



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP(MD).No.2531 of 2012 and

M.P(MD).No. 1 of 2012

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N. Balasubramanian ... Petitioner / Plaintiff

Vs.

1.N. Kavitha
2.Executive Officer,
Arulmigu Veeramakaliamman Kovil,
Aranthangi,
Aranthangi Taluk,
Pudukkottai Disstrict. ... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 19.07.2002 made in I.A.No.142 of 2012 in O.S.No.125 of 2003 on the file of the Sub Court, Pudukkottai.

For Petitioner : Mr.P. Thiagarajan

For R1 : Mr. Jameel Mohammed
for Mr.K. Balasundharam

For R2 : Mr. G. Mathavan

ORDER

This revision is challenging the order of the Trial Court dismissing the application in I.A.No.142 of 2012 in O.S.No.125 of 2003, filed by the revision petitioner / plaintiff seeking leave to amend the plaint to include the prayer for refund of advance in the suit for specific performance.

2. The plaintiff filed a suit for specific performance of the agreement, dated 04.10.2001. In the Written Statement the defendants have set up title in a temple. The defendants filed an application seeking to implead the temple to the suit. The said application was allowed by the trial Court and the same was challenged by way of revision by the petitioner / plaintiff, the said revision came to be dismissed on 22.02.2011. After dismissal of the revision, the plaintiff came up with the instant application seeking to introduce / include the prayer for refund of advance. This was resisted on the ground that the application is barred by limitation. The learned trial Judge relied upon the Judgment of this Court reported in **2013(6) CTC 801 (S.Manoharan Vs. Karunamurthy)**, dismissed the application as the prayer for refund of



advance is barred by limitation. Aggrieved, the plaintiff has come up with the revision.

3. I have heard Mr.P. Thiagarajan, learned counsel appearing for the petitioner and Mr. Jameel Mohammed learned counsel appearing for the first respondent and Mr.G.Mathavan, learned counsel appearing for second respondent.

4. Mr. Thiagarajan, learned counsel appearing for the petitioner would contend that the Judgment reported in **2013(6) CTC 801 (S.Manoharan Vs. Karunamurthy)**, will not apply to the facts of case since the relief of refund of advance was sought for in the said case after dismissal of the suit, in the appellate stage. While dealing with such application, this Court held that the limitation would be three years from the date on which the suit was dismissed by the trial Court. In the case on hand, the suit is still pending.

5. Section 22 of the Specific Relief Act, enables the plaintiff to seek alternative relief of refund of advance at any any stage of the proceeding, the Hon'ble Supreme Court in **Babu Lal Vs. M/s. Hazari Lal Kishori lal** reported in **AIR 1982 SC 818** has held that the relief of refund of advance could be sought for even after the disposal of the suit at the time of execution. Therefore, there is no question of relief being barred by limitation during the pendency of the suit. Even otherwise since the charge as created over the property for the value of the advance amount, the period of limitation for seeking the refund of advance would be 12 years and not 3 years.

6. Mr. Thiagarajan, learned counsel appearing for the petitioner relied upon the decision of Division Bench of this Court, dated 19.12.1999 made in the case of **Suryakala Vs. Prema Naidu**, wherein, the Division Bench has pointed out that the alternative relief of refund of advance could be at any stage of the proceeding. If it is sought for before the disposal of the suit, there is no question of the same being barred by limitation.

7. In view of the above, the order of the trial Court is set aside and I.A.No.142 of 2012 in O.S.No.125 of 2003 on the file of the Sub Court, Pudukkottai, stands allowed.

8. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

9. Now, it is informed that the suit has been transferred to the Sub Court, Aranthangi, and re-numbered as O.S.No. 4 of 2017.

10. Considering the fact that the suit is of the year 2003 and that the suit is one for specific performance, the Sub Court,



Aranthangi is directed to dispose of the suit within a period of six months from the date of resumption of regular Courts for physical hearing.

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Sd/-

Assistant Registrar (CS-II)

/ /2021

Sub Assistant Registrar(CS)

trp

To

1.The Judge,Sub Court, Pudukkottai.

2. The Judge,Sub Court, Aranthangi.

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