



AS.Nos.709, 714, 715, 716, 801 & 817 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2023

CORAM:

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

AS.Nos.709, 714, 715, 716, 801 & 817 of 2009 and
MP.Nos.1,1,1 & 1 of 2009 &
CMP.No.22646 of 2019

AS.No.709 of 2009

K.Krishnamoorthi

... Appellant

Vs.

1.P.Thilagar
2.K.Vijayanand
3.A.Leelavathi
4.A.Anurekha
5.A.Divya
6.A.Vijayalakshmi
7.G.Subbulakshmi

...Respondents

PRAYER: Appeal Suit is filed under Section 96 of CPC against the judgment and decree passed in OS.No.42 of 2007 dated 29.02.2008 on the file of the I Additional District Court, Erode.

AS.No.709 of 2009

For Appellant

: Mr.A.Sivaji



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For Respondents

R1 : Notice served

For R2 : Mr.C.S.K.Sathish

For R3 to 7 : Mr.A.Sundaravatanan

AS.No.714 of 2009

For Appellants : Mr.A.Sivaji

For Respondents

For R1 : Mr.G.Karthikeyan,
Senior Counsel
for Mrs.A.Jagadeeswari

For R2, 3, 5 to 7 : No appearance

AS.No.715 of 2009

For Appellants : Mr.A.Sivaji

For Respondents

For R6 & 7 : No appearance

For R2 to 5 : Mr.A.Sundaravatanan

AS.No.716 of 2009

For Appellant : Mr.A.Sivaji



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For Respondents

For R7

: Mr.G.Karthikeyan,
Senior Counsel
for Mrs.A.Jagadeeswari

For R6

: Mr.C.S.K.Sathish

For R1 to 5

: Mr.A.Sundaravatanan

AS.No.801 of 2009

For Appellants

: Mr.G.Karthikeyan,
Senior Counsel
for Mrs.A.Jagadeeswari

For Respondents

For R1 & 2

: Mr.A.Sivaji

For R3 to 7

: Mrs.P.T.Ramadevi

AS.No.817 of 2009

For Appellants

: Mr.G.Karthikeyan,
Senior Counsel
for Mrs.A.Jagadeeswari

For Respondents

For R1

: died(steps taken)

R2 to 6

: dismissed vide court order
dated 19.08.2015

For R7 & 8

: No appearance



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COMMON JUDGMENT

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The appeal suits in AS.Nos.709 & 801 of 2009 have been filed against the judgment and decree passed in OS.No.42 of 2007 dated 29.02.2008 on the file of the I Additional District Court, Erode; the appeal suits in AS.Nos.714 & 817 of 2009 have been filed against the judgment and decree passed in OS.No.40 of 2007 dated 29.02.2008 on the file of the I Additional District Court, Erode; the appeal suit in AS.Nos.715 of 2009 has been filed against the judgment and decree passed in OS.No.46 of 2007 dated 29.02.2008 on the file of the I Additional District Court, Erode; and the appeal suit in AS.Nos.716 of 2009 has been filed against the judgment and decree passed in OS.No.44 of 2007 dated 29.02.2008 on the file of the I Additional District Court, Erode.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court. The plaintiffs in OS.Nos.40, 42, 44 & 46 filed their respective suits for recovery of money as against the respective defendants.



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OS.No.40 of 2007

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3. The case of the plaintiff is that the plaintiff and another agreed to purchase the suit property which belongs to the first defendant for a sum of Rs.20 lakhs per acre. Accordingly, they had paid a sum of Rs.1,00,000/- as advance and part of sale consideration on 28.05.1995 and entered into an agreement for sale. Both the parties agreed to perform their part of contract within a period of eighteen months from the date of execution of the agreement for sale. The plaintiff was put in possession of the suit property on the date of agreement for sale itself. When the plaintiff and another were ready and willing to perform their part of contract, the defendants evaded to perform their part of contract. Subsequent to the agreement for sale also, the first defendant received a sum of Rs.4,00,000/- and thereafter Rs.1,50,000/- towards second instalment of advance amount and part of sale consideration. Thereafter, the plaintiff came to know that there were several suits pending in respect of the suit property. Therefore, the plaintiff approached the defendants and even then, the defendants assured to execute sale deed. However, the defendants suppressed the civil suits pending before various courts in respect of the suit property and as such, there was no possibility for execution of sale deed in respect of the suit



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property. Hence, the plaintiff rescinded the contract and demanded to refund the advance amount with interest at the rate of 6% per annum till the date of realisation.

4. Resisting the same, the first defendant filed written statement denying the agreement to sell the property. The price quoted is only approximate. The first defendant was always ready and willing to perform his part of contract. The first defendant further stated that the first defendant sent suitably reply on 24.06.2006 for the notice dated 19.06.2006. Hence, the first defendant prayed for dismissal of the suit.

4.1 Defendants 2 to 6 filed written statement and stated that the first defendant is bound to repay the advance money and the defendants 3 to 6 filed another suit in OS.No.46 of 2007 for return of money. Hence, the suit is to be decreed as prayed for.

OS.No.46 of 2007

5. The case of the plaintiff is that the first defendant is the owner of



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the property. Agreement was entered between the parties to purchase the property for a sum of Rs.20 lakhs per acre. Both the parties agreed to perform their part of contract within a period of eighteen months from the date of execution of the agreement for sale. One, K.G.S.Arjun and the second defendant paid Rs.1,00,000/- as advance. They were always ready and willing to perform their part of contract, whereas the first defendant evaded for the same. Thereafter, they came to know that there were several suits pending in respect of the suit property. Therefore, the second defendant issued a notice dated 19.06.2006. Thereafter, the plaintiffs filed the suit for recovery of advance money together with interest at the rate of 6% per annum.

6. Resisting the same, the first defendant filed written statement stating that the first defendant was always ready and willing to perform his contract, whereas the vendees alone requested extention of time. The vendees never tendered balance sale consideration. The first defendant has sent suitable reply for the notice issued by the plaintiffs. Therefore, the plaintiffs are not entitled for interest as claimed in the suit.



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6.1 The second defendant filed written statement and stated that the second defendant also sent a rejoinder reiterating the things happened. The first defendant alone failed to perform his contract. Only because of the pendency of the cases, the first defendant was not able to perform his part of contract and postponed the execution of sale deed. The second defendant has filed yet another suit in OS.No.40 of 2007 for return of advance money. Hence, suitable decree may be passed in this regard.

OS.No.42 of 2007

7. The case of the plaintiff is that the plaintiff and another agreed to purchase the suit property which belongs to defendants 1 & 2 for a sum of Rs.20 lakhs per acre. Accordingly, the first defendant received Rs.12,75,000/- as advance and part of sale consideration. Both the parties agreed to perform their part of contract within a period of eighteen months from the date of execution of the agreement for sale. The plaintiff was put in possession of the suit property on the date of agreement for sale itself. When the plaintiff and another were ready and willing to perform their part of contract, the defendants evaded to perform their part of contract. Subsequent to the agreement for sale



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also, the first defendant received a sum of Rs.1,00,000/-. Thereafter, the plaintiff came to know that there were several suits pending in respect of the suit property. Therefore, the plaintiff approached the defendants and even then, the defendants assured to execute sale deed. However, the defendants suppressed the civil suits pending before various courts in respect of the suit property and as such, there was no possibility for execution of sale deed in respect of the suit property. Hence, the plaintiff rescinded the contract and demanded to refund the advance amount with interest at the rate of 6% per annum till the date of realisation.

8. Resisting the same, the first defendant filed written statement denying the agreement to sell the property. The price quoted is only approximate. The plaintiff only prepared the agreement and obtained signature of the first defendant. The first defendant was always ready and willing to perform his part of contract. But the plaintiff and the co-vendee could not complete the sale on or before 28.05.1998.



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8.1 The second defendant filed written statement and stated that the agreement entered during the minority of the second defendant will not bind him. The plaintiff can seek the relief only against the first defendant and not the second defendant.

8.2 Defendants 3 to 7 filed separate written statement stating that defendants 1 and 2 are bound to repay the advance amount. The defendants 3 to 7 filed OS.No.44 of 2007 for recovery of advance amount being legal heirs of one, K.G.S.Arjun. Therefore, suitable decree may be passed in the suit.

OS.No.44 of 2007

9. The case of the plaintiff is that defendants 1 & 2 agreed to sell the suit property to the third defendant and one, K.G.S.Arjun. On the date of agreement, the first defendant received Rs.12,75,000/-. Both the parties agreed to perform their part of contract within a period of eighteen months from the date of execution of the agreement for sale. When the third defendant and another were ready and willing to perform their part of contract, defendants 1 and 2 evaded to perform their part of contract. Subsequent to the agreement for



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sale also, the first defendant received a sum of Rs.1,00,000/-. After the demise of the said K.G.S.Arjun, the third defendant issued notice dated 19.06.2006 to defendants 1 and 2 to pay back the advance amount. As such, the defendants 1 and 2 are liable to return the advance amount with interest at 6% per annum.

10. Resisting the same, the second defendant filed written statement stating that the receipt of advance money is not known to the second defendant. The second defendant never received any amount and therefore, he is not liable to pay any amount to the plaintiff. As such, the suit is liable to be dismissed.

10.1 The third defendant filed written statement and stated that the third defendant came to know about the litigations in OS.Nos.52 of 1991, 182 of 1997 and 199 of 2005 in respect of the suit property and there was no possibility for the third respondent to get sale deed executed. Therefore, defendants 1 and 2 are bound to return the advance amount with interest. As such, a suitable decree may be passed.



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11. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

OS.No.42 of 2007

(i) Whether the plaintiffs are entitled for the relief of refund of advance amount paid by them to the defendant?

(ii) Whether the plaintiffs are entitled the interest at the rate of 6% on the suit amount from the dates payments till date of realisation?

(iii) Whether the second defendant is not liable to the refund the suit amount to the plaintiffs?

(iv) Whether the suit is barred by limitation?

(v) Whether there is any cause of action for the suit?

(vi) Whether the defendant is entitled for the damage alleged in his written statement?

(vii) To what relief?

OS.No.44 of 2007

(i) Whether the plaintiffs are entitled for the relief of refund of advance amount paid by them to the defendants 1 & 2?



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(ii) Whether the plaintiffs entitled the interest at the rate of 6% on the suit amount from the dates payments till date of realisation?

(iii) Whether the suit is barred by limitation?

(iv) Whether there is any cause of action for the suit?

(v) To what relief?

OS.No.40 of 2007

(i) Whether the plaintiffs are entitled for the relief of refund of advance amount paid by them to the defendant?

(ii) Whether the plaintiffs are entitled the interest at the rate of 6% on the suit amount from the dates payments till date of realisation?

(iii) Whether the suit is barred by limitation?

(iv) Whether there is any cause of action for the suit?

(v) Whether the defendant is entitled for the damage alleged in his written statement?

(vi) To what relief?

OS.No.46 of 2007

(i) Whether the plaintiffs are entitled for the relief of refund of advance amount paid by them to the first defendant?



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- (ii) Whether the plaintiffs entitled the interest at the rate of 6% on the suit amount from the date's payments till date of realisation?
- (iii) Whether the suit is barred by limitation?
- (iv) Whether there is any cause of action for the suit?
- (v) To what relief?

12. In respect of OS.Nos.40 & 46 of 2007, on the side of the plaintiffs, they had examined PW1 and PW2 and marked Ex.P1 to Ex.P13. On the side of the defendants, they had examined DW1 to DW3 and marked Ex.D1 to Ex.D16. In respect of OS.Nos.42 & 44 of 2007, on the side of the plaintiffs, they had examined PW1 and PW2 and marked Ex.P1 to Ex.P14. On the side of the defendants, they had examined DW1 to DW3 and marked Ex.D1 to Ex.D16. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed all the suits with interest at the rate of 6% per annum from the date of filing of the suit till the date of realisation. A charge also is created over the suit schedule property for proper payment of the decree amount. As against the said judgments and decrees, the defendants have filed the appeal suits in AS.Nos.709, 714, 715 & 716 of 2009. At the same time, the plaintiffs also filed



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the appeal suits in AS.Nos.801 & 817 of 2009 insofar as denial of interest from the date of agreement for sale.

13. The learned counsel for the defendants would submit that the suits are barred by limitation and as such, the question of refund of advance amount does not arise. Even after the period of contract, the plaintiffs did not take any steps to file suits for specific performance. They have waited till 2007 and filed the present suits. Mere issuance of notice cannot give any cause of action to file the present suits. The plaintiffs also failed to prove their readiness and willingness to perform their part of contract within the period of contract. Therefore, they are not entitled for refund of any advance amount since the suit itself is barred by limitation.

14. The learned counsel for the plaintiffs would submit that the defendants suppressed the fact that already suits were pending in respect of the suit property and with intention to cheat the plaintiffs, they had received the amounts in the name of agreement for sale. That apart, one of the agreement holder died due to accident and as such, the plaintiffs caused legal notice thereby rescinded the agreement for sale and demanded to refund the advance



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amount. On receipt of the same, the defendants caused reply notice. Therefore, the suits are very much maintainable since all the suits were filed in time.

15. On the strength of the submissions made on either side, the following points arise for consideration of these appeal suits:

1. *Whether the suits filed by the plaintiffs are barred by limitation?*
2. *Whether the plaintiffs are entitled for interest from the date of agreement for sale instead of 'from the filing of the suit'?*

16. The agreement for sale was entered between the parties in respect of the suit property. As per the terms and conditions, the period of contract was fixed as 18 months. On the date of agreement for sale, the defendants received amount as advance and part of sale consideration. When the plaintiffs approached the defendants to perform their part of contract, the defendants evaded registration of sale deed. Later, the plaintiffs came to know about the pendency of the suits in respect of the suit properties in OS.Nos.52 of 1991 & 182 of 1997 on the file of the Sub Court, Erode. The defendants assured that immediately after completion of suits, they would perform their part of contract.



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It is also categorically admitted by DW1 and revealed that there were disputes between the family members of the defendants. Therefore, while pending litigation, the limitation period cannot be calculated from the date of agreement for sale for subsequent part payment of advance amount. As such, there were several obstacles for getting the sale deed executed in favour of the plaintiffs. At last, the plaintiffs found that the sale deed could not be executed in their favour and as such, they caused notice thereby rescinded the agreement for sale and demanded to refund the advance amount and the suits were filed. Therefore, the limitation does not arise to rescue the defendants from refunding the advance amount which was admittedly received by them. Further, when the defendants categorically admitted the receipt of the advance amount and admittedly they failed to execute any sale deed in favour of the plaintiffs, they are liable to refund the same with interest from the date of receipt of the advance amount. Without considering the same, the trial court ordered interest only from the date of filing of the suit instead of 'from the date of receipt of the advance amount'. Therefore, the first point is answered against the defendants and the second point is answered in favour of the plaintiffs. Accordingly, the appeal suits in AS.Nos.709, 714, 715 & 716 of 2009 are dismissed.



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17. Insofar as appeal suits in AS.Nos.801 & 817 of 2009 are concerned, the same are allowed. Accordingly, the judgment and decree passed in OS.No.42 of 2007 dated 29.02.2008 on the file of the I Additional District Court, Erode is modified to the effect “that the plaintiff is entitled for the advance amount of Rs.6,87,500/- along with interest at the rate of 6% per annum from the date of agreement for sale i.e. 28.05.1995 till the date of realisation and a charge is created over the schedule property for proper payment of the decree amount”. The judgment and decree passed in OS.No.40 of 2007 dated 29.02.2008 on the file of the I Additional District Court, Erode is modified to the effect that “the plaintiff is entitled for advance amount of Rs.1,00,000/- along with interest at the rate of 6% per annum from the date of the agreement for sale i.e. 28.05.1995 and subsequent payment of Rs.4,00,000/- along with interest at the rate of 6% per annum from 20.11.1996 and another payment of Rs.1,50,000/- along with interest at the rate of 6% per annum from 07.08.1998, till realisation. A charge is created over the schedule property for proper payment of the decree amount”. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.



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11.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
lok

To

1.The Additional District Court(Fast Track Court-2) at Cuddalore
2.Section Officer,
V.R.Section,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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