



WEB COPY



S.A.No.34 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.34 of 2023

and

C.M.P.Nos.961 and 964 of 2023

N.Subramanian

....

Appellant

Vs

1. Bajina Begum

2. Majiba Begum

3. Ummal Jupriya

represented by power agent

Ali Akbar

4. Ayusha Begum

represented by power agent

Ali Akbar

V.Anbarasu (Died)

5. A.Kala

6. A.Viswa

....

Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 02.06.2022 passed in A.S.No.7 of 2019 on the file of the Principal District Judge, Tiruvarur by confirming the Judgment and Decree dated 24.01.2019



S.A.No.34 of 2023

passed in O.S.No.63 of 2010 on the file of the Subordinate Court, Mannargudi.

For Appellant : Mr.K.M.Subramanian
For Respondents : Mr.S.Senthil

JUDGMENT

This second appeal is directed as the Judgment and Decree dated 02.06.2022 passed in A.S.No.7 of 2019 on the file of the Principal District Judge, Tiruvarur by confirming the Judgment and Decree dated 24.01.2019 passed in O.S.No.63 of 2010 on the file of the Subordinate Court, Mannargudi, thereby dismissing the suit filed by the appellant for specific performance.

2. The appellant is the plaintiff and the respondents are the defendants in the suit filed for specific performance. The case of the appellant is that the appellant and his father were cultivating the suit properties as leaseholder and paid the paddy as lease as per their oral agreement of lease. Their relationship was cordial, when the father of the respondents was alive. After their father's demise, the appellant was in possession and enjoyment of the suit property. Therefore, the respondents had decided to sell the lease properties to the appellant and



S.A.No.34 of 2023

executed sale agreement on 08.05.2006 on receipt of a sum of Rs.1,02,000/- as advance. As per the sale agreement, Rs.120/- per kuzhi for total extent of 64 maa land, total sale consideration was fixed at Rs.8,88,000/-. Both parties were to execute the sale deed, after receipt of the balance sale consideration. However, though the appellant is always ready and willing to register the sale deed and prepared to pay the entire balance sale consideration, the respondents were not coming forward to receive the balance sale consideration and failed to execute the sale deed. Hence the suit.

3. Resisting the suit, the respondents filed their written statement denying the very execution of sale agreement. Even assuming that the agreement for sale was true and as per the agreement, the period was specifically fixed as one year for payment of balance sale consideration. The limitation ended on 31.01.2007 and as such, the suit itself is barred by limitation. The appellant never showed any interest to pay the balance sale consideration before the limitation of one year. The appellant had issued legal notice only on 27.03.2010. Therefore, the agreement for sale itself is barred by limitation.



S.A.No.34 of 2023

4. On the side of the appellant, they had examined P.Ws.1 and 2 and marked Exs.P1 to P9. On the side of the respondent, they had examined D.Ws.1 to 4 and marked Exs.D1 to D12.

5. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the prayer of specific performance and allowed the suit in respect of alternative prayer viz., to refund the advance amount with interest. Aggrieved by the same, both the appellant and the respondents filed separate appeal suit and both the appeals were dismissed. Aggrieved by the same, the present second appeal.

6. The learned counsel for the appellant has raised the following substantial questions of law:

- a) Whether the delay can be construed on the part of the appellant/plaintiff since the respondents 1 to 4 used to stay in foreign country for most of the time without coming forward to execute the sale deed in favour of the appellant/plaintiff and whether the suit has been affected by period of limitation ?
- b) Whether the sale agreement and



S.A.No.34 of 2023

advance amounts paid by the appellant/plaintiff and admitted in the Exhibit A-8 (reply notice of the respondents 1 to 4 and the belated oral false evidence can be believed as per the Evidence Act ?

c) Whether the suit can be rejected since the respondents 1 to 4, the executors of the sale agreement in favour of the appellant/plaintiff, has been proved that they were not at all present even for the court proceedings in the trial court and that they have appointed their power agents to act on their behalf in the suit since they are in foreign countries and that the alleged fraudulent sale deeds (exhibits B1 and B2) has been executed in favour of respondents/defendants 5 and 6 through the power agents alone.

d) Whether the suit properties sold out to the respondents/defendants 5 and 6 through fraudulent sale deeds by the respondents/defendants 1 to 4 through power agents without having any recovery or possession from the appellant/plaintiff and whether the fraudulent sale deeds can be construed as a valid sale under the Transfer of Property Act ?

e) Whether the Courts below can



WEB COPY



S.A.No.34 of 2023

construed that the evidence of the D.Ws.1 to 3 and the documents of Exhibit B1 and B2 and Exhibit A1 and A8 are genuine and trustworthy to defeat the lawful claim of the appellant/plaintiff in the suit, both readiness and willingness and the limitation point under the Specific Performance Act and the Limitation Act under Article 54 ?

7 . Heard, Mr.K.M.Subramanian the learned counsel appearing for the appellant and Mr.S.Senthil, learned counsel appearing for the respondents and perused the materials available on record.

8. The learned counsel appearing for the appellant would submit that the appellant is in possession and enjoyment of the suit property and as such, there is no question of the period of limitation. Further, the appellant has right to purchase the property since he has tenancy right over the suit property as he is cultivating the same. Even before execution of agreement for sale on 08.05.2006, the suit properties were leased out in favour of the appellant and cultivable tenancy arrangement was also entered into between them. The respondents received an advance on the execution of the agreement for sale dated 08.05.2006 for a sum of Rs.1,02,000/- and a sum of Rs.1,30,000/- on



S.A.No.34 of 2023

26.01.2007. Thereafter, a sum of Rs.2,00,000/- was received on

16.06.2008. Therefore, the appellant paid a sum of Rs.4,32,000/- out of total sale consideration of Rs.8,88,000/-.

9. A perusal of the records reveals that the alleged agreement for sale was entered into between the parties on 08.05.2006, which was marked as Ex.A1. After Ex.A1, the total sale consideration was fixed for a sum of Rs.8,88,000/- in which on the date of agreement for sale a sum of Rs.1,02,000/- as advance and subsequently part of the sale consideration was received by the respondents. The time fixed as per the agreement for sale is till 31.01.2007. It further reveals that on the date of agreement for sale, the respondent received a sum of Rs.1,02,000/- as advance and the balance sale consideration of Rs.7,88,000/- has to be paid on or before 31.01.2007. Therefore, the limitation starts from 31.01.2007. As per Article 54 of the Limitation Act, it has to be seen that whether the appellant had proved his readiness and willingness to perform his part of the contract. The appellant failed to adduce any evidence in order to prove his readiness and willingness.

10. The appellant has also categorically admitted that he



S.A.No.34 of 2023

informed the respondents only after three years and two months about the execution of sale deed. That apart, the appellant had issued legal notice only on 27.03.2010, which was marked as Ex.A6. There was no document to show that in the intervening period, he had taken any steps for execution of sale deed as per the recital of the agreement for sale. Therefore, there is no evidence to prove the readiness and willingness of the appellant to perform his part of the contract. Hence, the suit itself is barred by limitation and hit by Article 54 of the Limitation Act. Though the suit was hit by Article 54 of Limitation Act, the appellant is not precluded by seeking the relief of refund of advance amount. Since for a consequential prayer, Article 64 would apply and as such, the appellant can very well maintain suit for alternative prayer.

11. As such the Courts below have analyzed the evidences, both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly dismissed the suit for specific performance and partly allowed the suit for repayment of advance amount.. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

12. In view of above, this Second Appeal is dismissed and



S.A.No.34 of 2023

the the Judgment and Decree dated 02.06.2022 passed in A.S.No.7 of 2019 on the file of the Principal District Judge, Tiruvarur, confirming the Judgment and Decree dated 24.01.2019 passed in O.S.No.63 of 2010 on the file of the Subordinate Court, Mannargudi, is confirmed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

23.01.2023

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

Lpp

To

1.The Principal District Judge, Tiruvarur

2. The Subordinate Judge, Mannargudi.



WEB COPY



S.A.No.34 of 2023

G.K.ILANTHIRAIYAN, J.

Lpp

S.A.No.34 of 2023

and

C.M.P.Nos.961 and 964 of 2023

23.01.2023