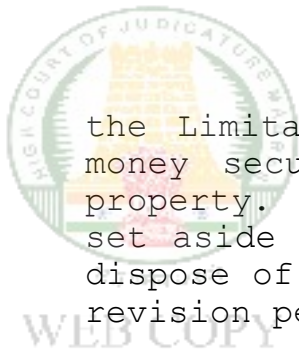
6.Following the said Judgment of the Hon'ble Apex Court, this Court in P.Muthusamy vs. K.Arumugam and others reported in 2016 (6) CTC 740 has held as follows:



"...25. Perusal of Article 54 and 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 the 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 alternative 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".

7. Perusal of the above judgments 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 the Hon'ble Apex Court and this Court, in the above judgments referred to supra. 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. Therefore, the order of return made by the Court below is set aside and the learned Judge is directed to number the suit and dispose of the same on merits and in accordance with law. The civil revision petition is allowed accordingly. No costs.

8.Registry is directed to return the original plaint filed alongwith the revision, to the petitioner / plaintiff forthwith, after retaining a photocopy of the same.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Sub Judge,
Eraniel.

2.The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R. MURUGAN, Advocate (SR-83355[F] dated 26/08/2019)

ORDER MADE IN
C.R.P (MD) No.1421 of 2019
26.08.2019

smn
MS/12.09.2019/4P.5C