



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2025

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)Nos.463 & 464 of 2024

and

C.M.P(MD)Nos.2330 & 2331 of 2024

C.R.P.(PD)(MD)No.463 of 2024

John Selvaraj (died)
John Jayakumar (died)

1. John Rajkumar
2. John Vethamuthu
3. Edison
4. Christoher
5. Kirubakaran

...Petitioners/Respondents 3,4,6,11,12/
Defendants 3,4,6,11,12

Vs.

1. Thanraj
2. Sankareswari
3. Esthar Thayammal
4. Victoriya
5. Lilli
6. Arulmani

...Respondent/Petitioner/Plaintiff

...Respondents 2 to 6/Respondents 5,7 to 10/
Defendants 5,7 to 10

***(Respondents 2 to 6 are ex-parte in main suit and not
necessary to issue notice to respondent 2 to 6)***



PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against fair and decreetal order of the learned Additional District and Sessions Judge, Srivilliputtur, dated 20-12-2023 in I.A.No.5 of 2023 in O.S.No. 139 of 2010.

For Petitioners : Mr.V.R.Shanmuganathan
For Respondents : M/s.S.Mamtha for R1
No appearance for R2 to R6

* * * * *

C.R.P.(PD)(MD)No.464 of 2024

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John Jayakumar (died)

1.John Rajkumar
2.John Vethamuthu
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5.Kirubakaran

...Petitioners/Respondents 3,4,6,11,12/
Defendants 3,4,6,11,12

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1.Thanraj
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6.Arulmani

...Respondent/Petitioner/Plaintiff

...Respondents 2 to 6/Respondents 5,7 to 10/
Defendants 5,7 to 10



PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against fair and decreetal order of the learned Additional District and Sessions Judge, Srivilliputtur, dated 12.04.2023 in I.A.No.3 of 2022 in O.S.No. 139 of 2010.

For Petitioners : Mr.V.R.Shanmuganathan
For Respondents : M/s.S.Mamtha for R1
No appearance for R2 to R6

* * * * *

COMMON ORDER

The defendants in O.S.No.139 of 2010, on the file of the Additional District and Sessions Court, Srivilliputhur, have filed the present revision petitions, challenging the orders passed in I.A.No.5 of 2023 and I.A.No.3 of 2022.

2.A perusal of the records reveal that the respondents in the revision petition had filed the above said suit for the relief of specific performance of the sale agreement, dated 16.12.2009. The plaintiff had filed I.A.No.682 of 2012 under Order 6 Rule 17 of C.P.C. to incorporate the alternative relief of refund of the advance amount of Rs.5,61,000/-.

3.The plaintiff had filed I.A.No.3 of 2022, to amend the plaint to enhance

the advance amount from Rs.5,00,000/- to Rs.18,00,000/- This application was



filed when P.W.1 was being cross examined and also to amend the body of the plaintiff to indicate that on various dates between 27.09.2010 and 20.06.2011, the plaintiff has paid the advance amount to the defendants. This application was resisted by the defendants on the ground that the enhancement of the refund of advance amount introduced by way of amendment is barred by limitation. It was further contended that the amendment application has been filed after the trial has begun and hit by Proviso order 6 Rule 17 of C.P.C. It was further contended by the defendants that these documents were available in the hands of the plaintiff even before filing of the suit and therefore, no proper reason has been assigned to incorporate this amendment at the present stage.

4.The trial Court after considering the submissions made on either side has proceeded to allow this application. Challenging the same, C.R.P.(MD)No. 464 of 2024 has been filed.

5.The plaintiff has also filed I.A.No.5 of 2023, seeking permission of the Court to receive the documents reflecting the payment of advance amount between 27.09.2010 and 20.06.2011. This application has also been allowed by the trial Court. According to the learned Counsel appearing for the revision petitioners, unless the plaintiff has properly explained the reasons for not enclosing these documents along with the plaint, the trial Court ought not to have allowed the application. It was further contended that this reception of the



document is based upon the amendment to the plaint prayer to enhance the refund of advance amount of Rs.5,00,000/- to Rs.18,00,000/-. When the amendment is barred by limitation, the documents cannot be received.

6.I have considered the submissions made on either side and perused the materials available on record.

7.As far as the plea relating to limitation is concerned, as per Section 55(6)(b) of the Transfer of Property Act, whenever the advance amount is paid, pursuant to the sale agreement, a statutory charge is created over the property. In such circumstances, the limitation for seeking refund of the advance amount is not governed by the Article 54 of the Limitation Act, but is it governed by the Article 62 of the Limitation Act.

8.This Court in a judgment reported in **2016 (6) CTC 740**, has categorically held that the alternative relief for refund of advance amount in a suit for specific performance is governed only Article by 62 of the Limitation Act. In such circumstances, the trial Court has rightly allowed the application seeking amendment of the plaint to enhance the refund of advance amount from Rs.5,00,000/- to Rs.18,00,000/-. However, it is always open to the defendants to raise the plea of limitation during trial.



9. As far as plea relating to reception of the documents is concerned, the present application has been filed only for reception of the documents. The relevancy and admissibility of the documents can be objected to, by the defendants when an attempt is being made to mark those documents.

10. In view of the above said deliberations, both the revision petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

18.03.2025

Internet: Yes/No
Index: Yes/No
RJR

To

The learned Additional District and Sessions Judge, Srivilliputtur.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR, J.

RJR

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