



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.593 of 2011

WEB COPY

Kuppusamy

... Appellant/Appellant/Defendant

Vs.

1.Chellathal

2.Somasundaram

3.Gunasekar

4.Sagunthala

...Respondents/Respondents 1, 2, 3 & 5

Plaintiffs 1, 2, 3 & 5

5.Sakthi

6.Megala (minor)

7.Kabilan @

Kabilvendan (minor)

...Respondents / Respondents 6, 7 & 8

L.Rs of 4th plaintiff

(respondents 6 & 7 herein rep.through their mother & guardian

5th respondent herein)

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decreetal order passed by the learned Sub Judge, Palani dated 15.02.2010 made in A.S No.30 of 2007 confirming the judgment and decreetal order made in O.S No.402 of 2006 dated 18.04.2007 by the learned District Munsif, Palani.

For Appellant : Mr.S.Deenadhayalan

For Respondents : Mr.S.Anand Chandrasekharan

for M/s.Sarvabhauman Associates

JUDGEMENT

The unsuccessful defendant in O.S No.402 of 2006 on the file of the District Munsif Court, Palani is the appellant in this second appeal. The respondents herein filed O.S No.402 of 2006 for recovering a sum of Rs.43,500/- together with interest from the appellant herein. The respondents are none other than the legal heirs of one Marimuthu Gounder. He had sold the property covered by Ex.A1 in favour of the appellant Kuppusamy. Consideration was fixed at Rs.79,000/- Kuppusamy had received a sum of Rs.35,000/-. The said property had earlier been mortgaged with Ramapattinampudhur Agricultural Cooperative Society on 30.10.2001 for availing loan of Rs.38,400/-. The liability in respect of the said loan transaction had mounted to Rs.43,500/-. The purchaser Kuppusamy was called upon to pay the said amount directly to the said cooperative society.



Marimuthu Gounder passed away on 21.10.2003. Kuppusamy also did not clear the aforesaid loan liability. But in May 2006, the government had waived the agricultural loans. Thus, the encumbrance created on the said property got lifted. In other words, Kuppusamy had become the owner of the property even without paying the said amount of Rs.43,500/- to the society. Therefore, the legal heirs of Marimuthu Gounder the respondents herein sent Ex.A4 notice dated 10.07.2006 calling upon Kuppusamy to pay them the said amount. Kuppusamy vide Ex.A6 reply dated 13.07.2006 made it clear that he was not liable to make any payment to the respondents herein. Therefore, the said suit came to be instituted.

2.The appellant herein filed a detailed written statement stating that after purchasing the property vide Ex.A1 sale deed dated 21.10.2002, he had paid a sum of Rs.560/- to the account of Marimuthu Gounder with the said bank and he had already obtained Ex.B1 receipt dated 20.08.2003. He further stated that as the purchaser of the property it was he who had stepped into the shoes of Marimuthu Gounder and entitled to the right of redemption. Therefore, the benefit of loan waiver announced by the Government would pass on to him. He would also contend that the sale deed having been executed on 21.10.2002, the institution of the suit on 31.07.2006 was patently barred by limitation. The defendant questioned the maintainability of the suit and sought its dismissal.

3.The second plaintiff himself examined as PW.1 and marked Exs.A1 to A6. The defendant himself examined as DW1 and one Ramasamy as DW.2 and marked Exs.B1 to B3. The learned Trial Munsif by judgment dated 18.04.2007, decreed the suit and directed the defendant to pay a sum of Rs.43,500/- to the plaintiff with interest at the rate of 9% p.a from the date of plaint till the date of realization. Questioning the same, the defendant filed A.S No.30 of 2007 before the Sub Court, Palani. The first appellate court by judgment and decree dated 15.02.2010 dismissed the appeal. Challenging the same, this Second Appeal has been filed. The Second Appeal was admitted on the following substantial questions of law :

"1.Whether the claim of the plaintiff for balance sale consideration after lapse of 3 ½ years from the date of execution of Ex.A1 sale deed dated 21.10.2002 is sustainable as per the Limitation Act.

2.Whether the benefits of writing off loan, could be claimed by the legal heirs of seller/plaintiff when already suit schedule property had been sold by way of registered sale deed for part consideration ?"

4.Heard the learned counsel on either side.



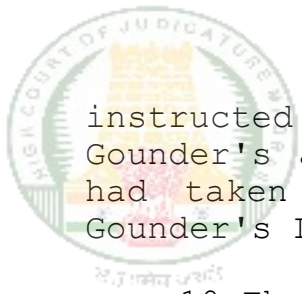
5.The learned counsel appearing for the appellant/defendant strongly contended that the suit was barred by limitation. According to him, if at all the suit for recovery of the unpaid purchase money should have been instituted within three years from the date of execution of sale deed. In the case on hand, the suit was filed after three and half years after the execution of the sale deed. Therefore, the suit was patently hit by limitation. He would further contend that the benefit of loan waiver cannot be claimed by the plaintiffs because the suit schedule property had already been sold for part consideration. He would state that since the defendant had stepped into the shoes of Marimuthu Gounder, the defendant would be entitled to receive the benefits of the loan waiver. He would place reliance on Section 55(6) (a) of the Transfer of Property Act, 1882.

6.Per contra, the learned counsel for the plaintiffs/respondents submitted that the courts below after applying the legal provisions and principles, correctly held that the suit is maintainable and that the suit claim is well founded. He pressed for dismissal of the Second Appeal.

7.I carefully considered the rival contentions and went through the evidence on record. The basic facts are not in dispute. Marimuthu Gounder was the owner of the property covered under Ex.A1 sale deed. He had sold the property to the appellant on 21.10.2002. There is again no dispute that Rs.79,000/- was the sale consideration fixed for the property. Marimuthu Gounder the vendor had only received a sum of Rs.35,500/- out of the total consideration. On the strength of the property, Marimuthu Gounder/the vendor had earlier availed loan from Ramapattinampudhur Agricultural Cooperative Society on 30.11.2001. The loan liability had accumulated to Rs.43,071/-. Marimuthu Gounder directed Kuppusamy to clear the loan liability directly with the said bank. The purchaser Kuppusamy/the appellant herein admittedly had paid only a sum of Rs.560/- as evident from Ex.B1 and did not pay the balance amount. In the meanwhile, in May 2006, the Government of Tamil Nadu had announced waiver of loan. As a result, the loan availed by Marimuthu Gounder from the said society was written off.

8.Now, the question that arises for my consideration is whether the benefit of loan waiver will enure in favour of the subsequent purchaser or the legal heirs of the original borrower.

9.Both the parties have not marked the terms of the loan waiver as announced by the Government but it is obvious that the object of loan waiver was only to benefit the borrowers and not subsequent purchaser of the property. More than anything else, the intention of the parties must be seen. Kuppusamy had agreed to buy the property for a sum of Rs.79,000/-. He had paid only a part of the consideration to the vendor Marimuthu Gounder. The balance amount



instructed that this amount should be directly paid to Marimuthu Gounder's account to the local society from whom Marimuthu Gounder had taken loan. In fact, in the sale deed itself, Marimuthu Gounder's Loan Account Number.846 is mentioned.

10.The announcement of loan waiver was a mere fortuitous circumstance. The buyer of the property will have to pay the entire consideration to the vendor. If due to fortuitous circumstances, the loan availed from the cooperative society got waived, the purchaser cannot claim the benefit. The Government which announced loan waiver scheme never intended to confer or pass on any benefit to such purchasers. The primary borrowers were to be the beneficiaries. Therefore, taking into account the intention of the parties, I come to the conclusion that Kuppusamy is bound to pay the balance consideration of Rs.43,500/-. The courts below have correctly found the relevant issue in favour of the plaintiffs and the first substantial question of law is answered against the appellant/defendant.

11.The next question that arises for consideration is as to whether the suit has been filed in time. As already pointed out by the learned counsel for the respondent, as per Section 55(4) (b) of the Transfer of Property Act, 1882, the vendor has a charge upon the property for the unpaid purchase money. The limitation for enforcing the same is not three years but twelve years as per Article 62 of the Limitation Act, 1863. Article 62 reads as follows :

To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years	When the money sued for becomes due.
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12.Here, the money sued became due to the plaintiff only in May 2006. The suit could have been filed before any time May 2018. In the case on hand, the suit has been filed in the year 2006 itself. Therefore, the second substantial question of law is also answered against the defendant. I do not find any merit in the second appeal. It stands dismissed. No costs.

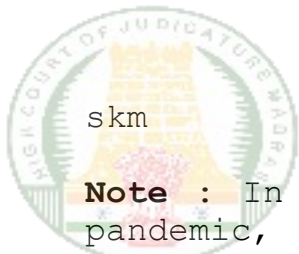
Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Sub Judge, Palani.
- 2.The District Munsif, Palani.

Copy to :

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

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-16879[F] dated 21/04/2021)

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KK(19.05.2021) 5P 6C