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C.R.P.Nos.3549 and 3550 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

**C.R.P.Nos.3549 and 3550 of 2016**  
**and C.M.P.Nos.18058 of 2016 and 23749 of 2019**

Vatchala Jegannathan

.. Petitioner **in both C.R.Ps**

Vs.

1. Renuka Bhojani
2. Ananya Shelters
3. Rathinam

.. Respondents **in both C.R.Ps**

**Prayer in C.R.P.No.3549 of 2016:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the petition and order dated 04.10.2016 made in I.A.No.1660 of 2016 in O.S.No.1507 of 2016 on the file of the Principal District Munsif Court, Coimbatore and allow the Civil Revision Petition.

**Prayer in C.R.P.No.3550 of 2016:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the exparte status-quo order dated 04.10.2016 made in I.A.No.1661 of 2016 in O.S.No.1507 of 2016 on the file of the Principal District Munsiff Court, Coimbatore and allow the Civil Revision Petition as prayed for.



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**In both C.R.Ps**

For Petitioner : Ms.Apoorva for  
M/s Sarvabhauman Associates  
For Respondents  
For R1 : Mr.Arvind Subramaniam  
For R2 : Mr.A.E.Ravichandran  
R3 : Died

**COMMON ORDER**

The Civil Revision Petition in C.R.P.No.3549 of 2016 has been filed as against the fair and final order passed in I.A.No.1660 of 2016 in O.S.No.1507 of 2016 dated 04.10.2016, on the file of the Principal District Munsif Court, Coimbatore, thereby allowing the petition filed under Order II Rule 2 of CPC.

2. The first respondent is the plaintiff and the petitioner is the second defendant in the suit filed by the first respondent herein for declaration declaring that the sale deed dated 04.05.2016 registered vide Document No.2300 of 2016 in favour of the first defendant and also seeking permanent injunction in respect of the suit schedule property.



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3. The case of the first respondent herein is that she entered into an agreement for sale with the petitioner herein for purchase of the suit property for a sum of Rs.40 Crores. On the date of agreement for sale, she paid a sum of Rs.50 Lakhs on 24.10.2008. On the date of agreement, the suit schedule property was given possession in favour of the first respondent herein. In the agreement for sale, the time was fixed for execution of the sale deed for a period of 18 months from the date of agreement for sale. However, the petitioner failed to execute any sale deed. Again, on 01.04.2009 she paid a sum of Rs.5 Lakhs and on 01.04.2010, she further paid a sum of Rs.5 Lakhs which was duly endorsed by the petitioner herein and the time for execution of sale agreement was extended, till 31.03.2011. However, even thereafter, the petitioner herein failed to execute any sale deed.

4. While being so, the petitioner was trying to alienate the suit property in favour of the third parties and as such the first respondent herein was constrained to file a suit for specific performance in O.S.No.626 of 2014 on the file of the I<sup>st</sup> Additional District Munsif Court, Coimbatore. Pending suit, the first respondent herein also filed an



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application in I.A.No.976 of 2014 under Order II Rule 2 of CPC and the same was allowed on 19.03.2014. However, the first respondent did not file any suit for specific performance. While being so, the petitioner herein sold out the property in favour of the second respondent herein in respect of the suit schedule property by the registered sale deed dated 04.05.2016. Hence, the first respondent herein filed a suit in O.S.No.1507 of 2016 for declaration and permanent injunction on the file of the District Munsif Court, Coimbatore. Pending suit, again the first respondent herein filed another application in I.A.No.1660 of 2016 under Order II Rule 2 of CPC seeking leave to file a suit for specific performance on the strength of the agreement for sale, dated 24.10.2008 separately as against the petitioner herein. The application was allowed. Hence, this present revision.

5. The learned counsel for the petitioner would submit that after the alleged agreement for sale, the first respondent caused notice on 25.07.2013, thereby called upon the petitioner to repay the advance amount which was allegedly received by the petitioner to the tune of Rs.60,00,000/- together with interest at the rate of 12% per annum from



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01.04.2010. On receipt of the same, the petitioner also issued reply notice dated 10.08.2013, thereby denying the execution of agreement for sale dated 24.10.2008. It is further stated that the petitioner never entered into any agreement for sale with the first respondent herein. She further submitted that the first respondent filed a suit for injunction in O.S.No.626 of 2014 on the file of the I<sup>st</sup> Additional District Munsif Court, Coimbatore. Pending suit, the first respondent also filed a petition under Order II rule 2 of CPC in I.A.No.976 of 2014 on the file of the District Munsif Court, Coimbatore and obtained leave to prefer suit for specific performance as against the petitioner herein. Even then, the petitioner did not prefer any suit for specific performance on the strength of the agreement for sale dated 24.10.2008. Hence, the petitioner herein sold out the property in favour of the second respondent herein. Therefore, the first respondent herein challenged the sale deed executed in favour of the second respondent herein in O.S.No.1507 of 2016. Pending suit, once again the first respondent filed a petition under Order II rule 2 of CPC and the Court below mechanically allowed the application without passing any speaking order. The application itself is not maintainable, since already in the injunction suit, the first respondent



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filed an application under Order II rule 2 of CPC and though it was allowed, the first respondent herein failed to exhaust the remedy granted under Order II rule 2 of CPC.

6. That apart, even according to the first respondent herein, the agreement for sale was time bounded one and as per the agreement, the time was granted for execution of sale deed which is only for a period of 18 months. Even assuming that subsequently the time was extended for execution of sale deed, till 31.03.2011, from the date of expiry of time, the first respondent failed to file any suit for specific performance. Therefore, the Court below ought not to have granted any leave to file any suit for specific performance, since it is barred by limitation.

7. Per contra, the learned counsel for the first respondent would submit that though the first respondent failed to file any suit for specific performance, subsequently, the petitioner sold out the suit schedule property in favour of the second respondent herein. Therefore, the first respondent necessarily has to file a suit challenging the sale deed. Accordingly, the first respondent filed a suit in O.S.No.1507 of 2016



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challenging the sale deed executed in favour of the second respondent.

The cause of action for the present suit is completely different and as such the suit is very much maintainable. Insofar as the order passed under Order II rule 2 of CPC is concerned, though, the first respondent cannot file any suit for specific performance, in view of Article 54 of the Limitation Act, on payment of advance amount, the first respondent created charge over the suit schedule property. Therefore, Article 62 of the Limitation Act would apply and he can file a suit for refund of advance amount till 12 years from the date of payment of advance amount. He further submitted that insofar as the order passed under Order II rule 2 of CPC is concerned, the first respondent can very well file a suit and it is up to the petitioner to agitate before the Trial Court in respect of the limitation. Therefore, the petitioner cannot say the first respondent is barred to even file a suit for specific performance.

8. The learned counsel for the second respondent would submit that he is a bonafied purchaser in respect of the suit schedule property. Though, the first respondent was granted leave to file a suit for specific performance, the first respondent failed to file any suit for specific



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performance so far. When the first respondent challenged the sale deed executed in favour of the second respondent, again he filed a petition under Order II rule 2 of CPC. Even then, the first respondent failed to exhaust the remedy granted under Order II rule 2 of CPC so far. Therefore, it is clearly barred by limitation and the first respondent cannot file any suit for specific performance. In fact, the first respondent also cannot maintain the suit for refund of advance amount as contemplated under Article 62 of Limitation Act, since it is a suit for recovery of money and it is also barred by limitation.

9. Heard, Ms.Apoorva, learned counsel appearing for the petitioner, Mr.Arvind Subramaniam, learned counsel appearing for the first respondent and Mr.A.E.Ravichandran, learned counsel appearing for the second respondent.

10. The only point for consideration in the petition in C.R.P.No.3549 of 2016 is whether the petition filed under Order II rule 2 of CPC can be sustained or not. Admittedly, the first respondent filed a suit for injunction in O.S.No.626 of 2014 on the file of the I<sup>st</sup> Additional



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District Munsif Court, Coimbatore. In the said suit, the first respondent also filed an application in I.A.No.976 of 2014 under Order II rule 2 of CPC and the same was allowed. However, the first respondent failed to file any suit for specific performance so far. The first respondent claimed the suit property as per the agreement for sale dated 24.10.2008. In fact, the first respondent also caused legal notice on 25.07.2013, thereby called upon the petitioner herein to return the advance amount which was received by him. It was replied by the reply notice dated 10.08.2013 by the petitioner alleging that no such agreement for sale was entered between them. Thereafter, the petitioner herein sold out the suit schedule property in favour of the second respondent herein. Challenging the said sale deed, the first respondent filed another suit in O.S.No.1507 of 2016 on the file of the Principal District Munsif Court, Coimbatore. Pending suit, again the first respondent filed an application in I.A.No.1660 of 2016 under Order II rule 2 of CPC seeking leave to file a suit for specific performance and the same was allowed. Though, it was allowed, again the first respondent failed to file any suit for specific performance separately as against the petitioner herein so far.



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11. A perusal of the alleged agreement for sale dated 24.10.2008 reveals that there is a specific clause for execution of sale deed, viz., within a period of 18 months. According to the first respondent, the time was extended till 31.03.2011. Thereafter, even after the completion of three years from the extended of period, viz., 31.03.2011, the first respondent failed to file any suit for specific performance. As per Article 54 of the Limitation Act, if the date is fixed for performance of the agreement, then non compliance of the agreement on the date would give a cause of action to file a suit for specific performance, within three years from the date so fixed. However, when such date is fixed, the limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant refused the performance of agreement.

12. In the case on hand, the period of limitation to file a suit for specific performance is three years from the date of extension ie. 31.03.2011. Admittedly, the first respondent failed to file a suit for specific performance within a period of three years from the date of extension i.e, 31.03.2011. Therefore, the Trial court ought not to have



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granted leave to the first respondent in the petition filed under Order II rule 2 of CPC to file a separate suit for specific performance as against the petitioner herein.

13. Insofar as the suit for refund of advance amount, by invoking Article 62 of Limitation Act is concerned, the first respondent is at liberty to file a suit and at the same time, the petitioner is at liberty to defend the suit on all the grounds available including limitation.

14. Insofar as the Civil Revision Petition in C.R.P.No.3550 of 2016 is concerned, it is filed as against the status-quo granted in I.A.No.1661 of 2016 in O.S.No.1507 of 2016 on the file of the Principal District Munsiff Court, Coimbatore, which has now expired and no interim order of status-quo is now in force.

15. Considering the above facts and circumstances, the trial Courts are directed to dispose of the suits in O.S.No.626 of 2014 and O.S.No.1507 of 2016, within a period of six months from the date of receipt of a copy of this order.



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16. In view of the above, the fair and final order passed in I.A.No.1660 of 2016 in O.S.No.1507 of 2016 dated 04.10.2016, on the file of the Principal District Munsif Court, Coimbatore, is hereby set aside. Accordingly, the Civil Revision Petition in C.R.P.No.3549 of 2016 is allowed and the Civil Revision Petition in C.R.P.No.3550 of 2016 is dismissed as infructuous. Consequently, connected Miscellaneous petitions are closed. No costs.

07.12.2022

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The Principal District Munsif Court, Coimbatore.
2. The I<sup>st</sup> Additional District Munsif Court, Coimbatore.



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**G.K.ILANTHIRAIYAN,J.**

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