



O.S.A.No.380 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON	JUDGMENT PRONOUNCED ON
16.09.2022	11.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE V.SIVAGNANAM**

O.S.A.No.380 of 2012
and M.P.No.1 of 2012

T.R.Pachamuthu

... Appellant

Vs.

- 1.E.Babu (died)
- 2.E.Gunasekaran (died)
- 3.E.Ravi
- 4.Vijayalakshmi
- 5.Renuka
- 6.P.Rajagopal Naicker (died)
- 7.R.Mani
- 8.R.Kumar
- 9.R.Prema
- 10.Prameela
- 11.Varun Prabhu
- 12.Sanjana



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13.Vijayalakshmi

14.Bavithraa

15.Deepak

... Respondents

(R10 to 12 brought on record as LR's of the deceased R1 viz., E.Babu and RR13 to 15 brought on record as LR's of the deceased R2 viz., E.Gunasekaran vide court order dated 21.03.2019 made in M.P.Nos.3849, 3852, 3863 & 3872 of 2019 in O.S.A.No.380 of 2012)

(R7 to R9 are the LR's of the deceased R6 viz., P.Rajagopal Naicker as per the memo dated 06.07.2018 vide court order dated 16.07.2018 made in O.S.A.No.380 of 2012)

Prayer: This Original Side Appeal is filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters of Patent, to set aside the order of this Court dated 15.06.2012 made in A.No.2920 of 2010 in C.S.No.764 of 2001.

For Appellant : Mr.G.Masilamani (Senior Counsel)
for M/s.B.Saraswathi

For RR3 to 5,7 to 9,10 to 15 : Mrs.Nalini Chidambaram
(Senior Counsel)
for M/s.R.Venkata Varadhan

COMMON JUDGMENT

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

Challenging the order passed in A.No.2920 of 2010 in C.S.No.764 of 2001, the appellant has filed the present appeal.



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2(i).According to the appellant/plaintiff, the respondents 1 to 9, along with one E.Sampath, one of the sons of P.Elumalai Naicker and Chockammal, wife of P.Elumalai Naicker approached the appellant for the sale of the suit property at the rate of Rs.5,20,000/- per ground claiming that they are the absolute owners of the suit property. They also informed the appellant that there were 34 hutment dwellers in the suit property, who are the encroachers. They agreed to vacate them and handover the vacant possession. Believing the said representation, the appellant entered into an agreement of sale dated 11.07.1990, agreeing to purchase the suit property at the rate of Rs.5,20,000/- per ground. The appellant paid a sum of Rs.3,00,000/- as advance on the date of agreement. It was agreed that the appellant will vacate the encroachers/hutment dwellers and a sum of Rs.15,00,000/- will be retained by the appellant from total sale consideration to pay compensation for evicting the hutment dwellers and take possession from them. The appellant subsequently paid Rs.3,00,000/- on 07.03.1991 and Rs.4,00,000/- on 27.07.1991. The vendors acknowledged the payment of total sum of Rs.10,00,000/-. In fact, there were 41 hutment dwellers in the suit property. Some of them had put up pucca construction, claiming to be the tenants under



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the vendors and claiming rights under the City Tenants Protection Act. The vendors were not cooperating with the appellant for evicting the encroachers.

On the other hand, they were instigating some of the encroachers to demand more money for vacating the suit property. The appellant was always ready and willing to pay the balance sale consideration and get the sale deed executed as appellant required vacant site for future development of his educational institution. Some of the encroachers filed suits in the City Civil Court and obtained interim injunction. The appellant spent 25 Lakhs than the agreed amount of 15 Lakhs and vacated hutment dwellers. After vacating the encroachers, the appellant took vacant possession of the land, improved the property, put up a compound wall, appointed a Security to keep the property protected from the encroachers. The appellant during October, 1992 itself sent draft sale deed to the respondents for approval. The appellant and his agent were meeting the respondents 1 to 9 and others very often and requested them to cooperate for execution of the sale deed after receiving the balance sale consideration. But the respondents failed to cooperate to finalize the sale deed.



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2(ii).On 28.01.1994, the appellant called upon the respondents 1 and 7,

to receive the balance sale consideration and to execute the sale deed. On 29.01.1994, the respondents 1 & 7 intimated the appellant that they will cooperate for execution of the sale deed, but demanded more money. There were some interse dispute among the respondents 1 to 9, 6th defendant and 4th defendant. The 4th defendant filed O.S.No.12458 of 1996 and O.S.No.3148 of 1999 on the file of the XII City Civil Court, Chennai for partition against the respondents 1 to 9 and 6th defendant. The appellant also was made as party defendant in the said suit. At one stage, many suits were filed by the encroachers against the appellant in respect of the suit property and the said suits were pending on the file of the VI, VII, XI and XII Assistant City Civil Court, Chennai. In order to safeguard possession of the suit property, the appellant had to file various Writ Petitions against various public authorities by spending huge amount. The respondents 1 to 9 and defendants 4 & 6 were evading to register the sale deed either jointly or severally. Though time was fixed for execution of the sale deed, the respondents 1 to 9 and defendants 4 & 6, by their own act, did not confine to the time limit. Even after last date fixed for performance, the respondents 1 to 9 and 6th defendant and husband



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of 4th defendant, received Rs.3,00,000/- on 07.03.1991 and Rs.4,00,000/- on 27.07.1991. The respondents 1 to 9 and 6th defendant and husband of 4th defendant demanded additional sum of Rs.10 Lakhs over and above the agreed amount and they were willing to execute the sale deed on payment of additional amount of Rs.10 Lakhs.

2(iii).After several negotiations with the appellant and his representatives by the respondents 1 to 9 and 6th defendant and one Navasingh, Arbitrator, the appellant issued a notice dated 23.04.2001 through his Advocate to all the respondents 1 to 9, 6th defendant and the 4th defendant. The respondents 1 to 9 and 6th defendant sent a reply dated 13.06.2001 through their Advocate, denying the averments in the notice. But in the reply, the respondents 1 to 9 and 6th defendant suggested that they are always ready for mutual negotiations in the interest of both the parties to avoid any unnecessary and protracted proceedings. The intention of the respondents 1 to 9 and other defendants is only to prolong the issue in order to get more money from the appellant. Hence, the appellant filed suit in C.S.No.764 of 2001 for specific performance of the sale agreement dated 11.07.1990 and the



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respondents 1 to 9 and defendants 4 & 6 are bound and liable to execute the sale deed and register the sale deed in favour of the appellant.

3(i).The respondents 1 to 9 and defendants 4 & 6 entered appearance in the suit in C.S.No.764 of 2001 filed by the appellant. The 1st respondent filed written statement in November, 2001. The respondents 2 to 9 and 6th defendant adopted the said written statement. Based on the pleadings, issues were framed. At this stage, the respondents 1 to 9 filed Application No.2920 of 2010 under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 of C.P.C, seeking to reject the plaint in C.S.No.764 of 2001 in so far as the respondents 1 to 9 are concerned.

3(ii).In the said application, the respondents 1 to 9 have stated various facts and circumstances about the ownership of the suit property, suit agreement of sale and various facts and circumstances leading up to filing of the suit. The respondents 1 to 9 have stated that as per the agreement of sale, the appellant has to pay the balance sale consideration within 6 months from the date of agreement and any deviation would render the agreement null and



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void. The respondents 1 to 9 sent letters dated 03.07.1991 and 28.12.1991,

requesting the appellant to perform his part of the contract. The appellant did

not respond to the respondents 1 to 9. They further stated that after several

letters and notices, they issued notice dated 29.07.1997 through their

Advocate that agreement dated 11.07.1990 was cancelled and called upon the

appellant to deliver vacant possession. The appellant, by suppressing the

earlier correspondence, sent a notice dated 23.04.2001 to the respondents 1 to

9, 4th defendant, 6th defendant and Chockammal, wife of P.Elumalai Naicker,

stating that he is ready and willing to perform his part of the contract and only

on account of non-performance by the respondents 1 to 9 and 4th defendant of

their obligations, the transaction was not completed, enclosed a draft sale

deed and called upon the respondents 1 to 9 and 4th defendant to execute the

sale deed in his favour. The respondents 1 to 9 sent a reply dated 13.06.2001

to the appellant's counsel stating that the appellant suppressed the earlier

correspondence and agreement of sale was cancelled by notice dated

29.07.1997 and called upon the appellant to handover vacant possession. As

per Article 54 of the Limitation Act, the suit for specific performance ought to

have been filed within three years. The present suit filed by the appellant is



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barred by limitation. On the face of the averments made in the plaint itself it is clear that the suit is barred by limitation as the appellant had knowledge of refusal of respondents 1 to 9 in the years 1990, 1992 and 1994 itself and prayed for rejection of the plaint.

4.The appellant filed counter affidavit and denied that the suit is barred by limitation and stated that the suit is well within the time. According to the appellant, the question of limitation is a mixed question of law and fact and plaint cannot be rejected on the ground of limitation in the application filed under Order VII Rule 11 of C.P.C. The appellant was always ready and willing to perform his part of the contract and only due to various litigations and the suit filed by the 4th defendant for partition against the respondents 1 to 9, 6th defendant and the appellant claiming 1/7th share in the suit property, the transaction was delayed. Further, the respondents 1 to 9 were negotiating with the appellant claiming additional sum of Rs.10,00,000/- over and above the agreed amount in the suit agreement of sale. Even in the reply notice dated 13.06.2001, the respondents 1 to 9 informed the appellant that they are ready for negotiations. The agent of the respondents 1 to 9 and one



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Navasingh met the representative of the appellant and in the negotiation, the

respondents 1 to 9 demanded additional amount of Rs.10,00,000/- over and above the agreed amount. The respondents 1 to 9, by their own action, kept the agreement alive and suit is not barred by limitation. The appellant sent several letters to the Advocate of the respondents 1 to 9, expressing his interest to negotiate with regard to payment of additional amount. However, the respondents 1 to 9 delayed the issue with ulterior motive. The question of limitation is mixed question of law and fact. It can be decided only after considering the evidence let in by the parties in the trial and it cannot be decided in the application filed under Order VII Rule 11 of C.P.C. The suit was posted for trial. The appellant was ready with proof affidavit to get along with the trial. The suit agreement was partly performed by evicting the encroachers and taking possession of the suit property and respondents 1 to 9 were continuously approaching the appellant for negotiations for payment of additional amount. The suit is not barred by limitation and prayed for dismissal of the application.

5.The learned Judge, by the order dated 15.06.2012 made in Application No.2920 of 2010, allowed the application and rejected the plaint.

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6.Against the said order, the present appeal is filed.

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7.The learned Senior Counsel appearing for the appellant contended that to decide the application filed under Order VII Rule 11 of C.P.C., only the averments in the plaint can be looked into and considered. As far as the documents filed along with the plaint are concerned, the appellant/plaintiff is entitled to explain the circumstances based on which the documents were issued, which can be done only by letting in evidence. The learned Judge without considering the averments in the plaint in its entirety and all the documents filed along with the plaint, considered only two documents and has held that suit is barred by limitation. The appellant has paid Rs.3,00,000/- on the date of agreement and also paid further amounts and respondents 1 to 9 received the same even after expiry of 6 months mentioned in the agreement of sale. The appellant took steps and spent considerable amount in evicting the 41 encroachers and took possession of the suit property. He developed the suit property, put up compound wall and appointed Security to protect the property from any further encroachments. The respondents 1 to 9 even after expiry of 6 months, were willing to execute the sale deed, but



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demanded additional amount of Rs.10,00,000/- over and above the amount

fixed in the agreement of sale. Number of negotiations were held and matter

was referred to Arbitrators viz., Mr.Ramanujam, Auditor and Mr.Navasingh.

In the said arbitration proceedings, the appellant and respondents 1 to 9

agreed for payment of Rs.10,00,000/- over and above the amount fixed in the

agreement of sale. Before the said amount can be paid and sale deed could be

executed in favour of the appellant, the 4th defendant viz., Revathi filed two

suits in O.S.Nos.12458 of 1996 and 3148 of 1998 on the file of the XII City

Civil Court, Chennai for partition against the respondents 1 to 9, 6th defendant

and also against the appellant. The respondents 1 to 9 have repeatedly

expressed their willingness to negotiate and complete the sale transaction.

The appellant issued notice dated 23.04.2001 calling upon the respondents 1

to 9 to receive the balance sale consideration and execute the sale deed. The

respondents 1 to 9 sent reply notice dated 13.06.2001 through their Counsel

and expressed their willingness to negotiate and conclude the transaction. The

appellant filed suit in September 2001 and the same is not barred by

limitation. The appellant has made averments in the plaint to show that the

suit is not barred by limitation. The appellant is in possession of suit property



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in part performance of agreement of sale and his possession is protected as per Section 53-A of the Transfer of Property Act. The right of the appellant as per Section 53-A of the Transfer of Property Act is perpetual right. The respondents 1 to 9 are not entitled to take possession from the appellant. The learned Judge without considering the averments in the plaint, erroneously considered only two notices and concluded that the suit is barred by limitation and rejected the plaint. The appellant is entitled to let in evidence to explain the two documents along with other documents filed with the plaint. These are triable issues. The question of limitation is mixed question of law and fact and it cannot be decided as summary proceedings in an application filed under Order VII Rule 11 of C.P.C. The respondents 1 to 9, in their reply dated 13.06.2001 have stated that they are ready for mutual negotiations in the interest of both the parties to avoid any unnecessary and protracted proceedings. The learned Judge, by rejecting the plaint by impugned order, has shut out any amicable settlement between the parties. The learned Judge without properly considering all the materials placed before her, has erroneously held that the suit is barred by limitation and denying the opportunity to the appellant to prove his case that suit is not



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barred by limitation. In view of the settlement talks between the appellant and respondents 1 to 9, the question of limitation is at large and the same can be decided only by letting in evidence and prayed for setting aside the order dated 15.06.2012 made in Application No.2920 of 2010 in C.S.No.764 of 2001 and prayed for allowing the appeal.

8.The learned Senior Counsel, in support of his contentions, relied on the following judgments: -

(i)(1997) 2 SCC 539 [*Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and another*] – paragraphs 5, 6 & 12;

(ii)(2004) 8 SCC 614 [*Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (dead) through LRs*] – paragraphs 8, 9 & 10;

(iii)(2005) 12 SCC 164 [*Huvappa Irappa Ballari Vs. Basava and another*] – paragraphs 6 & 7;

(iv)(2006) 5 SCC 658 [*Balasaria Construction (P) Ltd., Vs. Hanuman Seva Trust and others*]– paragraphs 8 & 9;

(v)(2007) 14 SCC 183 [*C.Natrajan Vs. Ashim Bai and another*] - paragraph 19;



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(vi)(2008) 12 SCC 661 [*Kamala and others Vs. K.T.Eshwara Sa and*

others] - paragraphs 21, 22, 45 & 50;

(vii)(2009) 5 SCC 182 [*N.Srinivasa Vs. Kuttukaran Machine Tools*

Limited] – paragraph 27;

(viii)(2009) 8 MLJ 838 [*G.V. Films Limited Vs. Gayathri Holdings*

Pvt. Ltd., and another] - paragraphs 9 & 15;

(ix)(2018) 6 SCC 422 [*Chhotanben Vs. Kirtibhai Jalkrushnabhai*

Thakkar and others] - paragraphs 15 & 20;

(x)2022 SCC Online SC 314 [*Sri Biswanath Banik and another Vs.*

Sulanga Bose and others] - paragraphs 16 & 17 and

(xi)2002 3 SCC 676 [*Shrimant Shamrao Suryavanshi and another*

Vs. Pralhad Bhairoba Suryavanshi (dead) by Lrs and others] - paragraphs 15 & 22.

9.The learned Senior Counsel appearing for the respondents 3 to 5, 7 to 9 and 10 to 15 contended that suit filed by the appellant in the year 2001 is barred by limitation. As per Article 54 of the Limitation Act, the time limit for filing suit for specific performance is 3 years. The plaint averment itself



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shows that suit is barred by limitation. The averments in the plaint itself

shows that on four occasions, the cause of action had arisen for filing the suit,

but the appellant did not utilize the same to file the suit. The averments in the

plaint discloses that cause of action arose on the following years:

1st cause of action – 1991

2nd cause of action – October 1992

3rd cause of action – 28.01.1994

4th cause of action – 29.07.1997

The appellant did not file the suit within three years, atleast on the 4th cause of action that arose on 29.07.1997. The appellant having failed to file suit within the time limit, issued notice on 23.04.2001 to create cause of action.

The documents filed along with the plaint are part and parcel of the plaint and it has to be treated as averments in the plaint. The learned Judge has considered all the materials placed before her and held that the appellant did not file suit within three years from the date when the cause of action has arisen and rejected the plaint. There is no error in the order of the learned Judge and prayed for dismissal of the appeal.



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10.The learned Senior Counsel, in support of her contentions, relied on the following judgments: -

(i)(2005) 7 SCC 510 [*Popat and Kotecha Property Vs. State Bank of India Staff Association*] – paragraphs 10 & 25;

(ii)(2007) 14 SCC 183 [*C.Natrajan Vs. Ashim Bai and another*] – paragraphs 8 & 9 and

(iii)(2013) 15 SCC [*I.S.Sikandar (dead) by Lrs vs. K.Subramani and others*] – paragraphs 37, 38 & 42.

11.Heard the learned Senior Counsel appearing for the appellant as well as the learned Senior Counsel appearing for the respondents 3 to 5, 7 to 9 and 10 to 15 and perused the entire materials available on record.

12.The issue to be decided in this appeal is:

“whether the plaint is liable to be rejected on the ground of limitation”.

By the impugned order, the plaint was rejected in the Application No.2920 of 2010, filed under Order VII Rule 11 of C.P.C. In the said Rule,



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six grounds are enumerated and on satisfying any one of the grounds filed by the defendants, the Courts shall reject the plaint. In the present case, the respondents 1 to 9 have sought for rejection of plaint on the ground of barred by law and limitation. Order VII Rule 11(d) of C.P.C. is the relevant provision which is extracted hereunder:

***“11.Rejection of Plaint- The plaint shall be rejected
in the following cases:-***

(a).....

(b).....

(c).....

***(d)Where the suit appears from the statement in the
plaint to be barred by any law;***

(e).....

(f).....”

13.The scope and power of the Court to reject the plaint or not had been considered and decided in number of cases by this Court, various High Courts and Hon'ble Apex Court. From the judgments relied on by both the learned Senior Counsel appearing for the appellant as well as the learned Senior Counsel appearing for the respondents 3 to 5, 7 to 9 and 10 to 15, the



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following principles emerge: -

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(i) The Courts can entertain an application filed under Order VII Rule 11 of C.P.C. at any stage of the suit namely after registering the suit, after filing written statement and framing of issues, but before deliverance of judgment. The Court has power to reject the plaint even before registering the suit on the ground of limitation.

(ii) While considering the application filed under Order VII Rule 11 of C.P.C., the Courts can take into account only the averments in the plaint and documents filed along with the plaint.

(iii) The defence taken by the defendants, averments in the written statement and the affidavit filed in support of the application are not relevant in deciding the application and Court cannot consider the same while deciding the application.

(iv) The averments in the plaint and documents filed along with the plaint must be read as a whole and nothing can be added or deducted from the averments made by the plaintiffs.

(v) The plaint must be read in a meaningful manner.

(vi) The plaint cannot be compartmentalized or read only in part. The



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plaint cannot be rejected in part. Considering the entire averments in the
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plaint and documents filed along with the plaint, the plaint can be rejected
either wholly or application has to be dismissed.

(vii) The Court has to consider whether the cause of action as stated in
the plaint is genuine and not illusory.

(viii) The Court has to consider whether the plaintiff by clever drafting
has created a cause of action.

(ix) The averments in the plaint must be taken as correct and decide
whether on the face of which any one of the conditions of Order VII Rule 11
of C.P.C is made out or not.

(x) The question of limitation is mixed question of law and fact and the
same can be decided only by letting in evidence and considering the same, it
has to be decided whether the suit is barred by limitation or not.

(xi) If on the face of the averments in the plaint, it is seen that the suit is
barred by limitation, the plaint shall be rejected.

(xii) The purpose of incorporating Rule 11 in Order VII of C.P.C. is to
reject the frivolous suit and prevent abuse of process of law and Court.



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14.Considering the above principles, the present issue has to be decided taking into account the averments in the plaint, documents filed along with the plaint and facts and circumstances of the case by applying the well settled principles stated above.

15.The appellant has filed suit for specific performance of agreement of sale dated 11.07.1990. In the said agreement of sale, the time limit for completion of transaction is fixed as six months. On the date of agreement, the appellant paid Rs.3,00,000/- to the respondents 1 to 9, 6th defendant, husband of the 4th defendant and wife of P.Elumalai Naicker. Subsequently, the appellant paid two sums of Rs.3,00,000/- and Rs.4,00,000/- on 07.03.1991 and 27.07.1991 respectively to the respondents 1 to 9, E.Sampath and Chockammal, wife of 4th defendant and 6th defendant. The receipt of the same is accepted by the respondents 1 to 9. According to the appellant, subsequent two payments on 07.03.1991 and 27.07.1991 were after expiry of six months fixed in the agreement of sale. According to the appellant, by receipt of subsequent amounts as stated above, the respondents 1 to 9 have given up time limit fixed in the agreement of sale. Further, the appellant and



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respondents 1 to 9 have exchanged number of letters and notices through

their respective Advocates. It is the further case of the appellant in the plaint

that after appellant evicted the encroachers, defended the suit filed by the

encroachers and various Writ Petitions filed by the appellant against various

authorities with regard to suit property, the respondents 1 to 9 have become

greedy and demanded more money over and above the amounts fixed in the

agreement of sale. The appellant also stated in the plaint and correspondence

filed along with the plaint that after negotiations, the appellant and

respondents 1 to 9 agreed for payment of further sum of Rs.10,00,000/- over

and above the amount fixed in the agreement of sale. At this stage, 4th

defendant filed two suits in O.S.Nos.12458 of 1996 and 3148 of 1999 on the

file of the XII Assistant City Civil Court, Chennai against the appellant,

respondents 1 to 9 and 6th defendant, claiming 1/7th share in the suit property.

It is the further case of the appellant that respondents 1 to 9 and one

Navasingh met the appellant and his officials and negotiated with regard to

payment of additional amount more than the amount agreed and to complete

the sale transaction. Since the said negotiation was not finalized, the appellant

issued notice dated 23.04.2001, calling upon the respondents 1 to 9 and



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others to receive the balance sale consideration and execute the sale deed.

The respondents 1 to 9 sent reply dated 13.06.2001, denying the claim of the appellant but they have stated that respondents 1 to 9 are ready for negotiations in order to avoid unnecessary and protracted proceedings. The learned Senior Counsel appearing for the respondents 3 to 5, 7 to 9 and 10 to 15 referred to cause of action paragraph and submitted that on four occasions, the cause of action had arisen, but the appellant did not file the suit within three years from the date of such cause of action. The learned Senior Counsel referred to reply dated 13.06.2001, stating that the agreement of sale was already cancelled in the earlier correspondence. The statement of respondents that they are willing for negotiations in order to avoid unnecessary and protracted proceedings is not disputed by the learned Senior Counsel for the respondents 3 to 5, 7 to 9 and 10 to 15. The learned Judge has considered the notice dated 29.07.1997, wherein the respondents 1 to 9 have stated that they are cancelling the agreement and called upon the appellant to deliver vacant possession. The learned Judge also held that the appellant did not mention about the exchange of notices between the parties during 1997. The said finding is erroneous as the said notices were filed along with plaint as



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document Nos.7 and 8. Once the documents are enclosed along with the
plaint and mentioned in the list of documents, they form part of the plaint and
it has to be taken into account as averments in the plaint. The learned Judge
having held that documents filed along with the plaint form part of the
averments in the plaint, erred in holding that appellant omitted to mention
about the exchange of notices between the parties during 1997. Further the
appellant issued notice dated 23.04.2001, calling upon the respondents 1 to 9
and others to receive balance sale consideration and execute the sale deed to
which the respondents 1 to 9 have sent a reply dated 13.06.2001, wherein the
respondents have expressed their willingness to negotiate and finalize the
transaction. The learned Judge has not considered the reply notice dated
13.06.2001 in its entirety and has stated that notice dated 23.04.2001 issued
by the appellant is only with a view to create a cause of action. The two
payments made after expiry of time limit and various correspondence
between the parties including the notice dated 23.04.2001 and reply dated
13.06.2001 has to be considered in its entirety to come to a conclusion
whether suit is barred by limitation and whether notice dated 23.04.2001 is
issued only to create a cause of action. This can be decided only after Trial by



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considering the evidence let in by the parties. It is well settled that plaint can be rejected on the ground that it is barred by limitation only if on the face of the averments made in the plaint, the suit is barred by limitation. In view of the fact that the appellant has mentioned in cause of action paragraph various correspondence and demand of additional amount, notice dated 23.04.2001 and reply dated 13.06.2001, the question of limitation can be decided only after trial by considering the evidence let in by the parties. A reading of the plaint and documents filed along with the plaint shows that the claim of the respondents that the suit is barred by limitation is a mixed question of facts and law which cannot be decided in the application filed under Order VII Rule 11 of C.P.C.

16.The contention of the learned Senior Counsel appearing for the appellant that the appellant is in possession of the suit property in part performance of suit agreement of sale and therefore, as per Section 53-A of the Transfer of Property Act, the possession of the appellant is perpetual possession and respondents cannot take possession from the appellant are not relevant to decide the present issue whether the suit is barred by limitation



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and plaint is liable to be rejected as per Order VII Rule 11 of C.P.C.

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17.In view of the above materials, the order of the learned Judge dated 15.06.2012 made in Application No.2920 of 2010 in C.S.No.764 of 2001 is set aside, as the averments made by the appellant in the plaint especially in cause of action can be decided only after trial. The plaint in C.S.No.764 of 2001 is restored to file and the Registry is directed to list C.S.No.764 of 2001 for further proceedings. It is open to the respondents/defendants to raise the question of limitation during trial.

18.In the result, the Original Side Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (V.S.G., J)
11.10.2022

Index : Yes/No
(gsa)

Note : Issue order copy by 14.10.2022



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and
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(gsa)

Pre-Delivery judgment in
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