



C.R.P.(PD) No.1437 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.1437 of 2021 &
CMP No.11277 of 2021

1. Durai
2. K.Jaishankar
3. K.Elavarasi

... Petitioners

Vs.

N.Muthayya

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 24.02.2021 made in I.A.No.02 of 2020 in O.S.No.18 of 2020 on the file of the Principal District Judge, Perambalur and set aside the same.

For Petitioner : Mr.S.Arjun
For Respondent : Mr.N.Manokaran

ORDER

This revision petition is filed, praying to set aside the fair and final order dated 24.02.2021 made in I.A.No.02 of 2020 in O.S.No.18 of 2020 on the



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file of the Principal District Judge, Perambalur.

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2. The petitioners herein are the defendants 4 to 6 and the respondent herein is the plaintiff in a suit in O.S.No.18 of 2020, filed by the respondent, praying to direct the defendants therein including the petitioners herein to pay a sum of Rs.2,91,000 along with interest at 12% and to create a charge upon the suit schedule properties for the suit amount.

3.The suit was based upon a sale agreement dated 28.10.2008 said to have been executed by the defendants in favour of the plaintiff agreeing to sell the suit schedule properties for a total sum of Rs.4,23,69,000/- and received Rs.1,35,00,000/- towards advance. According to the plaintiff, since the defendants did not perform their part of contract and as the time of specific performance has expired, the plaintiff filed the suit for recovery of the advance amount paid by him.

4. During the pendency of the suit, the petitioners/defendants 4 to 6 have moved an interlocutory application in I.A.No.02 of 2020 under Order VII Rule 11(a) and (d) CPC, praying to reject the plaint on the ground that it is



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barred by limitation under Article 47 of the Limitation Act and for want of cause of action since the suit was filed after 11 years and the sale agreement is an unregistered document and specifically contains forfeiture clause as per which, in the event of failure to get the sale deed executed in time, the advance amount will be forfeited, and since the plaintiff has not come forward to get the sale deed executed by paying remaining sale consideration in time as fixed in the agreement, the advance amount is forfeited and thereby, the sale agreement does not create any interest or charge over the suit property. According to the plaintiff, the suit was not one for Specific Performance but one for refund of advance amount with a charge on the properties, therefore, for refund of advance amount with charge upon property, the period of limitation is 12 years and the plaintiff filed the suit well within the said period and therefore, the suit is covered under Article 62 of the Limitation Act.

5. The issue involved in this revision is no longer *res integra* in view of the judgment of the Hon'ble Supreme Court in ***Delhi Development Authority v. Skipper Construction Co. (P) Limited and others*** [(2000) 10 Supreme Court Cases 130], wherein the Hon'ble Supreme Court has set at



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rest the controversy with reference to the period of limitation in cases

where refund of the advance amount is sought for and has held as follows:

“29.....It is plain from the above provision that, in the absence of a contract to the contrary, the buyer will have a charge on the seller-s interest in the property which is the subject matter of the sale agreement insofar as the purchase money and interest on such amount are concerned, unless the buyer has improperly declined to accept delivery. The charge is available against the seller and all persons claiming under him. This charge in favour of the buyer is the converse of the seller-s charge under Section 55(4)(b). The buyer-s charge under this Section is a statutory charge and differs from a contractual charge which a buyer may be entitled to claim under a separate contract (Chettiar Firm Vs. Chettiar) (AIR 1941 P.C. 47). No charge is available unless the agreement is genuine....

30.
.....

31.The above sub~section of Section 55 also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase money to the seller till date of delivery of property to the purchaser or till the execution of the sale deed, whichever is earlier. Points 1 and 2 are decided accordingly in favour of the buyers.



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32.Article 62 of the Limitation Act, 1963 (which corresponds to Article 132 of the Limitation Act 1908) provides a period of 12 years “to enforce payment of money secured by a mortgagee or otherwise charged upon immovable property“. Time runs from the date “when money becomes due“.

33.From the above Article, it is clear that the period of limitation for enforcement of the statutory charge created under Section 55(6)(b) is 12 years from the date when becomes due and not 3 years. The period remains the same even for enforcement of the charge on the substituted security. Point 3 is decided accordingly.”

In ***K. Shanmugam and another v. C.Samiappan and others*** [2013 (6) CTC 28], this Court has elaborately considered the above judgment relating to the statutory charge and ultimately, held as follows:

“23. The ratio laid down by the Supreme Court is that the the buyer shall have a statutory charge over the immovable property under Section 55 (6)(b) of the Transfer of Property Act, 1882. The said view has been followed by various High Courts including the Division benches of this Court. Citing all those decisions shall not be necessary. Suffice to state that now it is a settled position of law that limitation for refund of advance money



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with interest under an agreement for sale of immovable property is governed by Article 62 of the Limitation Act as the buyer has got a statutory charge over the property to the extent of interest of the seller and that hence the period of limitation shall be 12 years from the date on which the right to sue for the refund of advance amount accrues. Therefore, the lower appellate Court is definitely wrong in holding that the limitation for filing a suit for refund of advance amount shall be governed by Article 54 of the Limitation Act and hence, the period shall be three years from the date of accrual of the right to sue. Consequently, the lower appellate Court has committed an error in holding that the suit filed by the appellants/plaintiffs for refund of the advance amount is barred by limitation. The said finding of the lower appellate Court is erroneous and the same deserves interference and reversal.”

6. In view of the above, the application for rejecting the plaint on the ground of limitation cannot be sustained and the learned Principal District Judge, Perambalur has rightly dismissed the same and as such, no interference is required. However, as regards the contentions raised by the revision petitioners regarding the cause of action, *pendente lite* entering new contract of sale between the respondent and other defendants are subject matter of trial.



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7. Accordingly, the Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected CMP is closed.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

To

The Principal District Judge, Perambalur



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N.SESHASAYEE.J.,

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