



A.S.No.11 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
10.07.2024	27.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.11 of 2010

and

Cros.Obj.No.23 of 2024 & M.P.No.1 of 2010

A.S.No.11 of 2010:

1.T.Jayalakshmi

2.T.Sivakami

... Appellants/Plaintiffs

-Vs-

1.S.A.Khaja Mohideen

2.Minor A.K.Kadareek Anwar

(Minor R2 represented by his guardian and father
S.A.Khaja Mohideen)

3.P.Nagaraj

... Respondents/Defendants

Appeal suit filed under Section 96 read with Order 41 of the Civil Procedure Code, 1908, as against the judgment and decree dated 30.07.2009 made in O.S.No.85 of 2007, on the file of the learned Additional District



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Judge, Fast Track Court No.1, Erode.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.T.M.Hariharan for R1 & R2
: No appearance for R3

Cros.Obj.No.23 of 2024:

1.S.A.Khaja Mohideen

2.Minor A.K.Kadareek Anwar .. Cross Objectors/Respondents 1&2

(Minor Cross Objector.2 represented by his guardian and father
S.A.Khaja Mohideen)

Vs.

1.T.T.Jayalakshmi

2.T.Sivakami

3.P.Nagaraj .. Respondents in Cr. Objn/Appellants
& 3rd Respondent

Cross objection filed under Order XLI Rule 22 of the Civil
Procedure Code, against the grant of alternative relief in Judgment and Decree
dated 30.07.2009 in O.S.No.85 of 2007 on the file of the learned Additional
District Judge (Fast Track Court No.I),Erode and to dismiss the said suit in



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toto.

For Cross Objectors : Mr.T.M.Hariharan

For Respondents : Mr.N.Manokaran for R1 & R2
: No appearance for R3

COMMON J U D G M E N T

The plaintiffs in the suit, having not satisfied with the grant of alternate relief viz., the return of advance amount instead of specific performance, have preferred this appeal, seeking the main relief of specific performance. The first defendant filed cross objection with regard to the allowed portion, namely, refund of the advance money along with interest.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3(a). The petitioners/appellants filed a suit for specific performance based upon the suit sale agreement-Ex.A1 dated 03.05.1995. According to the plaintiffs, the first defendant is the father and the second defendant is the



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minor son and the third defendant is the tenant in the suit property.

3(b). A large extent of land measuring 14875 sq.ft. In the survey number T.S.No.77/3 and resurvey number T.S.No.11, the first defendant agreed to sell the undivided extent of 3100 sq.ft and has received Rs.1,00,000/- as an advance. In respect of the said extent of 3100 sq.ft, Rs.320/- was fixed per sq.ft, in toto Rs.9,92,000/- as sale consideration and Rs.1,00,000/- as advance. On 13.02.1996 a sum of Rs.20,000/- was paid by the plaintiffs and due endorsement is made on the reverse of the agreement, ie., Ex.A2. On 25.01.1997, another sum of Rs.10,000/- was paid by the plaintiffs and due endorsement is made under Ex.A3. (Ex.A3 endorsement for payment of Rs.10,000/- on 25.01.1997 is disputed).

4(a). After issuing Ex.A4-legal notice on 21.03.2007, the defendants sent reply on 14.04.2007 which is marked as Ex.A6. The defendants 1 & 2 filed joint written statement *inter alia* contented that the 1st defendant for himself and on behalf of the minor 2nd defendant offered common 3100 sq.ft



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vacant site and titled house thereon to sell to the plaintiffs on 02.05.1995 for his family necessity. The plaintiffs were also agreed to purchase the same for Rs.320/- per sq.ft and executed as unregistered agreement of sale on 03.05.1995 itself and also admitted that the 1st defendant received a sum of Rs.1,00,000/- towards advance on the day.

4(b). In the written statement, the defendants, *inter alia* contended that the plaintiffs agreed to perform their part of the agreement within three months from the date of the agreement. The said agreed recital also incorporated in the agreement. But the plaintiffs were not ready and willing to perform their part of the agreement. The plaintiffs ought to have performed their part of the agreement on or before 03.08.1995. Since the plaintiffs had not performed their part of the agreement within the stipulated agreed time, the sale agreement was cancelled as per the recital of the said sale agreement. Further the suit filed by the plaintiffs in the year 2007 is time barred as per the Limitation Act.



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4(c). Further, raised the pleas that the third defendant is neither the tenant to the suit property nor the tenant of the 1st defendant. The third defendant is totally stranger so far as the suit property is concerned. The 1st defendant also intimated in the 2nd week of July 1995 to the plaintiffs that the tenants in the common property were also vacated and there was no tenant in the property enjoyed by the 1st defendant as his convenience sake.

5(a). More so, in the written statement, it is specifically denied the second endorsement in the suit sale agreement namely Ex.A3 for a sum of Rs.10,000/-.

5(b). The third defendant filed separate written statement that the third defendant is a tenant in the property prior to that of 03.05.1995. He is a car mechanic and is doing his mechanical work in the suit property for all these years and he was paying a monthly rental of Rs.1000/- to the 1st defendant regularly. There were no arrears of rent as on date. The defendants 1 and 2



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never asked this defendant to vacate the premises till date. He had received the summons of this Court in the above suit and appeared through his counsel in the suit. A sale agreement had been executed by the defendants 1 & 2 and the plaintiffs and the same is pending for performance of contract for all these years. By using this defendant as a thumb card. The defendants 1 and 2 evaded to perform their part of the contract. He is a tenant for these years in the suit property and paying rent regularly. Hence, he should not evict by force under the guise of the sale agreement.

6. The trial Court has formulated necessary issues and the first plaintiff has examined himself as PW1 and marked Ex.A1 to Ex.A6. The 1st defendant was examined as DW1 and marked Ex.B1 to Ex.B10 and DW2 marked Ex.B11 & Ex.B12 and DW3 was also examined.

7. On consideration of both oral and documentary evidence, the trial Court has come to a conclusion that there is an inordinate delay in approaching the Court for seeking the specific performance and hence the trial



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Court has rejected the money relief of specific performance, however, granted the alternate relief of refund of the amount along with 18% interest and future interest at the rate of 6%.

8. Aggrieved over the disallowing portion, the plaintiffs have preferred this appeal. After service of summons, the first defendant has filed the cross objection. In M.P.No.1 of 2010 by an order dated 21.01.2010 this Court has granted the interim injunction. In the cross objection filed by the 1st defendant, it is specifically stated that Ex.A3 endorsement dated 25.01.1997 is disputed. In the Cross Appeal, the 1st defendant have raised the following plea viz; the trial Court has committed error in relying upon the Ex.B11 and Ex.B12 to come to the conclusion that the third defendant is the tenant and contended for the grant of alternate relief of refund of advance amount is to be set aside.

9. At the outset, the suit sale agreement Ex.A1 is dated 03.05.1995. As per the Court records, the plaint was filed on 16.05.2007. Ex.A2 endorsement for receipt of Rs.20,000/- is admitted by the defendants. Ex.A3-endorsement



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for receipt of Rs.10,000/- on 25.01.1997 is disputed by the defendant.

10. The learned counsel for the appellants Mr.N.Manokaran could state that since there is a specific recital in the Ex.A1-agreement that the landlord has to vacate the tenants, the plaintiffs are waited for the same and hence the delay. Further he would contend that within a reasonable time the plaintiffs have laid the suit.

11. Per contra, learned counsel for the respondents 1&2 and cross objector Mr.T.M.Hariharan could contend that the decree passed by the trial Court for the money recovery is a time barred one and the suit ought to have been filed within a period of three years and hence cross objection has to be allowed and suit has to be dismissed in entirety.

12. Per contra, by way of reply Mr.N.Manohar, learned counsel for the appellants could state that once the defendants have admitted Ex.A1 and Ex.A2 and receipt of Rs.1,10,000/-, a charge is created over the immovable



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property and to the period of limitation, for recovery money due on immovable property, the period is 12 years and hence, the decree granted by the trial Court for refund of the advance amount along with interest is justified as the suit is well within time.

13. After hearing the rival submissions, the following points for consideration arises in this appeal:

1. Whether the plaintiffs are ready and willing to perform their part of contract under the suit sale agreement-Ex.A1?
2. Whether Ex.A3-endorsement of further payment is true and genuine?
3. Whether the plaintiffs are entitled for the relief of specific performance of Ex.A1-suit sale agreement?
4. Whether the plaintiffs are entitled for return of advance amount along with 13% interest?
5. Whether the order passed by the trial Court is sustainable in law?
6. Whether the cross objection is to be allowed?



14. After hearing the rival submissions, it is relevant to rely on the decision reported in **2013 (6) CTC 28 (K.Shanmugam and another v. C.Samappan and others)** wherein in paragraph Nos.21, 22 & 23, it is held as under:

“21. In *Videocon Properties Ltd., Vs. Dr.Bhalchandra Laboratories and others* reported in (2004) 3 Supreme Court Cases 711, cited first above, it was held that the buyer under an agreement for sale of an immovable property was entitled to a charge on the property as against the seller to the extent of the seller's interest in the property for the amount of any purchase money paid and for the interest on such amount and that as per *Section 55 (6)(b)* of the Transfer of Property Act, 1882, the buyer under the agreement for sale was entitled to a charge even against the third party purchaser.

22. In *Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd., and others* reported in 2000(I) CTC 507, cited second above, the Hon'ble Supreme Court held that the charge of the purchaser under *Section 55 (6)(b)* of the Transfer of Property Act, 1882 would continue to run even after the conversion of the property into some other property. In addition, in the said case, the Hon'ble Supreme Court held that the period of limitation for enforcement of refund of purchase money paid on the sale agreement with regard to



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the immovable property plus interest thereon shall be 12 years from the date when the money becomes due.

23.Suffice to state that now it is a settled position of law that limitation for refund of advance money with interest under an agreement for sale of immovable property is governed by Article 62 of the Limitation Act as the buyer has got a statutory charge over the property to the extent of interest of the seller and that hence the period of limitation shall be 12 years from the date on which the right to sue for the refund of advance amount accrues.” (emphasis supplied)

15. Thus, I find that on the facts and circumstances of the case in view of the admitted portion of receipt of the advance amount from the purchaser, a charge was created as per Section 55(6) of the Transfer of Property Act and the suit will fall under Article 62 of the Limitation Act and consequently in respect of the sale agreement with regard to the immovable property along with the interest, the period of limitation for filing suit will be 12 years from the date when the money become due.

16. Keeping the above law in mind let us consider the factual situation.



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17(a). Ex.A1-suit sale agreement is dated 03.10.1985 based on which the suit was filed on 16.05.2007. On perusal of the agreement, the terms of the agreement, conditions of the agreement and the amount paid thereon are not in dispute. There is two endorsement in the said agreement that are marked as Ex.A2 and Ex.A3. Though the 1st defendant had chosen to deny the Ex.A3, he has not let in any positive evidence to substantiate his plea and therefore, the trial Court has rightly come to the conclusion that in the absence of any positive evidence, Ex.A3 is valid and binding upon the defendants 1&2.

17(b). The terms of the contract as could be seen from Ex.A1 is that within a period of three months the landlord namely, the first defendant has to vacate the tenant and give the vacant possession and amount of Rs.320/- per sq.ft was fixed and the extent of land is agreed and there is no dispute on the said terms.

17(c). The defendants filed Ex.B1 to Ex.B10. Ex.B3 is the plaint in



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O.S.No.128 of 1998 in the Sub Court, Erode. So also Ex.B5 is the written statement of the defendants in O.S.No.144 of 2004. The judgment copy of the I-Additional District Munsif cum Magistrate Court at Erode is Ex.B6. In O.S.No.744 of 2004 decree copy is Ex.B7 besides Ex.B8 & Ex.B9 were the certified copies of the plaint in O.S.No.402 of 1997 District Munsif Court, Erode and the written statements filed by them in the suit is marked as Ex.B9. Order copy of the said suit in O.S.No.402 of 1997 is marked as Ex.B10.

17(d). During the cross-examination of PW1, it is elucidated that the plaintiffs 1&2 in the said suit in O.S.No.402 of 1997 are none other than the husband of the first plaintiff and the husband of the second plaintiff herein. In other words, the husband of the plaintiffs herein are the plaintiffs 1&2 in the above suit in O.S.No.744 of 2004 which they are filed against the very same defendant and his son for an injunction against the eviction.

17(e). In other words, after the dismissal of the suit filed by the respective husbands of the plaintiffs herein as against the very defendant, now



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respective wives of the respective plaintiffs in the above suit in O.S.No.744 of 2004 have filed this case for specific performance, assumes significance.

17(f). Thus the trial Court has rightly come to the conclusion that though the agreement is for a period of three months and suit agreement is dated 03.05.1995, suit was filed only on 16.05.2007 and there is no positive evidence on the side of the plaintiffs as to why there is a huge delay of nearly 12 years even calculating from Ex.A3, it is 10 years and therefore the learned District Judge has rightly come to the conclusion that the plaintiffs have not moved the suit within a reasonable time and negated the relief of specific performance which is equity in nature.

18(a). Yet another point is that between 03.05.1995 the date of Ex.A1-suit sale agreement and Ex.A4-legal notice which is sent on 21.03.2007 after 12 long years, the plaintiffs have not shown any interest to perform their part of the contract and not even exercised the issuance of legal notice assumes significance. Hence, both the plaintiffs have miserably failed to show that they



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are ready with money to show the readiness.

18(b). Besides absolutely there is no document to show that they are ready with the balance of sale consideration. Instead, it appears from the defendants' document Ex.B3 to Ex.B10 that they are prosecuting through the respective husbands in different suits against the defendant resisting them from eviction and hence, they have not shown any iota of evidence for willingness to complete the sale transaction.

18(c). Hence, this Court finds that both the plaintiffs neither being demonstrated their readiness and willingness to perform their part of the contract before the trial Court, rather I can find that they would be focused against the movement of eviction of tenant as could be seen from Ex.B3 to Ex.B9.

18(d). Hence, I have no hesitation to come to the conclusion that the plaintiffs are not ready and willing to perform their part of the contract and



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statutory requirement under Section 16(c) of the Specific Relief Act has not comply with and therefore rejection of the main relief for the specific performance by the trial Court is well founded and well merited and it does not require any interference. Accordingly, the finding of the trial Court is hereby confirmed. I find there is no reason to interfere with the said finding. Accordingly, the above points for considerations are answered against the appellants/plaintiffs. Hence, the appeal suit is devoid of merits and liable to be dismissed.

Cross objection No.23 of 2024:

19. The first defendant filed cross objection challenging the award of alternate relief of grant of Rs.2,24,444.38/- and refund of the advance amount of Rs.1,30,000/- along with the 6% interest from the date of filing till the decree.

20. Heard Mr.T.M.Hariharan, learned counsel for the cross objector and Mr.N.Manokaran, learned counsel for R1 & R2.



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21. The law of limitation on the point of recovery of advance amount paid in the agreement of sale for immovable property as discussed supra in 12 years, the suit has been filed from the admitted amount is in time. Next point urged by the learned counsel is taken into consideration that whether the plaintiff is entitled for 13% interest from the date of the advance till the date of the filing of the suit.

22(a). After perusal of Ex.A1, there is no interest clause. In the absence of any interest clause being incorporated under Ex.A1, the trial Court has committed a gross error in granting 13% interest on the advance amount and hence, in view of the discussion in the preceding paragraphs regarding the payment of Rs.1,00,000/- + Rs.10,000/- + Rs.10,000/- the amount under the agreement comes to Rs.1,20,000/- from the date of agreement till the date of filing of the suit, they are entitled for 9% interest. Pending suit, they are entitled for 6% interest and future interest, they are entitled for 6% interest. When the plaintiffs have not come forward to complete the transaction the



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1st defendant ought to have issued termination of the agreement notice. Having failed to do so, he has to pay the interest thereon.

22(b). Accordingly, in respect of the decree granted by the trial Court by way of alternate relief, it is hereby modified that on the principal amount of Rs.1,20,000/- from the date of agreement, namely 03.05.1995, to the date of filing of suit namely, 16.05.2007, the plaintiffs are entitled for 9% interest and pending suit from 16.05.2007 till the date of the dismissal of appeal, the plaintiffs are entitled for 6% interest and further, after the decree namely, from the date of decree till realisation, the plaintiffs are entitled for 9% interest of Rs.1,20,000/- only.

23. In the result,

1. The cross objection filed by the first defendant stands partly allowed to the extent indicated above.
2. The decree granted by the trial Court stands modified accordingly.



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3. The Appeal Suit stands dismissed.

4. There shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

27.12.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

PJL

To

1. The Additional District Judge,
Fast Track Court No.1,
Erode.

2.The Section Officer, VR Section,
Madras High Court, Chennai.



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RMT.TEEKAA RAMAN, J.

PJL

PRE-DELIVERY JUDGMENT
IN
A.S.No.11 of 2010

27.12.2024