

C.M.P(MD)No. 14196 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.04.2025

DELIVERED ON: 29.05.2025

CORAM

THE HONOURABLE MR JUSTICE G.ILANGO VAN

C.M.P(MD)No. 14196 of 2024  
in S.A.(MD).No.823 of 2007

Abdul Kader

Petitioner(s)

Vs

- 1.Madhar Fathimal
2. Peer Fathimal
3. Basheer Ahamed
4. ABDUL KADAR JAILani
5. Nanisha Negam

Respondent(s)

For Petitioner(s):

M/s.V. GEORGE RAJA  
M.Mohamed Ibram Saibu

For Respondent(s):

Mr.V.Meenakshi Sundaram for Mr.D.Nallathambi for R1 to R4  
Mr.M.P.Senthil for R5

### ORDER

This petition has been filed to amend the plaint as per the particulars of amendment given in the petition.

#### 2.The facts in brief:

The suit was filed by this petitioner against the respondent for specific performance on the basis of sale agreement, dated 28.07.1995. It is stated in the plaint



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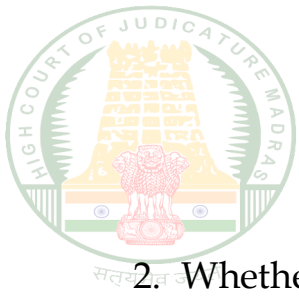
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that sale consideration was fixed at Rs.1,10,000/- and Rs.10,000/- was paid as advance amount. Promise was made by the respondent herein to execute the sale deed after receiving the balance sale consideration. The plaintiff was ready and willing to perform his part of the contract. Later the defendant received Rs.10,000/- on 21.09.1995, Rs.30,000/- on 06.02.1996 and Rs.20,000/- on 06.03.1996, by making endorsement in the sale agreement itself. When the defendant was evading, he issued notice demanding execution of sale deed. When that was not complied, he filed the suit. The defendant entered appearance and filed their written statement.

3.At the conclusion of the trial process the trial Court dismissed the suit with costs. Against which, A.S.No.42 of 2005 was filed by the plaintiff, which also came to be dismissed by the Judgment and Decree, dated 28.02.2006. Against which, this second appeal is preferred.

4.At the time of admission the following substantial question of law were framed.

1. Whether the first appellate Court is legally right in holding that the appellant was not entitled to the decree for specific performance under Section 16 of the Specific Relief Act on the ground that the Appellant was not ready and willing to perform his part of the contract, when the suit is filed in time and the Lion's share of the consideration was admittedly paid by the appellant to the sellers?



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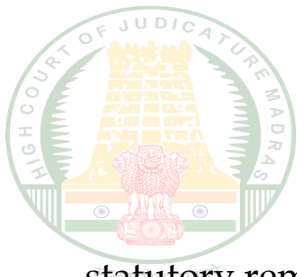
2. Whether the findings of the learned first appellate Judge that the claim of the plaintiff is not sustainable on the ground that he has not performed his part of the contract within the time stipulated under the sale agreement dated 28.07.1995, is not sustainable under law?

5. Pending the hearing, this miscellaneous petition is taken out by the petitioner in C.M.P.(MD).No.14196 of 2024 stating that towards the sale agreement the plaintiff/appellant has paid Rs.70,000/-. In the plaint the prayer is omitted for seeking refund of advance amount as alternative relief. This petition is filed seeking amendment of plaint for alternative relief of refund of advance amount with interest.

6. Heard both sides.

7. When the matter is called for hearing, objection was raised by the respondent stating that the agreement is of the year 1995. The suit was filed in the year 1998. The Judgment was pronounced on 22.02.2005 dismissing the suit. Appeal was preferred in the year 2005. Appeal was disposed of on 28.02.2006. The present second appeal was presented on 28.03.2007. By this length of time the prayer for refund of advance amount itself is barred by limitation. He would submit that the question of limitation may be left open to be decided at the time of hearing and subject to the above said, he has no objection to allow this petition.

8. Per contra the learned counsel for the petitioner would submit that it is



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statutory remedy. So the question of limitation may not arise.

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9.The learned counsel for the respondent would submit that now it is more or less settled that a charge is automatic upon the property for the advance amount in a suit for specific performance. So 12 years period is prescribed even for filing suit for recovery of advance amount. But here as mentioned above if the amendment is allowed, then it will have the effect of coming into record on the date of plaint itself. So this according to him is not permissible under law. Since the relief is barred on the date of this miscellaneous petition, the above said question may be left open. He would further submit that in any of the cases the question of limitation was not considered by the Courts while allowing amendment of this nature.

10.But, similar issue arose before Bombay High Court in a judgment reported in Kutbuddin Riyazuddin Shaikh Vs. Subhash Rangnath Wadane, 1998 (2) BOMCR 818, in a like suit, amendment petition that was filed by the plaintiff was dismissed by the trial Court on the ground that it is barred by limitation. Against which, revision was preferred Bombay High Court has made the following observation by extracting Section 22 of Specific Relief Act.

“4. Proviso to sub-section (2) makes it imperative for a Court to allow any amendment of the plaint claiming relief such as; possession or partition and separate possession or refund of any



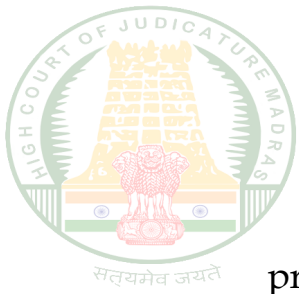
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earnest money or deposit. This amendment can be made 'at any stage of the proceeding'. The word 'proceeding' used in section 22 was found to include execution proceedings also by the Supreme Court in the case of Babu Lal v. M/s. Hazari Lal Kishori Lal and others, . Confirming the view taken by Allahabad High Court in the case of Rameshwar Nath v. U.P. Union Bank Ltd, , Supreme Court held:

"It is a term giving the widest freedom to a Court of law so that it may do justice to the parties in the case. Execution is a state in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation."

Supreme Court also quoted with approval the view taken by learned Single Judge of Delhi High Court in the case of Ex-Servicemen Enterprises (P) Ltd v. Sumey Singh, A.I.R. 1976 Delhi 56 holding that word 'proceeding' in section 22 includes execution proceedings also. Section 22 was enacted with specific performance. The purpose is to avoid multiplicity of the litigation and to put an end to all controversies and questions in a single

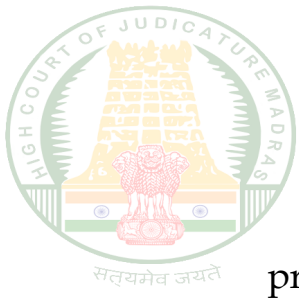


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proceeding arising out of a contract in which specific performance is asked for. Learned Single Judge of this Court in *Lotu Bandu Sonavane v. Pundalik Nimba Koli*, , has also taken the same view and held that the expression 'at any stage of the proceeding' gives widest permission to the Court to allow amendment at any stage of the proceeding including execution of the decree.

5. Section 22 of Specific Relief Act starts with non-obstante clause saying that notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, a person suing for the specific performance of a contract may also claim certain reliefs and those additional reliefs cannot be granted by the Court without having been asked for. However, the amendment praying those reliefs can be made at any time during the proceeding. Therefore, right from the day on which the suit is filed till the day on which the execution is fully satisfied, plaintiff decree-holder can amend the plaint and pray for reliefs like partition and separate possession or refund of consideration or deposit. There is no question of any limitation. This is a special



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provision which excludes operation in other rule on limitation so far as these prayers are concerned. In view of this, finding of the Trial Judge that the relief of the refund of consideration has become time barred will have to be rejected. The amendment prayed for should have been allowed by the learned Trial Judge.”

11.I am in full agreement with the view expressed by the Bombay High Court in the above said Judgment. No other Judgment contra to this was brought to the notice of this Court by any of the parties. In view of the above said position, the objection made by the respondent cannot be taken into consideration. So without any reservation the amendment petition filed by this petitioner, is liable to be allowed.

12.Accordingly, this petition is allowed. Registry is directed to carry out the amendment in the plaint in this regard. Consequently liberty is granted to the respondent to file additional written statement in pursuance of the amendment. For filing additional written statement, if any by the defendant, list the matter on 02.07.2025.

sd/-

29/05/2025

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Sub-Assistant Registrar  
( C.S. I / II / III / IV )  
Madurai Bench of Madras High Court,  
Madurai - 625 023.



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1 THE I ADDITIONAL DISTRICT JUDGE,  
TIRUNELVELI.

2 THE I ADDITIONAL SUBORDINATE JUDGE,  
TIRUNELVELI.

COPY TO:

1 THE SUB ASSISTANT REGISTRAR,  
JUDICIAL SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

2 THE SECTION OFFICER  
V.R.SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

ORDER IN  
C.M.P(MD)No. 14196 of 2024  
in S.A.(MD).No.823 of 2007  
Date :29/05/2025

SA/SAR. /29.05.2025/8P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.