



S.A.No. 1506 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

S.A.No. 1506 of 2011

A.Karuppaswamy

... Appellant/Appellant/Plaintiff

Vs.

1. O.A.Ramasamy

2. Sampath Kumar ... Respondents/Respondents/Defendants

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 28.02.2011 made in A.S.No. 49 of 2010 on the file of the Additional District Judge and Fast Track Court No.IV, Naïve, Coimbatore at Tiruppur and confirmed the Judgment and Decree dated 19.01.2010 made in O.S.No. 89 of 2006 on the file of the Principal Subordinate Judge, Tiruppur.

For Appellant : Mr. V.Anandhamoorthy

For Respondents : Mr. A.Kripakaran



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JUDGMENT

This Court did not admit the Second Appeal but ordered notice regarding admission. I am not willing to admit the appeal for the following reasons:-

1. This is a simple suit for recovery of money. According to the plaintiff, he entered into an agreement with the defendants on 15.04.1994. The agreement was for the purpose of sale of the suit schedule mentioned property. According to him, the defendants were postponing the sale of the property which constrained him to issue a notice on 03.04.2006. A reply was issued on 10.04.2006 denying the agreement. Since the amount was not paid, the plaintiff levied the suit for recovery of money of Rs.2,19,510/-, being the principal of Rs.90,000/- with interest at the rate of 12% from 15.04.1994 till the date of presentation of the plaint, namely, 13.04.2006.

2. Mr. V.Anandhamoorthy, learned counsel for the appellant would argue that the appropriate provision of limitation which will apply to the suit is under Article 62. According to him, an agreement of sale will



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amount to a charge on the property and therefore, the period of limitation is 12 years and before the expiry of 12 years, he had presented the plaint.

3. I am not in agreement with the learned counsel. A charge is created under Section 100 of the Transfer of Property Act either by an order of Court or by law. This is a mere agreement of sale. There is no creation of charge. No interest in the immovable property is transferred. It continues to be in the realm of contract. The period of limitation for recovery of advance amount is only for three years. By clever drafting, it cannot be brought under Article 62. The suit is being hopelessly barred by limitation. Hence, this Second Appeal is dismissed with costs throughout.

4. The Judgment and Decree of the Principal Sub Court, Tiruppur, in O.S.No. 89 of 2006 dated 19.01.2010 as confirmed by the Judgment and Decree of the learned Additional District Judge and Fast Track Court No.IV, Naive, Coimbatore, at Tiruppur, in A.S.No. 49 of 2010 dated 28.02.2011 are confirmed. The Second Appeal is dismissed with costs throughout.

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Index :Yes/No
Internet:Yes/No
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V. LAKSHMINARAYANAN, J.

vsg

To

1. Additional District Judge and Fast Track Court No.IV, Naïve,
Coimbatore, at Tiruppur
2. Principal Sub Court, Tiruppur.

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