



A.S. No. 552 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

A.S. No. 552 of 2019

&

C.M.P. Nos. 16643 & 16648 of 2019

D. Vargeeskumar

..Appellant

Vs.

1. V.P. Raja
2. K.P. Ranganathan
3. S. Chithra
4. N. Santhi

..Respondents

Prayer: First Appeal is filed against the judgment and decree dated 26.02.2019 passed in O.S. No. 57 of 2017 by the learned Additional District Judge, Dharmapuri.

For Appellant :: Ms.A. Pramila for
Mr.P. Nethaji



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For Respondents :: R1 to R3 notice served
Mr. I Abrar Md. Abdullah for R4

J U D G M E N T

The present appeal suit has been preferred as against the judgment and decree dated 26.02.2019 passed in O.S. No. 57 of 2017 on the file of learned Additional District Judge, Dharmapuri wherein the Trial Court dismissed the suit holding that the appellant had missed the opportunity to take steps for specific relief Act and seeking relief as per Article 54 of Limitation Act and as per the Limitation point, he had lost his advance amount as per the terms and conditions of the contract and that Article 62 of Limitation Act may not be applicable to the facts of the case.

2. The case of the appellant/plaintiff is that he had entered into a sale agreement on 27.10.2010 with one J. Raja, who was the power of attorney holder, on behalf of respondents'/defendants' father, in respect of the suit property for a total sale consideration of Rs.15 lakhs. Out of the said sum of Rs.15 lakhs, the appellant had paid Rs.12 lakhs on 27.10.2010 itself. The sale agreement stipulated that the sale deed shall be executed



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within a period of three months from the date of execution of the sale agreement. The period of three months stipulated in the sale agreement expired on 27.01.2011. Eventhough the appellant was ready and willing to execute the sale deed on 20.01.2011 and was also keeping the balance sale consideration of Rs.3 lakhs ready with him, according to the appellant, the power of attorney J. Raja never kept up his promise, which made the appellant to prefer a legal notice on 29.03.2012 to the respondents herein, calling upon them to execute the sale deed in favour of the appellant by complying with the sale agreement dated 27.10.2010 and also expressed his willingness and readiness to pay the balance sale consideration and also asked the respondents to fix a date for execution of the sale deed. Though the notice was acknowledged by the respondents in April, 2012, the respondents never complied and kept on delaying the execution of the sale deed. In the meanwhile, the power of attorney, J. Raja, also passed away on 07.07.2015. The plaintiff, who lost hope, approached the respondents and expressed his willingness to terminate the sale agreement and demanded them to repay the advance amount along with interest. Though the respondents sought time to settle the amount, the assurance was not kept up



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and the respondents did not repay the advance amount, instead, the appellant came to know that the respondents are trying to alienate the suit property and thereby, the appellant was forced to file the suit seeking the following reliefs:

“The plaintiff therefore prays for a judgment and decree against the defendants:

- a. for a sum of Rs.25,68,000/- [Rupees Twnety Five Lakhs Sixty Eight Thosuand only] together with interest at 18% per annum, from the date of Plaint till payment in full;*
- b. for the Cost of the Suit...”*

3. The respondents/defendants had denied the claim of the appellant/plaintiff as vexatious and also contended that there was delay in approaching the Court . They also contended that the sale agreement was not a true document and sought dismissal of the suit.

4. The Trial Court, at the threshold, on the preliminary issue, dismissed the suit with the following observations:

“11. vi) The plaintiff has not having any charge or lien



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over the suit mentioned property in the light of agreement for sale dated: 27.10.2010. The plaintiff has missed the opportunity to taking steps for specific relief Act and seeking relief as per article 54 of the Limitation Act. As per the Limitation point, he lost his advance amount as per the terms and conditions of the contract, viz., agreement dated 27.10.2010. The article 62 of the Limitation Act is not applicable to the present case. The plaintiff has filed a suit for recovery of advance amount with subject of agreement of sale dated 27.10.2010, only for 25.7.2017 and it was numbered on 23.8.2017, under Article 62 of Limitation Act. In the present case, article 62 is not applicable. This Court is not inclined to frame the issues, proceed for further steps for trial and dismiss the suit relating to the maintainability of law for limitation point.....”

Aggrieved by the dismissal of the suit, the present appeal has been preferred.

5. A reading of the plaint averments and the denial of the same in the written statement by the defendants/respondents would make it very clear that the appellant/plaintiff had filed the suit for refund of advance



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amount paid and not for specific performance. The limitation for filing a suit for specific performance, in terms of Article 54 is three years “from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that the performance is refused”. In the present case, as per the agreement of sale, three months time had been stipulated for the execution of the sale deed. The well accepted principle in case of agreement for sale, time is not the essence of contract. In this case, suit is laid for return of advance money paid. In the matters of claim for return of money by the vendor, the time runs from the date of notice, if notice is sent and Article 62 of Limitation Act would apply. Insofar as Article 62 of the Limitation Act, 1963 is concerned, the limitation period is 12 years for filing of suit to enforce payment of money secured by a mortgage or otherwise charged upon immovable property and the limitation begins when the money sued for becomes due. A reading of the judgment under challenge would make it very clear that there is no relief sought for specific performance and the appellant/plaintiff has sought only for refund of advance amount paid together with interest.



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6. Though it has been stated by the learned counsel for the respondents that there are contradictions in the plaint averments, especially, paragraph No.9 of the plaint wherein it is stated that the amount payable from November, 2011 to March 2017 together with interest, totally amounts to Rs.25,68,000/- whereas in the prayer portion, the appellant/plaintiff has sought decree for a sum of Rs.25,68,000/- together with interest at 18% per annum from the date of plaint till payment in full, we are not inclined to go into the merits of the case as the issue before this Court is with regard to the applicability of the provisions of Limitation Act, 1963. As discussed supra, in the present case, Article 62 of the Limitation Act, 1963 alone will be applicable as the appellant/plaintiff had filed the suit for refund of advance amount. The judgment and decree of the Additional District Court, Dharmapuri, in holding that Article 62 of the said Act may not be applicable is not correct.



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7. Hence, the judgment and decree dated 26.02.2019 passed in O.S. No. 57 of 2017 are set aside. The matter is remitted back to the Additional District Court, Dharmapuri and the Trial Court is expected to proceed with the matter without adjourning the matter beyond five working days at any point of time and render a decision as early as possible, preferably within a period of six months from the date of receipt of a copy of this order. The parties are at liberty to let in evidence. No costs. Connected C.M.Ps. are closed.

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(S.V.N.J.) (R.K.M.J.)
21.04.2023

To
The Additional District Court,
Dharmapuri.

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