



A.S.No.486 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

A.S.No.486 of 2020

and

C.M.P.No.6481 of 2020

1. S.Rajamanickam
2. R.Raja
3. Mallika

... Appellants

Versus

S.Selladurai

... Respondent

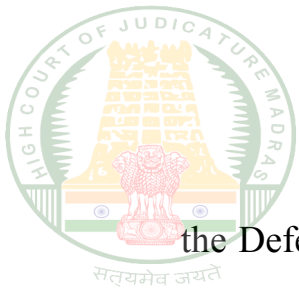
Appeal Suit is filed under Section 96 of Civil Procedure Code against the judgment dated 29.11.2019 passed in O.S.No.302 of 2017 on the file of the II Additional District and Sessions Court, Salem.

For Appellants : Mr. R. Nalliyappan
For Respondent : Mr. K. R. Krishnan

JUDGMENT

This Appeal Suit has been filed by the Defendants seeking to set aside the decree and Judgment dated 29.11.2019 passed in O.S.No.302 of 2017 on the file of the learned II Additional District and Sessions Judge, Salem.

2. As per the submission of the learned Counsel for the Appellants,



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the Defendants in O.S.No.302 of 2017 on the file of the learned II Additional District and Sessions Judge, Salem, are the Appellants herein. The Respondent in this Appeal as Plaintiff had filed the Suit in O.S.No.302 of 2017 seeking the relief of specific performance of contract for sale of the property.

3. The learned Counsel for the Appellants invited the attention of this Court to the averments of the plaint which are as follows:

3.1. A sale agreement was entered into with the Defendants on 18.11.2013. As per the sale agreement deed, the sale price was fixed at Rs.10,00,000/-. The sale agreement deed was registered on 18.11.2013 as Document No.3749 of 2013. On the date of the execution of sale agreement, an advance amount of Rs.2,00,000/- was paid and the Defendants accepted the same and the period for execution of sale was mentioned as 30 months from the date of execution of the agreement deed.

3.2. On 22.02.2014, the Plaintiff paid Rs.5,50,000/- and on 18.06.2014, he paid a further amount of Rs.60,000/- and on 13.10.2014, the Plaintiff paid Rs.70,000/-. On 22.09.2015, the Plaintiff paid Rs.50,000/-. In all these payments, the Defendants executed acknowledgment receipts. On 22.09.2015 while accepting Rs.50,000/-, the Defendants extended the period of execution of sale deed by 11 months. In total, the Plaintiff had paid



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Rs.9,30,000/- to the Defendants i.e., almost the sale price. Only Rs.70,000/-

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was the balance to be paid to the Defendants. Even after repeated requests, the Defendants did not come forward to execute the sale deed. Therefore, on 18.09.2017, the Plaintiff sent legal notice to the Defendants 1 to 3. The third Defendant received the notice, but did not send any reply. On 20.10.2017, the Plaintiff came to know that the Defendants were arranging to alienate the Suit property to third parties. If they are not prevented, it will cause loss and damage to the Plaintiff. It will also lead to multiplicity of proceedings. Therefore, the Plaintiff was forced to file the Suit for specific performance of contract for sale of the suit property and also sought for an injunction not to encumber the property till the Suit is disposed off.

4. The learned Counsel for the Appellants invited the attention of this Court to the contents of the written statement which are as follows:

4.1. The second Defendant filed the written statement which was adopted by the Defendants 1 and 3. As per the contents in the written statement filed by the Defendants, the payment of Rs.5,50,000/- was disputed by the Defendants 1 to 3. The Defendants claim that the Plaintiff had only paid Rs.3,70,000/-. Also in the written statement, it is stated that the Plaintiff had instituted the suit after a long period that is beyond the time stipulated in

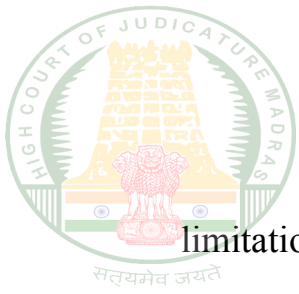


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the sale agreement deed dated 18.11.2013.

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4.2. The Defendants also disputed the claim of the Plaintiff that the Defendants 1 to 3 had executed an acknowledgment on 22.09.2015 whereby on receipt of Rs.50,000/- before the expiry of 13 months as per the sale agreement the Defendants 1 to 3 had extended the period for execution of sale deed by further 11 further months. Also, the Defendants had in the written statement stated that the Plaintiff had caused legal notice dated 18.09.2017 directing the Defendants to execute the sale deed within ten days, whereas he had instituted the suit only on 20.11.2017. The Plaintiff was not ready and willing to perform his part of the contract. The sale agreement itself is sham and nominal. The Defendants sought loan for which the Plaintiff insisted the sale agreement. Therefore, a sale agreement was entered into which was not intended for the purpose of sale of property, as the property fetches huge value which is an agricultural land. The Defendants had disputed the claim of the Plaintiff by proper reply that the sale agreement was not entered with an intention to execute the sale deed but it was executed as security for the loan availed by the Defendants. The Plaintiff had instituted the suit for specific performance against the mother-in-law of the second Defendant in O.S.No.154 of 2017. Also, the Plaintiff had instituted the suit beyond the period of



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limitation suppressing the facts and approached the Court with unclean hands and therefore, the suit is not maintainable which is to be dismissed.

5. Based on the pleadings of the plaint and the written statement, the learned II Additional District and Sessions Judge had framed the following issues:

- 1) Whether the sale agreement dated 18.11.2013 was executed as security for the loan availed by the Defendants?
- 2) Whether the Plaintiff is entitled to the relief of specific performance of contract for sale of the property?
- 3) Whether the Plaintiff is entitled to the alternate relief of refund of the Advance amount?
- 4) Whether the Plaintiff is entitled to the relief of permanent injunction restraining the Defendants 1 to 3 from creating encumbrance to the suit property?
- 5) To what relief?

6. Based on the issues framed by the learned II Additional District and Sessions Judge, the trial commenced. During trial, the Plaintiff examined himself as P.W-1. The affidavit of the Plaintiff was filed as examination in chief. The Plaintiff had marked the following documents - Ex.A-1 is the registered sale agreement deed dated 18.11.2013. Ex.A-2 is the legal notice

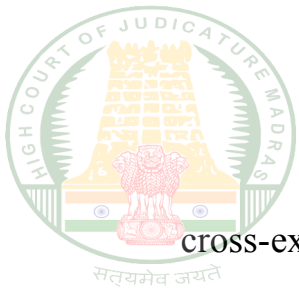


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issued on behalf of the Plaintiff to the Defendants 1 to 3 dated 18.09.2017.

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7. P.W-1 was cross-examined on behalf of the Defendants 1 to 3. He had denied the suggestions put to him by the learned Counsel for the Defendants regarding the contention raised in the written statement that the sale agreement deed is a security executed by the Defendants and it was not intended for sale of the valuable agricultural property. The suit filed beyond the period of limitation is not maintainable also was denied by P.W-1 in his



cross-examination.

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8. One K.M.Vijaya Kumar was examined as P.W-2 in support of the claim of the Plaintiff as P.W-1. P.W-2 also had filed affidavit as examination in chief. He was also subjected to cross-examination. The suggestion of the learned Counsel for the Defendants that he was not a witness to the transaction claimed by him in his evidence, was denied by him. He was subjected to cross-examination regarding the claim made by P.W-2 in his evidence that he was a witness to the transaction to the Plaintiff and Defendants under Ex.A-6 to Ex.A-9. He was cross-examined by the learned Counsel for the Defendants in which the suggestion put to him by the learned Counsel for the Defendants that he had not been a witness and he is deposing evidence only to help his friend, was denied by him.

9. The first Defendant Rajamanickam examined himself as D.W-1 and the affidavit filed by him was treated as examination in chief of D.W-1. In the course of the deposing evidence, the Defendants had marked three documents as Ex.B-1 to Ex.B-3. Ex.B-1 is the reply notice by the Defendants to the Plaintiff for the legal notice issued under Ex.A-2 dated 18.09.2017. Ex.B-2 is the acknowledgment for receipt of reply notice under Ex.B-1. Ex.B-



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3 is the guideline value for the suit property, as per the details available in the website of the Registration Department of Tamil Nadu Government for the period from 2012 to 2017. D.W-1 was subjected to cross-examination, in which the contents of the plaint was put to him as suggestions. After executing Ex.A-2 sale agreement deed dated 18.11.2013, a sum of Rs.2,00,000/- was paid to the Defendant-1. Subsequently, on various dates under Ex.A-6, a sum of Rs.5,50,000/- was paid on 22.04.2014; under Ex.A-7 a sum of Rs.60,000/- was paid on 18.06.2014; under Ex.A-8 a sum of Rs.70,000/- was paid on 13.10.2014 and under Ex.A-9 a sum of Rs.50,000/- was paid on 22.09.2015. The suggestions put to D.W-1 was denied by him stating that they had not executed it. Further, he would state that he had executed those documents under coercion without receiving the amount, as security for the loan availed by them. The suggestion that wantonly D.W-1 is denying after execution of Ex.A-6 to Ex.A-9 was also denied by him. The sale agreement and execution of receipts under Ex.A-6 to Ex.A-9 are valid documents and the suit is filed within time. Therefore, the suit is maintainable was denied by him.

10. On appreciation of evidence, the learned II Additional District and Sessions Judge, Salem by Judgment dated 29.11.2019 in O.S.No.302 of



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2017 had granted the decree for specific performance and directed the Defendants to execute the sale deed within three months from the date of passing of the decree.

11. Aggrieved, the Defendants had filed this Appeal Suit seeking to set aside the decree and Judgment dated 29.11.2019 passed in O.S.No.302 of 2017 by the learned II Additional District and Sessions Judge, Salem.

12. It is the contention of the learned Counsel for the Appellants that the learned Judge failed to consider the fact that the Plaintiff had approached the Court beyond the period that was stipulated in the sale agreement deed. Therefore, the Plaintiff is not entitled to the relief of specific performance of contract for sale and also for the alternative relief of refund of the advance amount already paid. The learned Counsel for the Appellants invited the attention of this Court to the deposition of Plaintiff as P.W-1 who in his cross-examination, admitted that he had not denied in his examination in chief that in the written statement, the Defendants had stated that they did not have the intention to sell their agriculture properties. The Defendants had availed loan for which the Plaintiff insisted to execute the sale agreement deed and get it registered. Only then, the Plaintiff will extend loan to them. On such demand by the Plaintiff, the Defendants were forced to execute the sale agreement



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deed. The sale agreement deed did not come into effect for the purpose of sale of property. It was only a security for the loan. This fact was not denied by the Plaintiff in his examination-in-chief was admitted by the Plaintiff as P.W-1 in his cross-examination. Further, in the cross-examination, the Plaintiff had admitted that he had instituted the Suit only after three years and 10 months. It is the contention of the learned Counsel for the Appellants (Defendants before the trial Court) that on this specific admission by the Plaintiff as P.W-1, in his cross-examination, the Suit filed by the Plaintiff ought to have been dismissed. The learned II Additional District and Sessions Judge, Salem ignored this particular admission by the Plaintiff in his cross-examination and had mechanically granted the decree for specific performance against the Defendants. Therefore, this Appeal is to be allowed and the decree granted by the learned II Additional District and Sessions Judge in O.S.No.302 of 2017, dated 29.11.2017, is to be set aside and the Suit is to be dismissed.

13. The learned Counsel for the Appellants also placed reliance on the Judgment of this Court in Second Appeal No.816 of 2014, dated 01.09.2022 particularly Page 14 of the Judgment wherein the learned Single Judge of this Court had referred to the reported ruling in ***Pappammal @ T.Pappa vs. P.Ramasamy*** reported in ***2012 (4) CTC 100*** wherein it has been held as follows:



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'Specific Relief Act, 1963 (47 of 1963), Sections 14 & 20 – When relief of Specific Performance cannot be granted – Discretion of Court – Agreement for Sale of land or money lending transaction – Document purporting to be Agreement of Sale of land for total sale consideration of Rs.40,000/-. Containing endorsement of payment of Rs.30,000/- as advance and for balance of Rs.10,000/- time period of five years granted – Moreover, no steps taken by Respondent for more than five years from date of Agreement of Sale. To enforce Agreement of Sale, even after Appellant refused to execute Sale Deed – From Evidence Adduced that the Respondent was waiting for Appellant to repay loan of Rs.30,000/- mentioned as advance in Agreement of Sale – Conduct of Respondent, held, proves that he did not intend to enforce Agreement of Sale, as it was given as security and not intended to be acted upon as Agreement of Sale – Judgment and decree of Lower Courts, thus, set aside – Appeal allowed."

13.1. The learned Single Judge of this Court had also referred to the reported ruling in the case of **Vallithai and Others vs Arulraj** reported in **(2007) 5 MLJ 222**, wherein it has been held as follows:-

"17. It is the plaintiff's case that the defendant agreed to sell the property to him for a sum of Rs.35,000/- and he had paid a sum of Rs.30,000/- to the defendants as advance sale consideration and he had promised to pay the balance amount of Rs.5,000/- to the defendant within a period of two years. The point which has to be noted here is that when the plaintiff was in a position to pay Rs.30,000/- towards advance sale consideration as a single payment to the defendant, there could have been no necessity for the plaintiff to wait for two years to pay the balance sale consideration of Rs.5,000/- to the defendant."

In the light of the above Judgments, this Appeal is to be allowed and the Suit filed by the Respondent as Plaintiff in O.S.No.302 of 2017 is to be dismissed.

14. The learned Counsel for Respondent vehemently objected to the submissions of the learned Counsel for the Appellants. It is the contention of



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the learned Counsel for the Respondents (Plaintiff before the trial Court) that the agreement dated 18.11.2013 was a registered sale agreement on the file of the Sub Registrar's Office, Salem. On the date of entering the sale agreement, a sum of Rs.2,00,000/- was paid by the Plaintiff and both parties agreed that the time stipulated to execute the sale is 30 months. Further, the Plaintiff had paid the balance of sale consideration periodically and the same was admitted by the Defendants and the same has been marked as Ex.A-2 to Ex.A-9. The acknowledgment for the receipt of the last installment of Rs.50,000/- was marked as Ex.A-9. The Defendants had accepted Rs.50,000/- and made endorsement which is marked as Ex.A-9 on 22.09.2015. Therefore, as on the date of Ex.A-9, Rs.9,30,000/- was accepted in the hands of the Defendants and only Rs.70,000/- was the balance that was to be paid by the Plaintiff for which the Defendants have to execute the sale deed. The time stipulated was also extended by the conduct of the Defendants on executing Ex.A-9 for a further period of 11 months. The Plaintiff had issued legal notice calling upon the Defendants to come and execute the sale deed. After having received the legal notice, the Defendants remained silent. They did not reply. As per Article 54 of the Limitation Act, the Suit has to be filed within three years from the date of expiry of the time stipulated in the sale agreement deed. The period expires on 21.08.2016 from Ex.A-9, thus, the Suit was instituted within time. As per

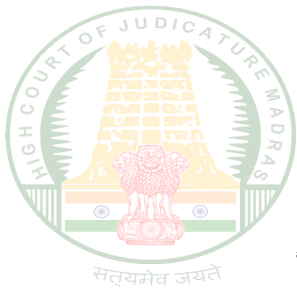


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Sections 91 and 92 of the Indian Evidence Act, the parties who enter into a contract are not permitted to deny the contents of the contract. The claim of the Appellants before this Court is contradictory to the recitals in Ex.A-1 which attracts Section 92 of the Indian Evidence Act. The claim of the Defendants that the sale agreement deed dated 18.11.2013 is sham and nominal and not with an intention to sell the property is unacceptable in the eyes of law. The Plaintiff had deposited the balance of sale consideration before the trial Court. The Defendants had marked three documents – (i) Reply notice dated 25.10.2017; (ii) the acknowledgment for the notice and (iii) the guideline value of the property from the Sub Registrar's Office for the period 2012-2017. The learned Counsel for the Respondent invited the attention of this Court to Section 14 of the Specific Relief Act contending that the Judgments cited by the learned Counsel for the Appellants does not apply to the facts of this case. In the reported decision, the sale was for Rs.35,000/-, advance amount of Rs.30,000/- was paid on the date of sale agreement and balance amount was Rs.5,000/- only, for this balance amount, 2 years period was fixed. Therefore, the Court held that it was not for sale of property but was executed as security. Therefore, the trial Court had granted alternative relief by directing refund of the advance amount with interest.

Points for determination as per the grounds raised in the



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Appeal memorandum:

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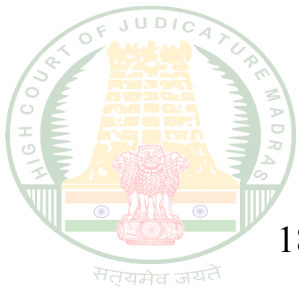
1. Whether the Suit filed by the Plaintiff based on Ex.A-9, receipts under Ex.A-6 to Ex.A-9 and the time extended by 11 months as per Ex.A-9 expires, by the time, notice was given under Ex.A-2?

2. Whether the granting of decree by the trial Court is perverse when the Plaintiff had approached the Court beyond the time stipulated by the contract?

15. Heard the learned Counsel for the Appellants and the learned Counsel for the Respondent.

16. Perused the deposition of P.W-1, P.W-2, D.W-1, the documents under Ex.A-1 to Ex.A-9 and Ex.B-1 to Ex.B-3. Perused the ruling cited by the learned Counsel for the Appellants in S.A.No.816 of 2024 and the ruling relied by the learned Judge of this Court in S.A.No.816 of 2024.

17. On consideration of the rival submissions and on perusal of the Judgment in O.S.No.302 of 2017, it is found that the learned Judge had not considered the specific admission made by the Plaintiff in his cross-examination, admitting that he had approached the Court after 3 years and 10 months from the date of extension of the period of sale agreement. In the light of the specific admission, the ruling cited by the learned Counsel for the Appellants in S.A.No.816 of 2024 is found attracted.



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18. The facts of the reported ruling in the case of ***Mrs.Pappammal @***

T.Pappa vs Mr.P.Ramasamy reported in ***2012 (4) CTC 100***, is a case in which on the date of agreement for sale, the sale price for the property was fixed at Rs.40,000/- on which date Rs.30,000/- was paid as advance and endorsement was made for receiving Rs.30,000/-. For the balance of Rs.10,000/-, 5 years period was granted. Moreover, no steps were taken for 5 years from the date of agreement for sale. Therefore, it was held by the Court that the intention was not for the sale of the property, rather it was given as a security.

19. In the reported decision in the case of ***Vallithai and Others -v- Arulraj*** reported in ***(2007) 5 MLJ 222***, it is the case where the Defendant agreed to sell the property by entering into sale agreement deed by fixing the sale price as Rs.35,000/-. Plaintiff had paid Rs.30,000/- to the Defendant as advance and promised to pay Rs.5,000/- within a period of two years. It was pointed out by the Court that when the Plaintiff was in a position to pay Rs.30,000/- as advance sale consideration in a single payment to the Defendant, there was no necessity for the Plaintiff to wait for two years for a meagre amount of Rs.5,000/-. Therefore, it was held that the sale agreement was executed as security for a loan and not intended for sale of property.

20. Here, in this case, before this Court in A.S.No.486 of 2020, the



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Plaintiff had advanced amount totalling to Rs.9,30,000/- to the Defendants.

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Even though, originally, the time stipulated as per the sale agreement deed was for a period of 30 months from the date of execution of the sale agreement deed, subsequently, as per Ex.A-9, a further period of 11 months was extended as per the document obtained by the Plaintiff from the Defendants. The Plaintiff ought to have issued notice before the expiry of that 11 months period. But the Plaintiff had issued notice only after 3 years and 11 months and the same was admitted by the Plaintiff as P.W-1 in his cross-examination. Therefore, the intention of the Defendants was not to sell the property. Further, it is to be noted that even within that period, the value of the property will increase geometrically manifold. Therefore, it is not fair on the part of the Court exercising discretion under the principles of fairness, equity and good conscience to decree the suit for specific performance for a valuable immovable property, particularly, agricultural lands. Therefore, the Court is justified in granting refund of the advance amount already paid by the Plaintiff and accepted by the Defendants.

21. The submission of the learned Counsel for the Appellants/the Defendants before the trial Court that the trial Court ought not to have decreed the suit on the admission in cross-examination by P.W-1 and that P.W-1 had



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approached this Court only after 3 years and 11 months in which case the suit ought to have been dismissed, is not found acceptable by this Court as the Defendants had accepted part payments after execution of Ex.A-1, the sale agreement deed. The thumb impression as well as the signatures of the Defendants 1 to 3 were found in all the documents marked as Ex.A-6 to Ex.A-9. Therefore, the claim that the disputed amount of Rs.5,50,000/- was not received by the Defendants, was found not to be fair. The recitals indicate that the Defendants had acknowledged Rs.5,50,000/- payment from the Plaintiff, so the Court had to necessarily draw presumptions in favour of the Plaintiff and against the Defendants. This can also be noted in Ex.A-9 where regarding payment made by the Plaintiff and in acceptance of the same by the Defendants, the Defendants 1 to 3 had executed Ex.A-9 on 22.09.2015 for Rs.50,000/- and totalling Rs.9,30,000/-.

22. The Appeal is to be allowed only for the purpose of granting alternative relief and is not allowed in so far as the argument of the Appellants is to be accepted. The sum of Rs.5,50,000/- received by the Defendants 1 to 3 and also part payment received continuously indicates the continuation of Ex.A-1, the sale agreement deed. That is considered by the lower Court. However, the Court has to necessarily dismiss the Appeal. Considering the valuable property of agricultural land, which fetches increasing sale price by



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the time Ex.A-1 is executed and by the time the suit was decreed. Therefore, in the principles of equity and as per Section 20 of the Specific Relief Act, it is stated that the Court need not always decree the suit for specific performance. The Court is within its discretion to grant alternative relief.

23. Here considering the averments and the pleadings, the Plaintiff is entitled to specific performance. However, at the same time, the practical approach should also be considered by the Court, that is, by the time Ex.A-1 is executed and by the time the suit is decreed, many years have passed whereby the property of the Defendants fetches geometrical value for every succeeding year. Therefore, under the principles of equity, it is fair on the part of this Court to grant alternative relief, instead of dismissing the Appeal.

24. The argument of the learned Counsel for the Appellants is that as per Article 54 of Limitation Act, the Plaintiff ought to have approached this Court within three years from the date of execution of Ex.A-1, which is the date on which the sale agreement was entered cannot be accepted by this Court in the light of the contract between the Plaintiff and the Defendants whereby the Plaintiff had made part payment towards the sale price and it was admitted and acknowledged by the Defendants by executing Ex.A-6 to Ex.A-9. Therefore, after Ex.A-9, a further period of 11 months was granted by the



Defendants. Therefore, time is not essence of the contract in this particular

contract. After 11 months only, the Plaintiff had approached this Court.

Therefore, the period to be accounted is as per Article 54 from the date of

Ex.A-9. Therefore, the suit is within time.

25. It is relevant to extract Article 54 of the Limitation Act which reads as follows:

"The expression "date" used in Article 54 definitely is suggestive of a specified date in the calendar. Ahmmadsahab Abdul Mull -vs- Bibijan A.I.R. 2009 SC 2193 Where a specific date for execution of the sale deed was provided in the agreement, it was held that even though time may not be the essence of the contract, limitation would start running from the date provided in the agreement for performance of the contract. T.L.Muddukrishna -vs Lalitha Ramachandra Rao AIR 1997 SC 772. However, where permission of the Ceiling Authority was required and the sale deed was to be executed only after intimation to the plaintiff of the grant of permission but the defendant gave no such intimation but for the first time in the notice in question served upon the plaintiff gave out that the contract had frustrated on account of refusal to grant permission by the Ceiling Authority, held, the limitation would start running from service of the notice: Raghuvir Singh Bhatti -v- Ram Chandra Waman Subhedar AIR 2002 All 1".

26. The submission of the learned Counsel for the Appellants seeking to dismiss the suit is found unacceptable and hence, rejected. The submission of the learned Counsel for the Respondent (Plaintiff before the trial Court) that the Suit filed by Plaintiff was within time, is found acceptable in the facts



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and circumstances as mentioned above.

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27. In the light of the above discussion, Ex.A-1 which is an admitted document by the Defendants 1 to 3 is the registered sale agreement deed dated 18.11.2013 in which a sum of Rs.2,00,000/- was paid on the date of execution of the sale agreement deed to the Defendants 1 to 3 whereby the period for execution of the sale deed was fixed as 30 months. If calculating 30 months from 18.11.2013, the period expires on 18.05.2016. Before expiry of the period of 30 months, Ex.A-9 was executed by which the period of further 11 months was extended by the Defendants 1 to 3 upto 18.04.2017 after receipt of Rs.50,000/- on 22.09.2015. The statutory notice was issued by the Plaintiff on 18.09.2017. As on the date of Ex.A-9, the Defendants had received totally a sum of Rs.9,30,000/- as per the receipts under Ex.A-6 to Ex.A-9. Therefore, the time starts running from 22.09.2015. The legal notice was issued on 18.09.2017. The plaint was presented on 20.11.2017. Therefore, the suit is within time. The claim by the Defendants 1 to 3 that the suit is belated cannot at all be accepted. The contention of the learned Counsel for the Appellants on behalf of the Defendants in the suit that the suit was not maintainable on the date of filing of the suit, is found unacceptable in the light of Ex.A-9. Therefore, as pointed out by the learned II Additional District and Sessions Judge in the course of the discussion to issue-2 that by the conduct of the



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parties time was not the essence of the contract. The time starts running from Ex.A-9 only. Therefore, the issue of legal notice under Ex.A-2 and filing of the suit are found within time from Ex.A-9. The contention of the learned Counsel for the Appellants on behalf of the Defendants that the suit is filed beyond the period of limitation under Article 54 of the Limitation Act is not applicable to the facts of this case. The suit is instituted as per Article 54 of the Limitation Act and the time commence from Ex.A-9. Therefore, the suit is within time. **The point for determination-1 is answered in favour of the Plaintiff in O.S.No.302 of 2017 on the file of the learned II Additional District and Session Judge, Salem.**

28. Considering the fact that the value of the property is high under Ex.B-3 guideline value. The sale agreement executed between the Plaintiff and Defendant-1 to 3 under Ex.A-1, dated 18.11.2013 and the suit was instituted in the year 2017 and the judgment was delivered on 29.11.2019 by which time, the value of the property would have increased manifold by geometrical progression. Therefore, as per Section 20 of the Specific Relief Act, the Civil Court need not grant specific relief. The Court shall exercise discretion regarding the relief of specific performance. To meet the ends of justice, the refund of the advance amount to the Plaintiff along with interest has to be ordered. The grant of decree for specific performance by the learned

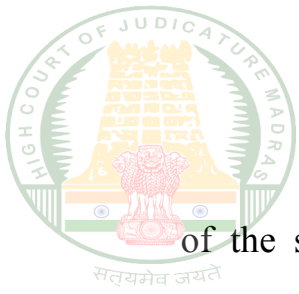


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II Additional District and Sessions Judge, ignoring the fact that as on the date of granting of decree i.e., 29.11.2019 the value of the property is surely increased manifold by geometrical progression. Considering those aspects, in the light of the guideline value furnished by the Defendants 1 to 3 under Ex.B-3 the grant of specific performance of the property by the learned II Additional District and Sessions Judge is found erroneous which warrants interference by this Court.

29. The learned Judge could have granted the alternative relief of refund of advance amount paid by the Plaintiff under Ex.A-1, Ex.A-6 to Ex.A-9 totalling to a sum of Rs.9,30,000/- with interest as prayed for by the Plaintiff, instead, the learned Judge had granted specific performance of contract for sale of property. Therefore, the Appeal by the Defendants seeking to set aside the judgment of the learned II Additional District and Sessions Judge, Salem, is to be partly allowed.

30. The arguments of the learned Counsel for the Appellants (Defendants before the learned II Additional District and Sessions Judge, Salem in O.S.No.302 of 2017) seeking to set aside the suit as beyond the period of limitation is rejected. The suit is maintainable as on the date of filing



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of the suit by calculating the period of limitation under Article 54 of the Limitation Act, from the date of execution of Ex.A-9. Therefore, the suit is within the time. The learned II Additional District and Sessions Judge, Salem, had ignored the fact that the value of the property for the period from the date of execution of Ex.A-1, dated 18.11.2013 till the date of decree of the suit dated 29.11.2019 by which time the value of the property would have increased manifold thereby granted the relief of specific performance of contract for sale which is modified by this Court by granting alternative relief. **The point for determination-2 is answered partly in favour of the Plaintiff and partly in favour of the Defendants in O.S.No.302 of 2017 on the file of the learned II Additional District and Session Judge, Salem.**

In the result, **the Appeal is partly allowed.** The judgment dated 29.11.2019 passed in O.S.No.302 of 2017 by the learned II Additional District and Sessions Judge, Salem is modified granting alternative relief of refund of advance amount to the Plaintiff.

The Defendants are directed to refund the advance amount of Rs.9,30,000/- under Ex.A-1, Ex.6 to Ex.A-9 to the Plaintiff along with interest at the rate of 12% per annum from 22.09.2015 till the date of filing of the Suit i.e., 20.11.2017 and with interest at the rate of 9% per annum from 20.11.2017



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till the date of Judgment; and with interest at the rate of 6% per annum from

the date of Judgment till the date of realisation.

The learned trial Judge is within his power if the Plaintiff moves the Court for execution of the decree when the Defendants had not repaid the amount already received by them from the Plaintiff, the Plaintiff is within his power to seek attachment of the property. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2025

dh/shl

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



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To
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1. The II Additional District and Sessions Court,
Salem.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

dh/shl

Judgment in
A.S.No.486 of 2020

24.06.2025