



A.S(MD)No.287 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.287 of 2009

1. Tiruchirapalli District Forest Employees
Co-operative Housing Society represented
by its President K.P.Nallusamy
No.D/269, II Cross, Anna Nagar, Tennur,
Tiruchirapalli-17.

2. K.P.Nallusamy

3. G.Ramalinga Jothi

... Appellants

vs.

1. Mahaboob Aslam

2. Ashraf Ali

3. Asif Ali

4. Arif Ali

5. Rani Begam

... Respondents

Appeal Suit filed under Section 96 of the Code of Civil Procedure,
against the judgment and decree dated 10.05.2006 made in O.S.No.331
of 2004 on the file of the Additional District Judge, Fast Track Court
No.II, Tiruchirappalli.



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For Appellants

: Mr.S.Vinayak for

Mr.P.Jayaprakash Narayanan

For Respondents

: No appearance

JUDGMENT

The appellants as plaintiffs, filed a suit in O.S.No.331 of 2004 on the file of the Additional District Judge, Fast Track Court No.II, Tiruchirappalli, against the respondents/defendants for the relief of specific performance and for return of a sum of Rs.6,240/- which has been paid in excess of the actual sale price or in the alternative for return of sale consideration of Rs.7,95,000/- with 12% interest per annum. After trial, the trial Court, by judgment and decree dated 10.05.2006, dismissed the suit. Aggrieved by the said judgment and decree, the plaintiffs as appellants have filed this appeal.

2. Brief averments stated in the plaint are as follows:-

The plaint schedule properties are the absolute properties of the defendants 1 to 4 and their father Late Usman Ali. In the year 1992, for the purpose of acquiring the suit properties on behalf of the members of the 1st plaintiff society, the plaintiffs approached the defendants 1 to 4



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and Usman Ali and they agreed to sell the suit properties to an extent of 6.26 acres at the rate of Rs.1,26,000/- per acre on 20.03.1992. A sale agreement was entered into by the parties on 20.03.1992, on which date, the plaintiffs paid initial advance amount of Rs.1,00,000/-, but no time limit was fixed for execution of the sale deed. According to the plaintiffs, thereafter, on various dates, a total sum of Rs.7,95,000/- has been paid by the plaintiffs which is more than the total sale consideration. It was agreed by the parties that the plaintiffs should take steps to get lay out approval of the suit property from the Director of Town Planning, Chennai. While the approval process was pending, the defendants filed caveat applications on 06.09.1999 and 07.09.1999, which according to the plaintiffs amounts to refusal of the defendants to execute the sale deed. Thus, the plaintiffs sent an advocate notice to the defendants on 15.09.1999 to execute the sale deed and the said notice returned with an endorsement 'unclaimed'. Hence, the suit.

3. Brief averments in the written statement are as follows:-

The sale agreement dated 20.03.1992 is admitted and four months time was fixed for execution of the sale deed. The mode of payment



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stipulated in the sale agreement had not been complied with by the plaintiffs and they have made payment of Rs.3,80,000/- only on various dates and not Rs.7,95,000/- as alleged in the plaint. The suit is barred by limitation. The death of Usman Ali/father of the defendants 1 to 4 was not informed to the defendants. All the legal heirs of Usman Ali have not been added as parties and therefore, the suit is bad for non joinder of necessary parties and no suit notice was served on the defendants. The caveat notice was issued when the plaintiffs who lost every right attempted to give trouble to the defendants. Further, mere caveat notice will not give rise to cause of action. Hence, the suit is liable to be dismissed.

4. Based on the pleadings, the trial Court framed the following issues:-

- (i) Whether the suit is not maintainable?
- (ii) Whether an unregistered society is not entitled to file a suit?
- (iii) Whether the suit is barred by limitation?
- (iv) Whether the suit is barred for non joinder of necessary parties?
- (v) Whether the plaintiffs are entitled for the relief of specific



performance and return of money?

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(vi) Are the plaintiffs barred from claiming the relief of specific performance?

(vii) What other reliefs are the plaintiffs are entitled to?

5. In order to substantiate the case, on the side of the plaintiffs, two witnesses were examined as PW1 and PW2 and 12 documents were marked as Exs.A1 to A12. On the side of the defendants, one witness was examined as DW1 and 4 documents were marked as Exs.B1 to B4.

6. The trial Court, considering the pleadings, oral and documentary evidence, dismissed the suit, by judgment and decree dated 10.05.2006. Challenging the said judgment and decree, the plaintiffs have filed this appeal.

7. The learned counsel for the appellants would submit that though the appellants filed this appeal against the dismissal of the suit for specific performance and the alternative relief of refund of the advance amount, now the appellants are not pressing the main relief of



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specific performance, but however, they pressed for the relief of refund of the sale consideration at Rs.7,95,000/- already paid by the appellants, stating that though the trial Court declined to grant the relief of specific performance, it ought to have ordered for refund of the advance amount paid by the appellants to the respondents. Though the appellants claimed refund of Rs.7,95,000/-, the respondents have admitted receipt of only Rs.3,80,000/- in the written statement. However, now the learned counsel for the appellants has restricted his relief only for refund of the admitted advance amount of Rs.3,80,000/- paid by the respondents. In support of his contention that the limitation for claiming refund of advance amount is 12 years from the date on which the right to sue accrues, the learned counsel relied upon a decision of this Court in **Ammani and another vs. Muthaya (CRP(PD)No.1582 of 2021, dated 10.02.2022).**

8. There is no appearance for the respondents either in person or through counsel.



9. In the decision relied on by the learned counsel for the appellants in **Ammani and another vs. Muthaya (CRP(PD)No.1582 of 2021, dated 10.02.2022)**, this Court at paragraph 12 has held as follows:-

"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 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



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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." "

10. In view of the above decision, as far as the refund of the advance amount is concerned, the period of 12 years fixed under Article 62 of the Limitation Act will be applicable and not 3 years under Article 54 of the Limitation Act. The sale agreement is dated 20.03.1992 and the suit was originally filed in 1999 well within 12 years of limitation period. Thus, the appellants are entitled to refund of the admitted payment of advance amount of Rs.3,80,000/-.

11. Accordingly, the respondents are directed to refund the admitted advance amount of Rs.3,80,000/- to the appellants along with



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9% interest from the date of judgment and decree passed in the suit till the date of payment.

12. In view of the above, the Appeal Suit is partly allowed. No costs.

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Index : Yes / No

Internet : Yes

To

The Additional District Judge,
Fast Track Court No.II,
Tiruchirappalli.



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P.VELMURUGAN, J.

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