



WEB COPY

AS No. 801 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 801 of 2012

Cuddalore Powergen Corp
Rep. by its Manager,
Office at No.10, 3rd St.,
Seetharam Nagar, Cuddalore – 1.

..Appellant(s)

Vs

1. Suganya

2. Usha

3. R.Magesh @ Durairaj

4. R.Dhamayend

R3 & R4 recorded as given up vide order of
Court dated 24.07.2012 in A.S.No.801 of 2012

..Respondent(s)

This Appeal Suit is filed under Section 96 of CPC, against the judgment and decree dated 30.01.2012 in O.S.No.34 of 2010 on the file of the Additional District Court (Fast Tract Court – II), Cuddalore.



WEB COPY

AS No. 801 of 2



For Appellant(s):

Mr.D.Ravichander

For Respondent(s):

Mrs.Hema Sampath, Senior Counsel
For Mrs.R.R.Meenal for R1 and R2.

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The plaintiff in O.S.No.34 of 2010 on the file of the Additional District Court / Fast Track Court – II, Cuddalore is the appellant herein. They had instituted a Suit seeking specific performance of an agreement dated 12.09.1997 entered into with the respondents herein.

2.The 1st and 2nd respondents are sisters and the 3rd and 4th respondents are legal representatives of yet another sister. All the three sisters were holding totally 99 acres of land. They had entered into an agreement of sale with the appellant herein on 12.09.1997. At the time of the agreement of sale, an advance of Rs.12,50,000/- had been paid. This would indicate that the share of each one of the three sisters would be around Rs.4,16,000/-.

3.It is contended on behalf of the appellant herein that the 3rd and 4th respondents had sold their undivided share of the land to the appellant under Ex.A7. It had also been stated that the 2nd respondent had also sold her share of the land to the appellant. The share of the 1st respondent alone is now under question.



4. It is contended that though the agreement was dated 12.09.1997, there was a supplemental agreement dated 20.02.2001 which is disputed by the learned Senior Counsel on behalf of the respondents, which had not been signed by the respondents herein and therefore would not bind the respondents. The suit notice was issued on 18.06.2007 and the suit was filed on 03.03.2010. Holding that the suit was barred by limitation, the suit came to be dismissed.

5. The learned counsel for the appellant placed an alternate argument that the relief of refund of advance amount paid would not extinguish and therefore, sought a direction that the said amount to be paid and that the appellant may be permitted to file necessary application to seek refund of the advance amount.

6. In this connection, the learned counsel placed reliance on Section 55(6) (b) of the Transfer of Property Act, 1882 which is as follows:

55(6)(b). Unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.



An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

7.He therefore contended that a charge could be created on the property for refund of the advance amount.

8.The learned Senior Counsel for the respondents pointed out that no specific relief was sought in the plaint seeking refund of the advance amount paid and stated that seeking such a relief after nearly two decades would be unfair and would affect the rights of the respondents herein.

9.We also had the benefit of hearing Mr.P.Valliappan, learned Senior Counsel, who came forward to assist the Court on this issue. The learned Senior Counsel pointed out Section 54 of the Transfer of Property Act, 1882, particularly, relating to Contract of Sale, which is as follows:

54. “Sale” defined.—

.....

.....

Contract for sale.—*A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*



It does not, of itself, create any interest in or charge on such property.

WEB COPY

10.The learned Senior Counsel pointed out that an agreement by itself would not create any interest or charge over the property and the provision under Section 55 of the Transfer of Property Act, 1882 would stand attracted only in contemplation of sale, presupposing decree to be passed and not otherwise. An agreement simpliciter would does not create any charge over the property.

11.The learned counsel for the appellant pointed out Article 62 of the Limitation Act, 1963 which provides for 12 years to enforce payment of money secured by a mortgage or otherwise on a charge upon immovable property.

12.Article 62 of the Limitation Act, 1963 is as follows:

Description of suit	Period of limitation	Time from which period begins to run
62. To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years.	When the money sued for becomes due.

13.But however, this provision contemplates a charge having been already created over the property and as pointed out, a mere agreement of sale



does not by itself create any charge. Moreover, the relief sought stands extinguished under Article 54 of the Limitation Act, 1963 which is as follows:

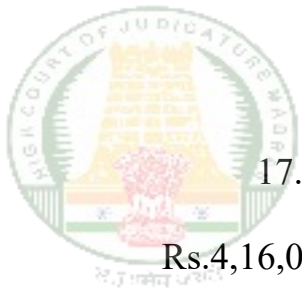
WEB COPY

Description of suit	Period of limitation	Time from which period begins to run
54. For specific performance of a contract.	Three years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

14. When substantial relief seeking specific performance stands barred by law, and when no charge had been created over the property, the relief for refund of advance amount also stands extinguished.

15. However, we would place appreciation on the learned Senior Counsel for the respondents who on instructions stated that the 1st respondent would come forward to refund the advance paid, but however, without interest, since the appellant had not sought this relief at the earliest instance and therefore seeking interest from the date whenever it was paid to the respondents till this date.

16. We find much force in this contention and would appreciate the 1st respondent in coming forward to refund the advance amount.



17.A direction is given that the 1st respondent may refund the sum of Rs.4,16,000/- within a period of six weeks from the date when this order is uploaded in the website of the Court.

18.We make it clear that this relief is granted only owing to the consent granted by the 1st respondent and would not be applicable either directly or in specific terms to any of the other agreements entered into by the appellant with other individuals, in that area relating to acquisition of land relating to the same project.

19.With the above observations, this Appeal Suit stands disposed of. No costs.

(C.V.K.,J.) (K.R.S.,J.)
07-04-2026

smv

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No



To,

1. The Additional District Court (Fast Tract Court – II), Cuddalore.

2. The Section Officer

VR Section, High Court of Madras.



WEB COPY

AS No. 801 of 2



**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

smv

AS No. 801 of 2012

07-04-2026