

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.03.2021

Pronounced on : 31.03.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.472 of 2017
& Crl.O.P.No.16061 of 2016

L.Rathanchand Sarma,
S/o.Lakshmi Narayana Sharma,
No.212, N.M.Road, Avadi, Chennai - 600 054. ... Appellant
in A.S.No.472 of 2017

/versus/

M/s.Vinayaka Exports & Imports,
Represented by its Partners,

1. Dr.A.Shanmugasundaram,
S/o.Arunachal Chettiar,

2. Mrs.S.Annapoorani,
W/o.Arunachala Chettiar,

3. S.Saravanan,
S/o.Arunachala Chettiar,

Respondents Nos.1 to 3 represented by their power of attorney
Agent, Dr.A.S.Ganesan,

4. Dr.A.S.Ganesan,
S/o.A.Shanmugasundaram,
All are at No.34, Landons Road,
Kilpauk, Chennai - 600 010.

... Respondents
in A.S.No.472 of 2017

Prayer in A.S.No.472 of 2017:- First Appeal is filed under
Section 96 C.P.C., against the judgment and decree of rejection
of plaint passed in I.A.No.295 of 2012 in O.S.No.98 of 2010 on
27.08.2012 by the Hon'ble II Additional District Judge,
Tiruvallur, Poonamallee.

L.Rathan Chand Sharma,
S/o.Lakshminarayan Sharma,
No.212, NM Road, Avadi,
Chennai - 600 054.

... Petitioner
in Crl.O.P.No.16061 of 2016

/versus/

Dr.A.S.Ganesan,
Power Agent of M/s.Vinayaka Imports & Exports,
No.34, Landons Road, Kilpauk,
Chennai - 600 010.

Amudh Catering Services Pvt. Ltd.
Rep. by its authorised signatory,
B. Mohan,
Plot No.5, Office No.6,
Kasi Arcade, 6th Floor,
Sir Thyagaraja Road, T.Nagar,
Chennai - 600 017.

... Respondents
in Crl.O.P.No.16061 of 2016

Prayer in Crl.O.P.No.16061 of 2016:- Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the docket order dated 28.10.2015 made by the II Additional District Judge, Tiruvallur at Poonamallee in the unnumbered petition filed by the petitioner under Section 340 Cr.P.C read with 195 Cr.P.C for offences under Section 193, 196, 199, 200 and 207 of I.P.C in respect of the proceedings in I.A.No.295 of 2012 and I.A.No.820 of 2011 in O.S.No.98 of 2010 on the file of the said II Additional District Judge, Tiruvallur at Poonamallee and direct the said II Additional District Judge, Tiruvallur at Poonamallee to entertain the said complaint filed by the petitioner to proceed with the same as per the provisions of the code of Criminal Procedure.

For Appellant : Mr.V.Lakshminarayanan
in A.S.No.472 of 2017

For Petitioner : Mr.A.Sasidharan
in Crl.O.P.No.16061 of 2016

For Respondent : Mr.A.K.Kumarasamy, Sr.C
in both cases for Mr.P.Balamurali.

COMMON JUDGMENT

The Point for determination in this appeal is whether the plaint for specific performance can be rejected at pre trial stage on the ground of limitation by travelling beyond the statement found in the plaint and by deciding the contentious issues without trial?

2. The appellant as purchaser and the respondents 1 to 3 through their power agent the 4th respondent as vendors entered into a sale agreement in respect of 3.32 ½ acres of land at

Veeraraghavapuram Village at Kundrathur Taluk on 25.01.2004. The sale price was fixed as Rs.87,50,000/- (Eighty Seven Lakhs Fifty Thousand only). Advance of Rs.33,01,000/- (Thirty Three lakhs one Thousand only) received and agreed to pay the balance within 60 days from the date of agreement and execute the sale deed. Before the date of registration, the vendors agreed to handover all the original documents relating to the property to the purchaser. The vendors issued notice dated 24.09.2004 informing the purchaser that the time for contract expired on 25.03.2004. The time is essence of contract and the purchaser not ready and willing to perform his part of contract, so the contract comes to an end. However, after this notice, the vendors have received Rs.46,50,000/- on 10.10.2004, Rs.3,50,000/- on 16.10.2004 and Rs.3,00,000/- on 20.10.2004 and made endorsement for these receipts on the sale agreement. Thereafter, through the power agent A.S.Ganesan (4th respondent) had executed the following three sale deeds on 20.10.2004 to the nominees of the agreement holder.

- 1). To Jaya Prakash - 32 cents for Rs.6,00,000/-
- 2). To Jayalakshmi - 27 cents for Rs.5,00,000/-
- 3). To Walter Salomen - 29 cents for Rs.5,40,000/-

3. After nearly lapse of four years, the parties exchanged notices through their lawyers. In the notice dated 06.09.2008, the purchaser called upon the vendors to receive the balance sale consideration of Rs.1,49,000/- and execute the sale deed for the balance land (2 acres 44 ½ cents). Whereas, the vendors alleging that the agreement got terminated on 24.09.2004 and the three sale deeds dated 20.10.2004 were executed for the sale consideration paid subsequently as found in the endorsement made, denied possession with the purchaser and called upon them to return back the original title deeds.

4. On the above factual background, the suit for specific performance filed by the purchaser on 14.07.2010. At paragraph 5 of the plaint, the plaintiff had stated the time is not essence of the contract. However, the suit is within the period of 3 years limitation from the date of defendants declining to honour the contract through the notice dated 07.04.2008.

5. The vendors filed I.A.No.295 of 2012, to reject the plaint on the ground of limitation. According to the vendors the suit for specific performance to enforce the agreement dated 25.01.2004 not filed within the three years period. The contract was terminated through notice dated 24.09.2004. The suit property already sold to one M/s.Amudh Catering Service (P) Ltd on 11.08.2010 and they are no more the owners of the suit property.

6. The Trial Court, accepted the plea of the vendors, rejected the plaint holding that, defendants have proved that the suit is not having any cause of action sans limitation. The defendants have further proved that they have sold the property to third party for valuable consideration without the notice of the suit. The defendants have proved a solid case to get the plaint rejected under Order VII Rule 11 (a)&(d) of C.P.C.

7. The verbose order of the Trial Court is assailed on the ground that, the Trial Court miserably failed to consider the fact that, after issuing notice dated 24.09.2004, repudiating the agreement, the vendors had received the entire balance sale consideration less Rs.1,49,000/- subsequently and on 20.10.2004 and had executed sale deeds for 88 cents out of 3 acres and 32 ½ cents. Thereafter, they were made to believe that the sale deed will be executed at any time but the refusal to execute the sale deed was made known to the purchaser only through the notice dated 07.04.2008 and reply notice dated 14.09.2008. Hence, the suit filed on 14.06.2008 within the second limb of Limitation under Article 54. Therefore, the suit cannot be rejected under Order VII Rule 11 (a) and (d) of C.P.C. More so, when contentious issues like whether the time was essence of the contract, whether the subsequent receipt of money and execution of sale deeds for portion of the property will amount to waiver of termination notice and elongate the time, whether the property was handed over to the purchasers as part performance of the contract and whether the purchaser had improved the land after taking possession by spending his money are essential and incidental to decide the issue of limitation. These issues can be decided only after Trial and not summarily.

8. The Learned Counsel for the Appellant submitted that the learned Trial Court Judge had failed to understood the scope of Order VII Rule 11 of C.P.C and had gone beyond its scope. The statement in the plaint regarding the cause of action and limitation and the admitted conduct of the vendors sufficient for the Court to frame issues and proceed for Trial. The Trial Court in the instant case had traversed beyond its power and had tested and documents and its contents to conclude that the defendants had proved certain facts this pre-concluded decision without examining witnesses is bad and had caused grave miscarriage of justice.

9. The learned counsel for the Appellant also brought to the notice of this Court that Trial Court took note of the plea made in the I.A.No.295 of 2012 that the suit property was sold in favour of M/s.Amudh Catering Service (P) Ltd on 11.08.2010 and the respondents are no more the owners of the suit property. Later, it had came to the notice of the appellant that the said M/s.Amudh Catering Service (P) Ltd is a shadow Company of the vendors. A.S.Ganesan and his wife Anuratha

Ganesan are the Directors of the said company. In I.A.No.295 of 2012, this fact was knowingly suppressed. The said sham transaction had weighed the Trial Court while deciding the I.A for rejection of plaint. This can be seen from the discussion of the Trial Court in paragraph No.27 of the impugned order. When the appellant filed petition to proceed against the vendors for false statement to procure favourable order, the said petition was returned stating not maintainable. Hence, Crl.O.P.No.16061 of 2016 is filed to set aside the said docket order and direct the II Additional District Judge, Tiruvallur at Poonamallee, to entertain the complaint.

10. Per contra, the Learned Senior Counsel appearing for the respondents/vendors submitted that, there is no illegality in the order of the Trial Court. The suit filed on 14.06.2010 to enforce an agreement dated 25.01.2004 is hopelessly barred by limitation and lack cause of action. No error could be pointed in the impugned order. The subsequent receipt of money and execution of sale deeds on 20.10.2004 will no way save the limitation. These transactions are subsequent to termination of the agreement vide notice dated 24.09.2004. They are independent transactions unconnected to the terms of the suit agreement. The price and extent are different. Even assuming these transactions on 20.10.2004 are pursuant to the suit agreement, the suit filed on 14.06.2010 after six years is beyond the period prescribed under Article 54 of the Limitation Act.

11. Heard the Learned Counsels. The pleadings and the impugned order perused.

12. To say the least, the impugned order bristles with several legal and factual infirmities. The Trial Court without examination of witnesses had summarily decided the plaint based on his opinion about the un-testified documents. He has rejected the plaint on the wrong impression that payment made subsequently will extend the period of limitation only in respect of money transaction and not in case of agreement of sale. With this wrong understanding of law, the Learned Judge has ignored the subsequent transactions and endorsements made in the suit agreement. Even before putting the parties for trial, the Court below had held that the plaintiff had not proved that the suit agreement is a open agreement; the plaintiff has not proved that the suit agreement has been elongated after 25.03.2004; the plaintiff has also not proved that the cause of action survive under the suit sale agreement after 20.03.2004.

13. This Court is reminded of the Hon'ble Supreme Court judgment rendered in Urvashiben -vs- Kkrishnakant Manuprasad Trivedi reported in 2019(13) SCC 372, wherein it is held as follows:-

"15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under Order VII Rule 11(d) CPC. Equally, it is well settled that for the purpose of deciding application filed under Order VII Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under:

Description of suit	Period of limitation	Time from which period begins to run
*	*	*
54. For specific performance of a contract.	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under Order VII Rule 11 of C.P.C same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application."

14. In this case, if the agreement expired on 25.03.2004 and got terminated by notice dated 24.09.2004, the defendants/vendors are bound to explain why the three

endorsements in the sale agreement between 10.10.2004 to 20.10.2004. The plea that the three sale deeds on 20.10.2004 are independent and un-connected to the suit sale agreement is a fact to be proved in trial. If the said plea is proved in the trial, then the first limb of Article 54 of Limitation Act will apply. If the plaintiffs/purchasers proves that the transactions on 20.10.2004 is implied extension of time, making time not the essence of the contract, then the refusal to execute sale deed received on 07.04.2008 will be commencement of limitation and the second limb of Article 54 of Limitation Act will apply. These are mixed question of facts and law which can be proved only after examination of witnesses in Trial and not summarily. Till then, the facts placed as statement in the plaint for cause of action and limitation has to be accepted.

A.S.No.472 of 2017:-

15. Hence, the Appeal Suit is Allowed. The order of the Court below passed in I.A.No.295 of 2012 in O.S.No.98 of 2010 is set aside. The suit is restored on the file of the II Additional District Court, Tiruvallur at Poonamallee. The Trial Judge shall proceed with the Trial of the case, and frame issues including the limitation and cause of action, without being influenced by any observations made by this Court and in the impugned order. The trial Judge shall complete the trial preferable within six months from the receipt of the copy of this judgment.

CrI.O.P.No.16061 of 2016:-

16. As far as CrI.O.P.No.16061 of 2016 is concern, in view of the order allowing the appeal and restoration of the suit back on file, the petitioner in Criminal Original Petition is directed to represent the petition and on such representation, the Court below shall take it on file and deal it in accordance with law. With the said direction, the Criminal Original Petition is Allowed. No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

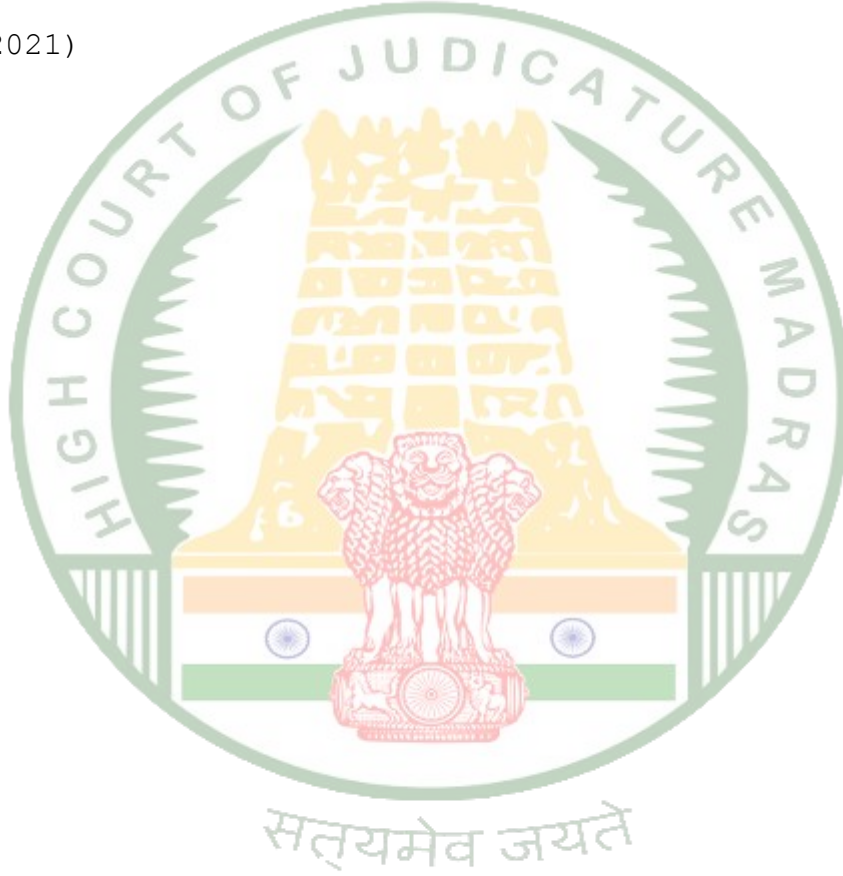
1.The II Additional District Judge,
Tiruvallur, Poonamallee.

2.The Section Officer,
V.R.Section, High Court, Madras.

+2cc to Mr.P.Sivaprakash, Advocate, S.R.No. 21312
+1cc to Mr.A.Sasidharan, Advocate, S.R.No. 21671
+2cc to Mr.P.Balamurali, Advocate, S.R.No. 21311

A.S.No.472 of 2017
& Crl.O.P.No.16061 of 2016

KV (CO)
GN(17/06/2021)



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