

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.296 of 2020 and
C.M.P. No.1485 of 2020

1. Dr.Prof. P.Achuthan
 2. Dr.Mrs.Vimala Achuthan (died)
 3. Sairam Achuthan
 4. Harishree Achuthan
 5. Krishnasri Achuthan
- ... Petitioners

Vs.

A.Baskar

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of Civil Procedure Code to set aside the fair and decreetal order dated 15.10.2019 made in I.A.No.1 of 2019 in O.S.No.798 of 2011 on the file of Additional District Munsif Court, Alandur and to allow the Civil Revision Petition.

For Petitioners : Mr.T.V.Krishnakumar

For Respondent : Mrs.Meera Ramesh for
Mr.S.Rathnasabapathy

O R D E R

The present Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order passed in I.A No.1 of 2019 in O.S.No.798 of 2011 by the Additional District Munsif Court, Alandur dated 15.10.2019.

2. The case of the respondent / plaintiff in O.S.No.798 of 2011 is that the said suit was filed against as against the petitioners for a permanent injunction restraining the petitioners herein from in anyway alienating or encumbering the suit schedule property therein on the facts that the respondent / plaintiff had entered into a sale agreement dated 10.08.2011, by which agreement, the 1st petitioner seems to have offered to sell plot nos.7 and 8 in Pallikaranai Village, which the 1st petitioner to be the absolute owner to an extent of 3,620 square feet and 3,580 square feet respectively and plot nos.7 & 8, form part of the layout scheme sanctioned by the Deputy director of Town Planning, Madras to an extent of one acre and

ninety two cents of land in survey nos.580/1 to 580/8 in No.149, Pallikaranai village Saidapet Taluk on receipt of Rs.6,00,000/- as advance and fixed a sale price at Rs.2,46,00,000/- agreeing to pay the balance amount within a period of three months from the date of execution of the said sale agreement. The respondent / plaintiff was ready and willing to perform the said sale agreement and complete the sale transaction within a stipulated period, however, for want of registered power of attorney from the principal, viz., the wife of the 1st petitioner, viz., 2nd petitioner, it was not proceeded with. Thereafter, the respondent / plaintiff insisted the execution of power of attorney in favour of the 1st petitioner by the 2nd petitioner / defendants and on 07.11.2011, the respondent / plaintiff seems to have sent xerox copies of the demand drafts in favour of the 1st petitioner herein, which is dated 14.11.2011 for Rs.19,20,000/- and for Rs.7,10,000/- dated 16.11.2011 and again another demand draft on the same date for Rs.8,90,000/- and on 17.11.2011 for Rs.17,00,000/- totaling a sum of Rs.71,20,000/- and by sending the same, informed the petitioners about his readiness and willingness to complete the sale and for registration after receiving the balance sale consideration. The respondent / plaintiff further submitted that a sum of Rs.71,20,000/- is the guideline value as of November 2011 for Plot No.8, owned by the 1st petitioner.

3. It is the further case of the respondent / plaintiff that on receipt of the said amounts, the 1st and 2nd petitioners / defendants, have not performed their part by executing the sale despite the respondent, at his expense, obtained patta for the suit schedule property. It is further stated by the respondent / plaintiff that at the request of the 1st Revision petitioner herein on 08.11.2011, the respondent has issued two cheques for Rs.72,00,000/- totalling Rs.1,44,00,000/- even before the registration of the sale deed and thereafter, on various dates, as mentioned above, has issued cheques and demand drafts totaling to a sum of Rs.71,20,000/- and the payments were made by the respondent / plaintiff to the petitioners / defendants towards the sale consideration. It is also further stated that the petitioners were delaying to execute the said sale intentionally and they have violated the contract agreement of sale dated 10.08.2011 and now attempting to sell the suit property to the third parties for more gain and making more profit.

4. Per contra, the revision petitioners herein / defendants had filed detailed written statement admitting the fact that they have entered into a sale agreement in respect of the suit property with the respondent on 10.08.2011 and had also received an amount of Rs.6,00,000/-, as advance out of total sale consideration of Rs.2,46,00,000/- and further, they have also

submitted that they have received two cheques for Rs.72,00,000/- dated 07.11.2011 totally Rs.1,44,00,000/- and in fact, the 1st petitioner herein has also made an endorsement for the receipt of the above two cheques. But respondent's friend one Gopalakrishnan requested the petitioners herein that the respondent have directed him to state that the said cheques can be deposited after some days, as there was no money available in the bank account. However, the respondent seems to have sent a letter dated 08.11.2011 to the petitioners herein, as if they have received Rs.1,44,00,000/- as the entire sale consideration, which news was a surprise to them, as the sale consideration was Rs.2,46,00,000/- and the respondent has reduced the total sale consideration to Rs.1,50,00,000/- from Rs.2,46,00,000/-, considering the said situation, the revision petitioners have come to know the intention of the respondent herein and the manipulation done by the respondent, who had requested them to deposit the cheque later by postponing the deposit. Immediately the petitioners had sent notice through their counsel dated 19.11.2011 and thereby cancelled the sale agreement dated 10.08.2011 and also returned the advance amount of Rs.6,00,000/-. The petitioners had sought for disposal of the suit by considering the factual situation placed in the said written statement.

5. The respondent had filed I.A.No.2170 of 2011 in O.S.No.798 of 2011 seeking for adinterim injunction under Order 39 Rule 1 and 2 of CPC against the petitioners herein and the said application was dismissed on 11.07.2012 on the ground that the petitioner therein, viz., the respondent has not acted properly to the payment of sale consideration to the respondent / revision petitioners herein. Further, the agreement for sale has not conferred any title to the respondent, considering the conduct of the respondent and the cancellation sale agreement by the 1st petitioner, the court had observed that the respondent / plaintiff has not acted genuinely and the said petition was dismissed. सत्यमेव जयते

6. Again I.A.No.1 of 2019 was filed by the respondent / plaintiff in O.S.No.798 of 2011 seeking amendment of the prayer under Order 6 Rule 17 and Section 151 of CPC, to amend the prayer for relief of specific performance and also in addition to the existing prayer for a Judgment and decree against the petitioners / defendants for specifically enforcing the contract - sale agreement dated 10.08.2011 by directing the defendants to execute the sale deed / (s) in favour of the respondent / plaintiff in respect of the property morefully described in the schedule hereunder for a total sale consideration of Rs.2,46,00,000/- on receiving the balance payment of

Rs.2,40,00,000/- within the date fixed by this Court, failing which, directing the Registry to execute the sale deed in favour of the plaintiff on behalf of the defendants.

7. A detailed counter was also filed by the revision petitioners to the above said application and vehemently contended that the amendment sought in the prayer to plaint filed in the year 2011 changes the very nature of the suit and the amendment should not have been allowed. On the contrary, the learned counsel appearing for the respondent / plaintiff had submitted that the amendment is necessary and is required for the completion of the suit proceedings and since the revision petitioners are squatting on the property, despite the respondent is ready and willing to fulfill the commitments, as per the sale agreement dated 10.08.2011 and the amendment of the plaint will only solve the multiplicity of the proceedings.

8. However, the learned Additional District Munsif, Alandur by an order dated 15.10.2019 has allowed the said amendment petition, against which, the present Revision has been preferred by the petitioners / defendants.

9. The learned counsel for the petitioners submits that the respondent / plaintiff had filed the above application, viz., I.A.No.1 of 2019 on 19.11.2018 under Order 6 Rule 17 and Section 151 of CPC to amend the prayer for relief of specific performance in addition to the existing prayer for permanent injunction. The agreement for sale was entered into on 10.08.2011 and taking advantage of the age of the 1st Revision Petitioner, who is 93 years old, the respondent / plaintiff had not come forward to perform his form of contract at any point of time. The respondent filed the suit on 07.12.2011 for bare injunction and obtained permission to file a suit for specific performance on the same cause of action in I.A.No.2169 of 2011. The limitation of the said suit starts from the date of defendants' refusal to sell the suit property to the plaintiff. The respondent ought to have filed the suit for specific performance within a period of three years from the date of refusal, i.e., from the date of sending a legal notice, cancelling the said agreement, instead he filed an application in I.A.No.1 of 2019 on 19.11.2019 seeking for amendment of the prayer and he further submitted that when he has filed an application seeking a prayer for relief of specific performance, the same is barred by limitation and hence not maintainable.

10. Resisting the same, the learned counsel for the respondent submitted that when the petitioners undertook to perform the sale agreement they have failed to do so on the ground to sell the properties to the third parties for higher

consideration, hence the amendment is valid and does not warrant any interference. Further, the parties are one and the same and the suit is pending from the year 2011, the present amendment sought to be included as a prayer for specific performance will not change the nature of the suit.

11. Heard the learned counsel appearing for the petitioners and the respondent and perused the documents placed on record.

12. The Hon'ble Supreme Court has instructed the High Courts not to make any personal comments about the Subordinate Judges coming under the purview of High Courts and this Court has also observed in many cases "to restrain themselves from personally commenting about the Subordinate Judges except in exceptional cases" This case falls under the exceptional case that warrants observations as against the Additional District Munsif, Alandur, who passed a Judgment and decretal order in I.A.No. 1 of 2019 in O.S.No.798 of 2011.

13. On perusal of the records, it is seen that the 1st revision petitioner before this Court is 93 years old man and the 2nd petitioner, who is the wife of the 1st petitioner died and the petitioners 3, 4 and 5 were impleaded as legal heirs in the suit after the demise of the 2nd petitioner. It is clear that the suit is filed in the year 2011 for bare injunction restraining the petitioners / defendants therein from in anyway alienating or encumbering the suit schedule property. It is clearly admitted by both the parties that there was agreement dated 10.08.2011 wherein which the 1st and 2nd petitioners had agreed to sell the suit schedule properties at Rs. 2,46,00,000/- and has received Rs.6,00,000/- as an advance, however, the respondent herein by letter dated 08.11.2011 reduced the total sale consideration from Rs. 2,46,00,000/- to Rs.1,50,00,000/- and in response to the said letter, the revision petitioners herein had returned the advance amount of Rs.6,00,000/- along with notice from their counsel and having received the same, the present suit has been filed in the year 2011 by the respondent / plaintiff.

14. At this juncture, it is to be noted that the suit is filed for only bare injunction and an injunction petition, viz., I.A.No.2170 of 2011 has been filed under Order 39 Rule 1 and 2 of CPC, which was dismissed against the plaintiff / respondent and no further proceedings were initiated against the said order. After a period of seven years, the respondent seems to have filed this I.A.No.1 of 2019 seeking for an amendment to include a prayer for specific performance. On going through the order passed by the learned Additional District Munsif, Alandur, apart from recording the contents of the affidavit and the counter, the learned Judge has not even whispered anything on

merits as to why the petition has to be allowed or the legal consequences of allowing such petition filed under Order 6 Rule 17 and Section 151 of CPC.

15. It is settled position of law that a prayer for specific performance has to be filed within a period of three years from the date of denial of opposite party. Here, in the present case, it is apparently clear that the suit is filed in the year 2011 for bare injunction as against the petitioners herein and it is clear from the petitioners' written statement, which is also not denied by the respondent that he received a sum of Rs.6,00,000/- which was received as an advance amount by the petitioners pursuant to the agreement dated 10.08.2011. While that being the case, what made the respondent / plaintiff to approach the District Munsif Court on 07.12.2011 itself, by filing the suit in the year 2011. The amendment sought in the year 2019 is well after the limitation period wherein the petitioners has returned the advance amount received from the respondent herein on 19.11.2011 itself, which is a basic requirement and the learned District Munsif, Alandur had failed to apply the same and allowed the amendment petition, which naturally changes the basic structure of the suit filed. That is the reason why the learned District Munsif, Alandur has not stated any averments or objections raised by the petitioners with regard to the limitation prescribed while rendering the Judgment and Fair order for allowing the prayer sought by the respondent.

16. It is crystal clear the learned District Munsif, Alandur has not applied the basic concept of the limitation prescribed under the limitation act to the petition seeking amendment, which changes very nature of the suit. The learned District Munsif had just allowed the amendment without even going through the entire material facts available before him and the basic concept of law of limitation. The relevant portion of the order, viz., Paragraph No.8, passed by the learned District Munsif, Alandur in I.A.No.1 of 2019 dated 18.10.2010 is extracted hereunder:-

"8.The respondent / defendant contended that the petitioner / plaintiff filed the above suit on 07.12.2011 and filed an application in I.A.No.2169 of 2011u/o 2 Rule 2(3) of CPC for leave to file a separate suit for specific performance on the same cause of action basing on the sale agreement dated 10.08.2011 and obtained a permission and also filed the above application on 19.11.2018 u/o 6 Rule 17 and Section 151 CPC to amend the existing prayer for permanent injunction. These are absolutely no merits in the above application. No prejudice will be caused to the respondents by way of allowing this application. Considering the facts

and circumstances, this court is inclined to allow this petition."

17. Under these circumstances, this Court has no hesitation to set aside the order passed by the learned District Munsif, Alandur made in I.A.No.1 of 2019 in O.S.No.798 of 2011 dated 15.10.2019 by allowing this revision petition. No costs. Consequently, connected miscellaneous petition is closed.

18. While allowing the present Civil Revision Petition, this Court directs the Registrar Vigilance of this Court to seek explanation from the District Munsif, Alandur as to how the said application was allowed. After obtaining the report, the Registrar Vigilance, is directed to place the report / materials before the Hon'ble committee for further action.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssd
To

1. The Registrar Vigilance,
High Court, Madras.
2. The Additional District Munsif,
Alandur.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to M/s.S.Ratnasabapathy, Advocate Sr.22734
+1cc to M/s.T.V.Krishnakumar, Advocate Sr.23044

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