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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.201 of 2007

1. M. Mukhya Prana Rao (deceased)
2. Pushpalatha M. Rao
3. K.M. Sudha

...Appellants/Plaintiffs

Appellants 2 & 3 brought on record as LR's of the deceased sole appellant vide order of court dated 16.08.2017 made in CMP Nos. 12146 to 12148/2016 in S.A. No.201/2007.

Vs.

A.R. Prathaban

... Respondent/Defendant

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 04.08.2006 passed in A.S. No.87 of 2004, on the file of the I Additional District Court, Coimbatore, upholding the decree and judgment dated 30.08.2000 passed in C.F.R.(O.S.) No.20031 of 2000, on the file of the Principal Subordinate Court, Coimbatore.

For Appellants	: Mr.S. Mukunth for M/s. Sarvabhauman Associates
For Respondents	: Mr.R.T. Doraisamy for Mr. B. Mutharasan

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present second appeal.



2. The minimum facts that are required for the disposal of the present appeal are as follows:

The appellant entered into a sale agreement dated 16.11.1987 with the respondent for purchase of the suit property. The sale consideration was fixed as Rs.2,30,000/-, out of which Rs.1,00,000/- was paid towards advance on 03.12.1987. The appellant also subsequently paid a sum of Rs.50,000/- to the respondent. As per the terms of the contract, the transaction should be completed within six months and though the appellant was ready and willing to perform his part of the contract, the respondent failed to execute the sale deed. However, the respondent issued a legal notice dated 20.09.1997 calling upon the appellant to pay the balance sale consideration and get the sale deed executed in his favour. The appellant, on receipt of the said notice, issued a reply notice dated 13.10.1997 to the respondent. The respondent also filed a suit for recovery of possession of the suit property in O.S.No.95 of 1998. Since the respondent failed to perform his part of the contract and execute the sale deed in favour of the appellant, the appellant filed the suit for specific performance before the Principal Subordinate Judge, Coimbatore.

4. The learned Principal Subordinate Judge, Coimbatore, rejected the plaint vide his order dated 30.08.2000 by observing that since the suit is filed after a lapse of nearly 15 years, it is barred by limitation.

5. Aggrieved over the same, the appellant filed an appeal in A.S. No.87 of 2004 before the Additional District Court, Coimbatore. The learned Additional District Judge, Coimbatore, also dismissed the appeal filed by the appellant vide his decree and judgment dated 04.08.2006 on the ground that the suit is barred by limitation as per Article 54 of the Limitation Act.

6. Now the present second appeal is filed by the appellant on the following substantial questions of law :

- i. Whether the courts below are right in rejecting the plaint even at the threshold on the ground of limitation when the conduct of the respondent/defendant would clearly reflect acquiescence and novation of the agreement of sale itself.
- ii. Whether the courts below are right in applying the first limb of Article 54 of the Limitation Act when on facts it is only the second limb that would apply.
- iii. Whether the courts below are right in rejecting the plaint on the ground of limitation when the same is a mixed question of law and fact and can be established through evidence.



7. Heard Mr. S. Mukunth, learned counsel for the appellant and Mr.R.T. Doraisamy, learned counsel for the respondent.

8. The contention of the appellant is that he entered into a sale agreement on 16.11.1987 and paid an advance of Rs.1,00,000/-. Though it was averred in the plaint that the appellant was always ready and willing to perform his part of the contract, he did not take any steps to get the sale deed executed in his favour as is seen from the pleadings in the plaint. Only the respondent had issued a notice on 20.09.1997 and thereafter the appellant filed a suit in C.F.R. (O.S.) No.20031 of 2000 before the Principal Subordinate Judge, Coimbatore. The period of limitation for filing the suit for specific performance as per Article 54 of the Limitation Act is three years and the period commences from the date fixed in the contract or, if no date is fixed, from the date of notice of refusal to perform. In the instance case, the time for completion of the contract is mentioned as six months. Though it is settled law that time is not the essence of contract as far as the immovable properties are concerned, the appellant did not take steps to complete his part of the contract and after a lapse of 13 years, he filed the suit for specific performance of the contract and that too, after issuance of notice by the respondent on 20.09.1997. It is appropriate to extract the judgment of the first appellate court.

"8. The counsel for the respondent emphasized that from the reading of the plaint itself, it is clear that the period of limitation commenced immediately after the expiry of 6 months time fixed as per clause 3 of Agreement and the 3 years period of limitation starts from that date. Further, he also contended that even if that is not taken into account, it is an admitted fact by the appellant himself that on 13.9.91, he wrote a letter to his father to pay the tax which he fails to do and on 12.03.1994, he wrote a letter to the bank under which the suit property alleged to have been mortgaged in its reply notice also he has referred about a letter dt. 27.4.90. requesting for the arrangement of the registration. Taking into account of these admitted facts, the period of limitation has expired long back and the date of notice of refusal to perform the contract is not on 26.7.97, as alleged by the appellant/buyer, but it was much earlier to this. He relied upon the Judgment rendered by the Hon'ble High Court in,

"S.Maruthai and another Appellants Vs.
Gokuldoss dharam Doss and four others ...



Respondents.

(reported in 1999 (3) C.T.C.724)

Wherein it has been stated that as per section 9 of the Limitation Act, the period of limitation begins to run will not stop running due to subsequent disability or inability to institute suit. Mere possession of property will not save suit from law of limitation." Further in that Judgment it has been held that,

"When there is no specific condition in the contract, to furnish no objection certificate from the authorities, non furnishing of such certificate will not save the limitation".

Further, he also relied upon the Bench Judgment of Hon'ble High Court, rendered in

P.Sivan Muthiah and others -- Appellants Vs. John Sathiavasagam -- Respondent (Reported in 1990 (1) MLJ PAGE 490).

"The first part of Article 54 of the Limitation Act could be invoked only when there is a definite date fixed for performing the contract. It is true that the expression 'date fixed' could mean either the date expressly fixed or the date which can be fixed with reference to a future even which is certain to happen. If on the other hand, the date is to be ascertained, depending upon an event which is not certain to happen, this part of Article 54 is not at all applicable. In that contingency, it is only the latter part of Article 54 that could be invoked treating the case as one in which no date has been fixed for performance and that would be three years from the date when the plaintiff has notice that performance is refused."

The counsel for the respondent submitted that from the plaint as well as from the documents filed along with the plaint, it is clear that the appellant/buyer has not come to the court seeking the equitable relief of specific performance within the period of limitation, and even assuming that the date of notice of refusal as the commencement of period of limitation, the suit has been filed only at the fag-end of the third year. The notice is dt. 26.9.1997 whereas the suit has been filed on 10.7.2000 which is not within reasonable time.

10. The learned counsel for the respondent emphasized



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that the plaintiff/buyer having put in possession was not ready and willing to perform his contract therefore he was put to notice that the defendant/seller is not ready to perform the contract, long back. Hence, the suit filed after 13 years from the date of contract is barred by limitation. Order rejecting the plaint by the trial court is perfectly sustainable.

11. In the light of the submissions made by the rival parties, and the perusal of the plaint and documents filed along with the plaint, and the judicial pronouncements, it is clear that,

1. Suit can be rejected at the inception stage itself only if there is no material to show, that the suit is filed within limitation.

2. If in the contract time for performance is fixed, the limitation is 3 years from the time fixed.

3.If no time is fixed then the limitation is 3 years from the date of notice of refusal to perform by the other side.

12. The date of agreement is 16.11.1987. Period to perform contract is 6 months as per clause 3 of the agreement that expired on 15.5.1978. It is pleaded by the plaintiff that he was repeatedly asking the vendor to receive the balance sale consideration and execute the sale deed. He has also mentioned some dates such as 24.7.90, 13.9.91, 12.3.95. These periods extends to nearly 7 years from the date of contract. The plaintiff has not filed the suit for specific performance inspite of the non response by the respondent/seller. This fact is admitted by the plaintiff.

13. In the view of this court, the second limb of Article 54 does not contemplate written notice of refusal. The conduct of the party is sufficient to infer refusal to perform. From the pleading of the appellant herein, it is clear that even as early as 24.7.90 the seller has not complied his request. He should not have waited till specific denial or refusal from the seller. He should have approached the court within a reasonable time for the relief.

14. The Supreme Court has pointed out in,

"N.Balakrishnan Vs. M.Krishna Murthy (1998)



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(7) SCC 123)"

and referred by JUSTICE ARIJIT PAYSAYAT in
Popat and Kotecha Property Vs. State Bank of
India Staff Association (reported in CDJ 2005
SC 625).

"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never re-visit. During the efflux of time, never causes would sprout up necessitating never persons to seek legal remedy by approaching the courts. So, a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae UT SIT finis litium (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time".

"T.Arvindam Vs. T.V.Satyapal (reported in 1997 (4) SCC, 467" the Apex Court has held that,

"The trial court must remember that if on a meaningful - no formal - reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C., An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be



shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch.XI) and must be triggered against them."

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This view has been reaffirmed by the Supreme Court again in, Srinivasa Murthy and others Vs. Mariyamma (Dead) by proposed Lrs. and others (reported in CDJ 2005 SC 515).

15. On reading of the plaint, and the accompanying document in toto, it is clear that the respondent/seller by his conduct has declined to perform his part of contract and same has been made known to the appellant/buyer, Long before the notice dt. 26.9.97. The failure on the part of the appellant/buyer to believe the existence of such fact is unfortunate. The plaint on the face of it is hopelessly barred by limitation. Therefore, order passed by the trial court is hereby confirmed."

The above observations of the first appellate court are based on sound principles of law and do not require any interference by this court. It is also brought to the notice of this court that the suit filed by the respondent for the recovery of possession of the suit property from the appellant in O.S. No.95/1998 before the Principal Subordinate Judge, Coimbatore, was decreed on 29.03.2019. In any event, as far as the present case is concerned, the appellant has not made up any case warranting this Court to interfere with the findings of the first appellate court. Accordingly, the substantial questions of law 1 and 3 are answered against the appellant. As far as the second substantial question of law is concerned, though second limb of Article 54 would apply, the first appellant court had given a clear finding that the appellant did not approach the court with clean hands and he filed the suit at the fag end of the third year from the date of notice, which is not a reasonable time. It is pertinent to point out that the suit itself was filed after 13 years from the date of the sale agreement by the respondent. Hence the second appeal deserves to be dismissed.

9.In the result,

i. the second appeal is dismissed. No costs.



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ii.the decree and judgment dated 04.08.2006 passed in A.S. No.87 of 2004, on the file of the I Additional District Judge, Coimbatore, and the decree and judgment dated 30.08.2000 passed in C.F.R.(O.S.) No.20031 of 2000, on the file of the Principal Subordinate Judge, Coimbatore, are upheld.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
Coimbatore.

2.The Principal Subordinate Judge,
Coimbatore.

3. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.R.T. Doraisamy, Advocate SR.No.15710

+1cc to M/s. Sarvabhauman Associates, Advocate SR.No.16085

S.A.No .201 of 2007

VG II(CO)
GMY(18/04/2022)