



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD)No.396 of 2021

V.Radhika

... Petitioner / Plaintiff

vs.

A.Mani

... Respondent / Defendant

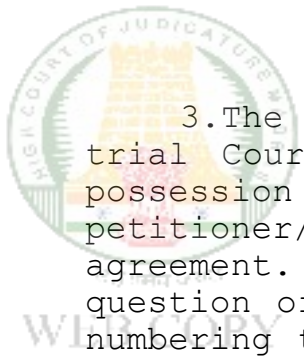
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of rejection of unnumbered plaint dated 19.01.2021 on the file of the District Munsif Court at Periyakulam.

For Petitioner : Mr.P.Muthu Vijaya Pandian

ORDER

This Civil Revision Petition has been filed against the order of rejection of unnumbered plaint dated 19.01.2021 on the file of the Principal District Court at Theni.

2.The petitioner has entered into a sale agreement dated 13.11.2014 with the respondent in respect of the suit property for a sale consideration of Rs.15,00,000/- and a sum of Rs.10,00,000/- was paid by the petitioner to the respondent on the date of agreement itself and by endorsement dated 03.12.2015, balance amount of Rs.5,00,000/- was paid to the respondent and on the same day, possession was handed over to the petitioner and the same has also been underwritten on the sale agreement. Despite the petitioner requested the respondent on several occasions to perform his part of contract by executing the sale deed, the respondent did not come forward to execute the sale deed, whereas, he started to disturb the peaceful possession and enjoyment of the petitioner over the suit property on 10.11.2020 which was prevented by the plaintiff. Hence the petitioner/plaintiff has filed the above unnumbered suit for the relief of specific performance and permanent injunction restraining the respondent from interfering with her peaceful possession over the suit property or in the alternative, for refund of the sale consideration of Rs.15,00,000/- with 24% interest from the date of agreement and costs. The trial Court rejected the plaint stating that the suit was not filed within the limitation period as such the suit is barred by law of limitation, against which, this revision petition is filed.



3.The learned counsel for the petitioner would state that the trial Court failed to note that on the date of second payment, possession of the suit property was handed over to the petitioner/plaintiff and the same has been underwritten in the agreement. He would further state that limitation is a mixed question of fact and law and the same has to be decided only after numbering the suit and by giving opportunity to the parties to let in evidence. It is also stated that in respect of the relief of alternative prayer namely, for refund of advance amount, the learned Judge has not answered the same. In respect of the alternative prayer, 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. In support of his contention, he relied upon paragraphs 25 and 27 of the judgment reported in **2016 (6) CTC 740, P.Muthusamy vs. K.Arumugam and others**. Thus, he would pray for setting aside the impugned return and for a direction to the Court below to number the suit.

4.Heard the learned counsel for the petitioner. In view of the order going to be passed, notice to the respondent is not necessary, as no prejudice would be caused to him.

5.As rightly stated by the petitioner/plaintiff, the question of limitation is a mixed question of law and fact. Rejection of plaint on the ground of limitation without framing an issue on limitation and without recording evidence is contrary to law. In this case, it appears that the trial Court on its own took up the ground of limitation and rejected the plaint. The Court below is not justified in simply rejecting the plaint at the threshold without giving an opportunity to the petitioner/plaintiff to put forth her case through evidence.

6.It is relevant to extract below paragraphs 25 and 27 of the judgment reported in 2016 (6) CTC 740:-

'25.Perusal of Articles 54 & 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 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 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 judgment 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 this Court in the above judgment reported in 2016 (6) CTC 740. 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.

8.Therefore, the impugned rejection order of the learned Principal District Judge, Theni, dated 19.01.2021 in unnumbered O.S.SR.No.5183 of 2020, is set aside and the learned Judge is directed to number the suit and dispose of the same in accordance with law.



9.With the above direction, the Civil Revision Petition is allowed. No costs.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (AE)

/ /2021

Sub Assistant Registrar(CS)

Note : Registry is directed to return the original plaint to the learned counsel for the petitioner after getting attesting copies of the same.

bala/gns

To

The Principal District Judge,
Theni.

1 CC to M/s.P.MUTHUVIJAYAPANDIAN, Advocate (SR-9745[F] dated 09/03/2021)

ORDER MADE IN
C.R.P (MD) No.396 of 2021
DATED : 08.03.2021

GS (07.05.2021) 4P 3C