



C.R.P.(PD).No.1582 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 10.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.1582 of 2021

and

C.M.P.No.12342 of 2021

1.Ammani

2.Raj Kumar

...Petitioners/Petitioners/
Defendants 1 and 2

-Vs-

Muthaya

...Respondent/Respondent/
Plaintiff

Prayer: Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 24.02.2021 passed in I.A.No.3 of 2020 in O.S.No.18 of 2020 on the file of the learned Principal District Judge, Perambalur.

For Petitioners : Ms.S. Yogalakshmi
for Mr.R.Mansoor Ilahi

For Respondent : Mr.N. Manokaran



C.R.P.(PD).No.1582 of 2021

WEB COPY

ORDER

The defendants 1 and 2 are before this Court challenging the dismissal of their application to reject the Plaint in O.S.No.18 of 2020 on the file of the learned Principal District Judge, Perambalur.

2.The facts in brief are as follows:

The respondent herein had filed O.S.No.18 of 2020 on the file of the learned Principal District Judge, Perambalur, seeking recovery of a sum of Rs.2,91,60,000/- with interest @12% per annum and to create a charge upon the schedule properties. The said sum was due towards the advance amount paid by the plaintiff for the purchase of the suit schedule properties. The plaintiff and the defendants 1 to 9 had entered into an Agreement of Sale dated 28.10.2008. Though the plaintiff was ready to pay the balance amount and to get the document executed the defendants had failed to perform their obligations in measuring the properties and demarcating the same.

2/15



C.R.P.(PD).No.1582 of 2021

The plaintiff had also paid the expenses for the same. Later, when the properties were measured there was a dispute from the adjoining land owner regarding pathway. As the purpose for the purchase of the property was for forming a layout of house sites the plaintiff wanted to resolve the disputes with reference to the pathway before the Sale Deed was executed. However, they were unable to resolve the same. In the meanwhile, two of the agreement holders had come forward to sell their shares and the plaintiff had got the Sale Deed executed in his favour. The remaining sharers have not come forward to execute the Sale Deed but have retained the advance amount paid to them. The plaintiff also contended stated that the time for filing the suit for Specific Performance had expired and therefore, a suit for recovery of money seeking a charge on the properties has been filed. The suit has been filed before the expiry of the period of limitation.

3.The defendants 1 and 2/revision petitioners who had entered



appearance had immediately taken out an application for rejecting the Complaint on the grounds that the suit lacks cause of action and is barred by limitation. Their allegations with reference to the first ground was that the Agreement of Sale was an incomplete document since it has not been signed by all the signatories. Further, the terms of the Agreement clearly stipulated a time schedule for the performance of the Contract and on the face of the Agreement, the suit is barred by limitation. Further, the plaintiff having entered into a fresh contract with other defendants there is a novation of the earlier cause of action. The Agreement had provided a period of nine months for completing the Contract, however, the suit has been filed nearly after eleven years and was therefore barred by limitation.

4.The respondents/plaintiff had resisted the above application *inter alia* contending that the suit was not one for Specific Performance but one for refund of advance amount with a charge on the properties. The limitation was therefore twelve years as per



C.R.P.(PD).No.1582 of 2021

Article 62 of the Limitation Act. The cause of action for filing the suit was the retention of the advance money by the defendants without performing their part of the Contract.

5.The learned Principal District Judge, Perambalur, by her order dated 24.02.2021 was pleased to dismiss the said application. The learned Judge has observed that both the questions regarding cause of action and limitation are questions to be proved by evidence and therefore, the petition to reject the Plaint was dismissed. Challenging the same, the defendants 1 and 2 are before this Court.

6.The learned counsel for the revision petitioner would submit that the plaintiff has filed the suit seeking the following relief:

“to pass a decree in favour of the plaintiff as against the defendants directing the defendants to pay a sum of Rs.2,91,60,000.00 with subsequent interest



C.R.P.(PD).No.1582 of 2021

WEB COPY

@12% and create a charge upon the schedule properties for the above amount, award costs”

7. Therefore, it is crystal clear that the plaintiff does not have a charge over the property. Therefore, the suit has to be filed within a period of three years and therefore, Article 62 is not applicable. She would further contend that the agreement deed was invalid as it has not been signed by all the parties.

8. Per contra, Mr.N.Manoharan, learned counsel for the respondent would submit that the issue is now *res intergra* by reason 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 stated that in the absence of a Contract to the contrary by virtue of provisions of Section 55(6)(b) of the



C.R.P.(PD).No.1582 of 2021

Transfer of Property Act, the buyer would have a charge on the sellers interest in the property which is the subject matter of the Sale Agreement insofar as the purchase-money and interest is concerned. The learned Judges of the Apex Court had also stated that since there was a charge on the property Article 62 of the Limitation Act would apply and this provides a period of twelve years to enforce the payment of money secured by a mortgagee or otherwise charged on a movable property and the time would start running from the date when the money sued for becomes due.

9. Therefore, in the instant case, the suit is well within a period of twelve years and the same therefore would be within limitation. The above referred Judgment in **Delhi Development Authority v. Skipper Construction Co. (P) Limited and others [(2000) 10 Supreme Court Cases 130]** has been followed in the later Judgment reported in **Videocon Properties Limited v. Dr. Bhalchandra Laboratories and others [(2004) 3 Supreme Court Cases]** and by



C.R.P.(PD).No.1582 of 2021

our Court in the case reported in **K.Shanmugam and another v. C.Samiappan and others [2013 (6) CTC 28]** and **P. Muthusamy v. K. Arumugam and others [2016-5-L.W. 820]**.

10.Heard the learned counsel appearing on either side and perused the above referred Judgments.

11.The Hon'ble Supreme Court in **Delhi Development Authority v. Skipper Construction Co. (P) Limited and others [(2000) 10 Supreme Court Cases 130]** has set at 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



WEB COPY



C.R.P.(PD).No.1582 of 2021

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....

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



WEB COPY

or till the execution of the sale deed, whichever is earlier. Points 1 and 2 are decided accordingly in favour of the buyers.

POINT 3:

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.”

WEB COPY

12.This Court in the Judgment reported in **K. Shanmugam and another v. C.Samiappan and others [2013 (6) CTC 28]** 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 with interest under an agreement for sale of immovable property is governed by Article 62 of the



WEB COPY



C.R.P.(PD).No.1582 of 2021

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



C.R.P.(PD).No.1582 of 2021

WEB COPY

advance amount is barred by limitation. The said finding of the lower appellate Court is erroneous and the same deserves interference and reversal.”

13.In the light of this pronouncement, the application for rejecting the Plaint on the ground of limitation has to definitely fail and the learned Principal District Judge, Perambalur, has rightly rejected the application.

As regards the plea that there is no cause of action for filing the suit the same has to be established only by letting in evidence. In the above circumstances, I do not find any reason to interfere with the fair and decretal order of the trial Court. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

10.02.2022

Internet : Yes/No
Index :Yes/No



C.R.P.(PD).No.1582 of 2021

Speaking / Non-Speaking
mps

To

The Principal District Judge,
Perambalur.

P.T. ASHA, J.

mps



WEB COPY



C.R.P.(PD).No.1582 of 2021

C.R.P.(PD).No.1582 of 2021
and
C.M.P.No.12342 of 2021

10.02.2022