IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.10.2025	Pronounced on : 31.10.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

A.S.No.573 of 2022
and
CMP.No.21686 of 2022

J.Vinayagam ... Appellant

Vs.

1.S.Venkatesan
2.C.Annapoorani
3.N.Rani @ Bhuvaneswari ... Respondents

Prayer: Appeal Suit filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, to set aside the Judgment and decree made in O.S.No.135 of 2021 dated 27.09.2022 on the file of the Hon'ble Additional District Judge (FTC), Vellore District.

For Appellant : Mr.S.Senthil Nathan

For Respondents : Mr.P.Jagadeesan

JUDGMENT

The plaintiff in O.S.No.135 of 2021, on the file of the Additional District Judge, Fast Track Court, Vellore, is the appellant. The suit for refund of sale consideration together with interest, having been dismissed.

2. I have heard Mr.S.Senthil Nathan, learned counsel for the appellant and Mr.P.Jagadeesan, learned counsel for the respondent.

3. The plaint pleadings in brief:-

The plaintiff entered into a registered agreement of sale on 16.11.2012 with the 1st defendant and father of the other defendants 2 and 3 for a total sale consideration of Rs.4,00,000/-. The agreement was duly registered on the same day i.e., on 16.11.2012 and a sum of Rs.2,00,000/- was paid as advance. Subsequently, on 02.12.2012, the plaintiff paid the remaining consideration of Rs.2,00,000/- to the father of the defendants and the same was executed by Subramani Naidu, the father of the defendants 2 and 3 in a separate sheet.

4. The plaintiff alleges that, despite repeated demands and oral requests, the 1st defendant and father of the defendants 2 and 3 did not come forward to execute the sale deed. Thereafter, the said Subramani Naidu died on 11.01.2018, leaving behind the defendants 2 and 3 to succeed his estate. After the demise of Subramani Naidu, the plaintiffs had requested all the defendants to come forward to register the sale deed. However, the defendants have evaded the same under some pretext or other. The plaintiff, realizing that he cannot enforce the agreement of sale, claims refund of the consideration of Rs.4,00,000/-, along with interest at 12% per annum. The plaintiff had also issued pre-suit notice, which was refused to be received by the defendants. Hence the suit.

5. Written statement in brief:-

The suit is hopelessly barred by limitation. The suit ought to have been filed within three years from 15.10.2013, the date on which the plaintiff was required to pay the balance sale consideration of Rs.2,00,000/-. The claim of the plaintiff is that he made repeated demands and requests for execution of the sale deed is denied. The further claim that a sum of Rs.2,00,000/- towards balance sale consideration was paid to the father of the defendants 2 and 3 is also denied and the receipt is alleged to be a forged document.

6. Issues:-

Based on the above pleadings, the trial Court framed the following issues:-

(i) Whether the 1st defendant and faher f defendants 2 and 3 entered into sale agreement with the plaintiff as alleged by the plaintiff?

(ii) Whether the 1st defendant and father of defendants 2 and 3 received advance amount of Rs.4 lakhs as alleged by defendants?

(iii) Whether the suit is barred by limitation as alleged by defendants?

(iv) Whether the plaintiff is entitled for refund of advance sale consideration of Rs.4 lakhs with interest at 18% as prayed for?

(v) To what relief?

7. Trial:-

On the side of the plaintiff, two (2) witnesses namely PW.1 and PW.2 were examined and nine (9) documents, Ex.A1 to Ex.A9 were marked. On the side of the defendants no oral or documentary evidence was adduced.

8. Decision of the Trial Court:-

The trial Court found that the plaintiff was never ready and willing to get the sale deed executed in the year 2018; the plaintiff was not able to prove the payment of balance sale consideration of Rs.2 lakhs; PW.2, one of the witnesses to the agreement of sale, was a person inimical to the family of the defendants and his evidence was not credible as he was an interested witness; the independent witness, Pratap has not been examined. The Trial Court finally held that execution of the documents were not proved and the plaintiff was not entitled for refund of the sale consideration. Accordingly, the suit was dismissed.

9. Arguments of the Appellant in this Appeal:-

(i) Mr.S.Senthil Nathan, learned counsel for the appellant would submit that the trial Court had proceeded to try the suit as if the suit was one for specific performance, forgetting the fact that the suit was laid only for recovery of the sale consideration of Rs.4 lakhs paid by the plaintiff. The learned counsel would further submit that Section 55 of the Transfer of Property Act, would squarely come into play as the advance amount of Rs.4

lakhs was paid towards sale consideration for purchase of immovable property and therefore, under Section 55(6)(b) of the Transfer of Property Act, a charge has been created in favour of the proposed prospective purchaser, namely the plaintiff and consequently the plaintiff is entitled to file a suit within a period of 12 years and not 3 years.

(ii) Mr.S.Senthil Nathan, learned counsel for the appellant would further states that the defendants did not even enter the witness box to prove the contentions raised in the written statement and the trial Court has failed to consider this crucial factor. He would therefore, submit that non-examination of any witnesses on the side of the defendants is fatal and the written statement itself should have been rejected by the trial Court, since there is no oral or documentary evidence to support the contentions raised in the written statement.

(iii) He would further state that the sale agreement is a registered document. In the absence of any evidence on the side of the defendants, the presumption regarding the said registered instruments in favour of their genuineness should operate in favour of the plaintiff. Therefore, the trial Court has miserably erred in dismissing the suit. Insofar as the receipt marked Ex.A2, the learned counsel would submit that the defendants had alleged forgery. The defendants had to therefore establish their case. In the absence of any evidence on the side of the defendants, the trial Court should have proceeded to hold that Ex.A2 was a true and genuine document and that the amount of Rs.2 lakhs paid by the plaintiff under the said receipt would also become payable by the defendants.

(iv) The learned counsel for the appellant has relied on the decision of this Court in ***Ammani and another Vs.Muthaya*** in ***C.R.P (PD).No.1582 of 2021 dated 10.02.2022.***

10. Arguments of the counsel for the Respondent in this Appeal:-

Per contra, Mr.P.Jagadeesan, learned counsel for the respondents would submit that though the agreement of sale dated 16.11.2012 is a registered instrument, the consideration i.e., paid as advance under the said agreement is only a sum of Rs.2 lakhs. He would contend that in normal circumstances, when any payment towards the balance sale consideration is made an endorsement would be made on the original sale agreement alone. If it is not customary to execute a separate receipt acknowledging payment of further sale consideration towards balance sale consideration. He would also invite my attention to the said receipt, which was cited as an agreement dated 02.12.2012 and witnessed by three persons and contend that on scrutiny, the signatures in the registered agreement of sale and in the alleged receipt/agreement, even to the naked eye, show that the signature on the unregistered/receipt has been forged.

(ii) In any event it is the contention of Mr.P.Jagadeesan, learned counsel for the respondent is that the suit is hopelessly barred by limitation and the plaintiff cannot avail of the limitation period of 12 years and he ought to have filed the suit within a period of 3 years, from the date on which the agreement of sale was contemplated by the parties to be completed by execution or registration of sale deed, thereby, conveying the property in favour of the plaintiff.

11. I have carefully considered the arguments advanced on either side.

12. Points for consideration:-

The points that arise for consideration in the present appeal are as follows:-

(A) Whether the plaintiff has established that he is entitled to a refund of the sale consideration, and if so, to what amount?

(B) Whether the suit claim is barred by limitation?

13. Discussion:-

Before deciding the first point it would be appropriate to decide the issue of limitation. The agreement of sale admittedly is a registered instrument and it has been executed and registered on 16.11.2012. The suit has been filed on 15.09.2021, i.e., the plaint has been presented on 15.09.2021. It is thus clear that the suit has not been filed within a period of three years. The question that arises whether a suit for refund of sale for consideration paid under an agreement of sale is to be filed within a period of three years under Article 62 of the Limitation Act, or whether the plaintiff is entitled to take the benefit of Section 55(6)(b) of the Transfer of Property Act and contend that unlike any other money suit, a suit for recovery of money can be filed within 12 years. The money is otherwise charged upon immovable property and it is only Article 62 of the Limitation Act, which would apply.

14. This Court, in Ammani's case, following the ratio laid down by this Court in ***K.Shanmugam and another Vs. C.Samiappan and other [2013 (6) CTC 28],*** held that a holder of an agreement for sale is entitled to statutory charge in immovable property, under Section 55(6)(b) of the Transfer of Property Act, 1882. Consequently, it has been held that the suit for refund of advance paid under such agreement, together with interest is governed only by Article 62 of Limitation Act. The principle laid down by this Court in Ammani's case, would squarely apply to the facts of this case.

15. A charge stands automatically created in favour of the buyer in respect of the advance paid for the purchase of immovable property in view of the provision of Section 55(6)(b) of the Transfer of Property Act. Therefore, I am unable to countenance the submissions of Mr.P.Jagadeesan, that the suit is hopelessly barred by limitation and it ought to have been filed within three years. Point B is answered in favour of the appellant.

16. Regarding point A, the registered agreement of sale clearly records payment of Rs.2 lakhs as advance on the date of execution of the agreement of sale itself. It is further contended by the plaintiff that the remaining consideration of Rs.2 lakhs was also paid, under Ex.A12, on 02.12.2012. Though PW.2 has been examined on the side of the appellant to establish the payment of Rs.2 lakhs, as rightly found by the trial Court, PW.2 was admittedly not on good terms with the family of the defendants and his evidence was certainly not credible. In fact the trial Court has also found that the independent witness, who was a witness to both the agreement of sale as well as Ex.A2 receipt,one Pratap, could have been examined on the side of the plaintiff and admittedly he has not been examined.

17. I also find force in the submissions of Mr.P.Jagadeesan, learned counsel for the respondent, as in normal practice, if any further advances are made towards the balance sale consideration, it is normal that the parties would only make an endorsement in the original sale agreement itself. It is strange that the balance sale consideration is paid under a document on a plain paper styled as an "agreement". It is not even signed as a receipt as rightly contended by the learned counsel Mr.P.Jagadeesan.

18. Signature of the father of the defendants 2 and 3 alone is available in the said document. I am able to see there is vast difference in the signature of the said Subramani Naidu as found in the registered sale agreement dated 16.11.2012 and the alleged receipt/agreement dated 02.12.2012. It is highly improbable that such drastic variation in the signature could occur within a fortnight. Therefore, the plaintiff has miserably failed to establish that the payment of balance sale consideration of Rs.2 lakhs under the document dated 02.12.2012 and he cannot be entitled to recover this amount. In sofar as the advance sale consideration that finds place even in Ex.A1, registered sale deed dated 16.11.2012, the plaintiff cannot be deprived of refund.

19. As I have already found, delay cannot be put against the plaintiff, and merely because he approached the Court in 2021, it cannot defeat the plaintiff's legitimate claim. The plaintiff is entitled to recover a sum of Rs.2 lakhs, which is admittedly paid under the registered sale agreement dated 16.11.2012. However, he is not entitled to claim the further sum of Rs.2 lakhs alleged to have been paid under the unregistered agreement dated 02.12.2012, as the same has not been proved.

20. Accordingly, the appeal is partly allowed. Consequently, the connected Civil Miscellaneous Petition is closed. The judgment and decree of the trial Court is set aside. The defendants/respondents are directed to refund a sum of Rs.2 lakhs together with interest at the rate of 9% per annum from the date of suit till realization, together with proportionate costs in the appeal as well as in the suit.

31.10.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No
Internet : Yes / No

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To

The Additional District Judge (FTC), Vellore District.

P.B. BALAJI,J.

rpl

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