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CRP.No.2145 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:10.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2145 of 2024
and CMP.No.11389 of 2024

R.Vijayakumar

... Petitioner

Vs.

S.Asokan

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 20.02.2024 passed in I.A.No.493 of 2019 in O.S.No.25 of 2019 on the file of the learned District and Sessions Court – II, Kanchipuram.

For Petitioner :Mr.B.Arvind Srevatsa

For Respondent :Mr.V.Ayyappa Raja

ORDER

The Civil Revision petition is filed challenging the order passed by the trial Court, dismissing the application filed by the petitioner/defendant seeking rejection of the plaint.



2. The respondent herein filed a suit seeking recovery of advance amount paid by him under agreement of sale entered by him with the petitioner on 17.12.2014. According to the respondent, there was an agreement between the petitioner and the respondent whereunder, the petitioner agreed to sell 200 cents of land (agreement mentioned property) in his favour for a sale consideration of Rs.10 Crores. On the date of agreement, the petitioner/defendant said to have received Rs.2 Crores as advanced amount and executed the sale agreement on 17.12.2014. Since the petitioner said to have committed default in performing his part of the contract and defaulted to execute sale deed as per agreement, suit was laid by the respondent seeking recovery of advance amount.

3. The petitioner herein, who was sole defendant in the suit filed instant application seeking rejection of the plaint on the ground of limitation. According to the petitioner, the suit sale agreement was entered into on 17.12.2014 and advance amount was paid on the very same date. The present suit was presented by the respondent only on 24.01.2019 well beyond the period of three years, therefore, the suit is hopelessly bared by limitation.



4. The trial Court which considered the application dismissed it on the ground that the question of limitation is a mixed question of law and fact and therefore it could not be considered at this stage. Aggrieved by the same, the petitioner has come before this Court.

5. The learned counsel appearing for the petitioner would submit that as per the sale agreement dated 17.12.2014, balance sale consideration shall be paid within nine months. Even assuming the date of expiry of nine months is taken at the starting point for limitation, the three years period expired on 16.09.2018 and hence the plaint presented on 24.01.2019 is hopelessly barred by limitation. He further submitted that ingenious pleading made by the respondent in his plaint would not save the period of limitation and bring the suit within time.

6. A perusal of the plaint pleading would indicate that as per the terms of agreement dated 17.12.2014, the respondent paid advance amount of Rs.2 Crores on the date of agreement by way of cheque and cash. The time fixed for performance was nine months. The agreement further stipulates that the seller under the agreement namely, the petitioner shall measure the



property with the help of government Surveyor, fix the boundaries and hand over the same to the respondent. If there is any shortage of the extent, the same shall be set off proportionately in the sale consideration. In the plaint, it was stated that as per the terms of agreement, the petitioner failed to survey the property with the help of Government Surveyor, fix the boundaries and hand over the physical possession to the respondent, inspite of the repeated demands made by him. It is further stated that the respondents made application before CMDA for getting approval to form residential layout in the property and the said process reached the stage of executing the gift deed in respect of the road and park in the proposed layouts.

7. It is further stated in the plaint that the petitioner/defendant failed to perform his part of the contract as mentioned above and hence the respondent issued a legal notice on 17.11.2017 calling upon the petitioner to measure the property, fix the boundaries and complete the sale transaction or return the advance amount of Rs.2 Crores with interest. Even assuming that the date of issuance of notice is taken as the date of knowledge about the breach of contract by the plaintiff, the suit has been filed within three years from the said date. Therefore, if the plaint averments are read as a whole, it is clear, the suit



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has been filed within three years from the date of alleged breach. As rightly pointed out by the trial Court, whether time was essence of contract, whether the petitioner failed to perform his part of the contract, what was the exact date of breach of contract by the petitioner which gave the cause of action for the respondent to seek refund of the advanced money, these are all the questions to be decided based on the evidence to be let in at the time of trial. On the basis of the averment found in the plaint and the documents filed along with the plaint, we cannot come to a definite conclusion that the suit prayer is barred by limitation.

8. It is also pertinent to mention that under Section 55(6) (b) of the Transfer of Property Act, the purchaser of the property is entitled to statutory charge on the agreement mentioned property, in respect of the purchase money including the advance amount. In that case, the period of limitation for the respondent is 12 years and Article 62 of Limitation Act is the appropriate Provision. The same has been settled by the Apex Court in ***Delhi Development Authority Vs. Skipper Construction Company Private Limited and others***, reported in (2000) 10 SCC 130. The above said judgment of the Apex Court was followed by this Court in ***Durai and others Vs. N.Muthayya in CRP.No.1437 of 2021***.



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9. In the light of the discussion above, the submission made by the learned counsel for the petitioner that the suit prayer is barred by limitation on the face of the averment found in the plaint cannot be accepted.

10. I do not find any error in the impugned order passed by the trial Court, accordingly, the Civil Revision Petition stands dismissed. The trial Court shall consider and dispose of the suit on it's own merits without being influenced by anything said in this order. No costs. Consequently, connected miscellaneous petition is closed.

10.02.2026

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To
The District and Sessions Court – II,
Kanchipuram.



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S.SOUNTHAR, J.

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