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S.A.(MD)No.485 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A.(MD)No.485 of 2023

N.Balasubramanian

... Appellant / Plaintiff

Vs.

1.Sekar

2.Ganesh Kumar

3.Rayar M.Gunasekaran

4.Rayar N.Ramadurai

5.P.Krishnan

... Respondents / Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 10.07.2023 made in A.S.No.15 of 2021 on the file of the III Additional District Judge, Tiruchirappalli, confirming order dated 19.11.2020 made in OSSR.No.533 of 2020 on the file of the Principal Subordinate Judge, Tiruchirappalli.

For Appellant : Mr.K.Prabhakar



JUDGMENT

This Second Appeal is filed against the judgment and decree dated 10.07.2023 made in A.S.No.15 of 2021 on the file of the Additional District Judge, Tiruchirappalli, confirming the order dated 19.11.2020 passed in OSSR.No.533 of 2020 on the file of the Principal Subordinate Judge, Tiruchirappalli.

2. The brief facts of the case:

The appellant is the plaintiff in OSSR.No.533 of 2020 on the file of the Principal Subordinate Court, Tiruchirappalli. The plaintiff filed the suit for declaration and specific performance against the defendants by averring that the suit property belongs to one Rengaraj @ Singaram Muthuraja and his son the first defendant. The plaintiff and the said Rengaraj @ Singaram Muthuraja and the first defendant entered into sale agreement on 24.03.2005 for a sale consideration of Rs.3,32,530/- and he paid the total sale consideration on the same day. It is further averred that the time for registration of sale deed was fixed as three months. Later, the plaintiff came to know that they entered settlement deed in favour of the second defendant on 13.04.2016 and thereafter the defendants 1 and 2 executed the sale deed dated 13.12.2018 in favour of the defendants 3 and 4, who in turn entered sale agreement with 5th



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defendant. The plaint was filed on 30.09.2020 before the Trial Court/Principal Subordinate Court, Tiruchirappalli. The Trial Court after considering the plaint averments and on the point of limitation rejected the plaint at numbering stage. Aggrieved by the judgment and decree of the Trial Court, the plaintiff filed Civil appeal in A.S.No.15 of 2021 before the First Appellate Court / III Additional District Court, Tiruchirappalli. The First Appellate Court, after considering material records and after hearing both side arguments dismissed the appeal and confirmed the order of the Trial Court. Against the judgment and decree of the Courts below, the plaintiff filed this Second Appeal and the same is posted for admission.

3. Heard the learned counsel for the appellant and perused the records.

4. The learned counsel for the appellant/plaintiff has argued that the plaint cannot be rejected at the stage of numbering on the ground that the plaint is barred by limitation. It is to be decided only after adducing evidences. The question of limitation is a mixed question of fact and law. The plaintiff filed the suit for declaration and specific performance as the cause of action is from the date of knowledge. The Courts below failed to



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consider the vital aspects. The Courts below failed to consider that the reckoning of limitation for the relief of specific performance and relief of recovery of advance would run differently. The Courts below could not reject the plaint as the ground of limitation is not contemplated under Order 7 Rule 11 of the Civil Procedure Code and for refund of money as per Article 62 of the Limitation Act alone has to be applied and the period of limitation is 12 years as per the unreported judgment of this Court passed in C.M.A(MD)No.396 of 2021 dated 08.03.2021. Therefore, the plaintiff has fair chance in this second appeal by raising question of law. Therefore, the Second Appeal may be admitted to file.

5. On hearing the learned counsel for the appellant/plaintiff and on perusal of records, it is clear that the plaintiff himself has admitted that he entered sale agreement with the deceased Rengaraj @ Singaram Muthuraja and his son first defendant on 24.03.2005. The time for contract was fixed three months. It is specifically averred by the plaintiff that he paid the entire sale consideration of Rs.3,32,530/- on the date of sale agreement. On perusal of records, the sale agreement is dated 24.03.2005, time for performance of contract is fixed as three months. So, the period of limitation of three years would be started from 24.06.2005. But, the suit for specific performance, which is major relief,



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filed on 30.09.2020. No prudent man would wait for registering sale in respect of an immovable property after paying the entire sale consideration. The plaintiff has not averred proper explanation for not taking steps within the stipulated period. The suit for recovery of advance amount, the suit has to be filed within a period of 12 years from 24.06.2005 i.e., within 24.06.2017. But, he slept more than 15 years and filed the suit on 30.09.2020. So this suit for refund of money also hopelessly barred by limitation. The law will help the litigants, who are vigilant in their litigation. The law will not help the litigant, who slept over years together and awake up one morning and approach the Court for relief that too expecting the Court to grant relief in his favour. The plaintiff's side argument, that the Trial Court has to number the plaint and the Trial Court could not raise the ground of limitation at the time of numbering the plaint, is not acceptable. The litigants will not expect the courts to do favour as per their whims and fancies. It is the duty of the Court to see whether there is non-disclosure of the cause of action or the plaint is barred under any law. As per the Order VII Rule 11(d) of the Civil Procedure Code, the Trial Court is empowered to reject a plaint if the suit is barred by Limitation. In such circumstances, the plaintiff has no valid ground to file the Second Appeal. Considering the facts, there is *prima facie* no question of law arisen in this Second Appeal in favour of



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the appellant/plaintiff. Therefore, considering the above facts and circumstances, this Court is of the opinion that this Second Appeal is liable to be dismissed in the admission itself.

6.In the result, as there is no substantial question of law involved in this appeal, this Second Appeal is dismissed at the admission stage itself. No costs.

26.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The III Additional District Judge,
Tiruchirappalli.
- 2.The Principal Subordinate Judge,
Tiruchirappalli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

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ORDER MADE IN
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