



SA No. 1005 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-11-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

SA No. 1005 of 2012

1. V.Dhanapal

Appellant(s)

Vs

1. Tmt.Rajaathi

2.K.Balasubramaniam

Respondent(s)

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 30.06.2011 passed in A.S.No.51 of 2009 on the file of the Principal District Judge, Coimbatore, reversing the judgment and decree dated 10.09.2007 in O.S.No.529 of 2005 on the file of the I Additional Sub Judge, Coimbatore and decree the suit in O.S.No.529/2005.

For Appellant(s): Mr T. Murugamanickam
Senior Counsel For



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Mr B.Gopalakrishnan

For Respondent(s): Mr S. Mukund, Senior Counsel
For M/S.SARVABHAUMAN
ASSOCIATES FOR RR1 AND 2

JUDGMENT

The plaintiff in the suit is the appellant herein. The suit has been filed for seeking relief of specific performance.

2. The trial Court had decreed the suit as against which a first appeal was preferred by the defendants. The first appellate Court has allowed the appeal and set aside the judgment of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has preferred this second appeal.

SHORT CASE PLEADED IN THE PLAINT:

2.1. The suit property belongs to one Kandasamy. He initially agreed to sell the suit property to the plaintiff for a total consideration of Rs.4,44,000/-



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and a sale agreement has been entered on 09.07.1997 and on the date of the sale agreement a sum of Rs.1,00,000/- was received as advance and the sale deed was agreed to be executed within a period of one year. Thereafter, the plaintiff has also made part payments on 19.03.1998 and 25.03.1998 towards the part sale consideration. The plaintiff has issued a legal notice on 01.07.2005 to one Kandasamy and that has been received. As no reply has been sent and the defendants did not come forward to execute the sale deed, the plaintiff has filed the suit for specific performance.

WRITTEN STATEMENT IN BRIEF:

2.2. The written statement has been filed by the second defendant adopted by the first defendant. The sale agreement is admitted by the defendants. It is also admitted that the plaintiff has made payments of Rs.1,00,000/- on 09.07.1997 and Rs.25,000/- on 19.03.1998 and Rs.50,000/- on 25.03.1998 totally Rs.1,75,000/- as an advance amount. But it is false to say that one year period has been extended for performing the contract subsequently. In



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fact, the second defendant's father had extended the time limit for six months after receiving a sum of Rs.50,000/- on 25.09.1998. Even thereafter, the plaintiff has not come forward to complete the sale transaction. The plaintiff did not have whereabouts to pay the balance sale consideration and the suit is also barred by limitation. Hence, the suit has to be dismissed.

TRIAL COURT:

3. On the basis of the above pleadings, the trial Court had framed the following issues:

1. வாதி தாவாவில் கோரியவாறு ஏற்றதை ஆற்றுக பரிகாரம் பெற அருகரா?
2. காலாவதி தோஷத்தால் தாவா தள்ளுபடி ஆகத் தக்கதா?
3. வாதிக்கு கிட்டும் பரிகாரம் யாது?

4. During the course of the trial, on the side of the plaintiff, one witness *viz.*, Dhanapal was examined as P.W.1 and Exs.A1 to A3 were marked and on the side of the defendants, one witness *viz.*, Balasubramaniam was examined as D.W.1 and Ex.D1 was marked.



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5. On considering the evidence on record, the trial Court had decreed the suit.

LOWER APPELLATE COURT:

6. The first appeal has been preferred by the defendants challenging the judgment of the trial Court which was allowed by set asiding the judgment of the trial Court and by dismissing the suit, aggrieved by which, the plaintiff has preferred this appeal by raising the following substantial questions of law:

“(i) Whether the learned District Judge had travelled beyond the pleadings by way of written statement and proof by way of D.W.1 to dismiss the suit ?

(ii) Whether the learned District Judge had committed a grave error in disbelieving the case of the plaintiff that, the defendants had received a part of sale consideration on 09.02.2004 and hence the suit was filed in time, when the defendant himself had categorically



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admitted in his cross examination (DW1) to the effect that, he had

received a sum of Rs.10,000/- on 09.02.2004 from the plaintiff?”

7. The learned counsel for the appellant would submit that even though the defendants has admitted the payment of the advance amount, the first appellate court has chosen to allow the appeal by setting aside the judgment of the trial Court on the finding that the suit is barred by limitation. The first appellate Court arrived at a wrong conclusion even though the endorsement for extension of time has been proved before the trial Court. There is no extension for six years. Since the endorsement was true, the appeal ought to have been dismissed or at least partly allowed by modifying the decree in respect of refund of the advance amount.

8. The learned counsel for the respondents would submit that the appellant has not proved before the trial Court that the suit is saved by limitation and hence, the first appellate Court is right in allowing the first appeal on the ground of limitation.



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9. There is no disagreement between the parties with regard to the execution of the sale agreement and also with regard to the various payments towards the part sale consideration on various dates. Even though in the written statement it has been stated that on the date of the sale agreement only Rs.50,000/- has been received, it is seen in the sale agreement that the advance amount paid was Rs,1,00,000/-. When the sale agreement is not denied by the respondents then it has to be presumed that the advance amount has been paid only in accordance with the recitals found in the sale agreement. However, with regard to the endorsement found for extension of time, the trial Court got convinced with the evidence of the appellant/plaintiff on this aspect and chosen to decree the suit. The trial Court has made an observation as to the receipt of the part sale consideration in piece meal and that the suit is not barred by limitation.



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10. The first appellate Court has stated that there is an alteration made in the endorsement made in 25.09.1998 and the time limit of six months has been altered to six years. The defendants have not filed any suit or sent any legal notice stating that the sale agreement has got terminated after the expiry of the extension of the time granted after making the part payments each time. So, the plaintiff appears to have countered the limitation from the date when the defendants refused to come forward to execute the sale agreement and maintained the suit. But the first appellate Court, without appreciating the above fact had recorded a finding that the suit is barred by limitation.

11. Whatever may be the case, the fact remains that the plaintiff has been making an inordinate delay without seeing the contract is fulfilled within the reasonable time. The worth of the property would have got appreciated multiple times and it is hence, the appellant/plaintiff cannot be allowed to make any undue enrichment out of his own fault. Therefore, the conduct of the



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plaintiff is not satisfactory to the extent of proving equitable circumstances lying in his favour for granting the relief of specific performance.

12. On the other hand, the defendants did not deny the receipt of the part sale consideration on various dates and it would have been appropriate if the first appellate Court has modified the decree by allowing the alternate relief of refund of advance amount instead of set aside the whole of the judgement of the trial Court in its entirety. Therefore, to this limited extent, I feel the substantial questions of law can be answered in favour of the appellant and consequently, the appeal can be partly allowed.

13. In the result, this second appeal is partly allowed and the judgment of the first appellate Court is set aside to the extent of disallowing the plaintiff to get the relief of refund of part sale consideration which has been already paid. Hence, the suit is partly decreed by granting the appellant/plaintiff the relief of refund of the part sale consideration of Rs.1,75,000/- with interest at the rate of



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9% from the date of the receipt of the payment. The suit is dismissed in respect
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of the specific performance. The time for completion of the payment is one
month from the date of the receipt of the copy of this order. No costs.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The Principal District Judge, Coimbatore.

2. The I Additional Sub Judge, Coimbatore.

3. The Section Officer, V.R. Section,
High Court, Madras.



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R.N.MANJULA J.

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