

**CASE DETAILS**

A. VALLIAMMAI

v.

K.P. MURALI AND OTHERS

(Civil Appeal No. 5342 of 2023)

SEPTEMBER 12, 2023

[SANJIV KHANNA AND BELA M. TRIVEDI, JJ.]

**HEADNOTES**

**Issue for consideration:** Whether the suit for specific performance was barred by limitation and if the High Court erred in affirming the judgment and decree of specific performance passed by the trial court.

**Specific Performance – No time fixed for performance of contract – Suit for specific performance – Limitation – Limitation Act, 1963 – Article 54 – Applicability:**

**Held:** Article 54 of Part II of the Schedule to the Limitation Act stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused – In the present case, it is an accepted position that an advance was paid at the time of execution of the agreement to sell dtd.26.05.88, and the balance consideration was required to be paid by 26.05.89 – However, time for payment thereof and execution of the sale deed was extended till 26.11.89 vide endorsement dtd. 26.05.89 – If, 26.11.89 is taken as the date for performance, the suit for specific performance filed on 27.09.95 is barred by limitation – However, the aforesaid time, as fixed vide the agreement to sell and the endorsement, was not the essence of the contract and therefore, the first part of Article 54 will not be applicable – Instead, the second part of Article 54 will apply – The 3-year limitation period to file a suit for specific performance commenced as early as when the respondent no.3 had filed suit for injunction on 15.07.91 – Appellant’s (in C.A.No. 5342 of 2023) reply dtd. 09.08.1991 or reply to rejoinder dtd. 16.09.1991 were again sufficient written notice to respondent no.3 of her

refusal and unwillingness to perform the agreement to sell – The limitation period of three years under the second part of Article 54, which is from the date when the party had notice of the refusal by the other side, had expired when the suit for specific performance was filed on 27.09.1995 – Thus, suit for specific performance filed by respondent no.3's assignees ('KPM' and 'SPD') is barred by limitation – Impugned judgment and decree for specific performance affirmed by the Division Bench, set aside – However, on facts, to do substantial justice, a decree of Rs.50,00,000/- is passed in favour of 'KPM' and 'SPD' against the appellant, on failure to pay the same within 6 months, appellant to pay interest @ 8% – Civil Appeal Nos. 5343, 5344 and 5345 of 2023 filed by subsequent purchasers of portions of the suit property, allowed – Civil Appeal No. 5342 of 2023 filed by appellant is allowed to the extent indicated Constitution of India – Article 142 – Contract Act, 1872 – s.63. [Paras 20, 21 and 27-29]

#### **LIST OF CITATIONS AND OTHER REFERENCES**

*Pachanan Dhara and Others v. Monmatha Nath Maity*, (2006) 5 SCC 340 : [2006] 2 Suppl. SCR 520 – relied on.

*S. Brahmanand and Ors. v. K.R. Mutugopal*, (2005) 12 SCC 764:[2005] 4 Suppl. SCR 461 – referred to.

#### **OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5342 of 2023.

From the Judgment and Order dated 20.12.2016 of the High Court of Judicature at Madras at Madurai in AS No.63 of 2007.

With

Civil Appeal Nos. 5343, 5344 and 5345 of 2023.

#### **Appearances:**

Ranjit Kumar, Jaideep Gupta, Pallav Sishodia, Sr. Advs., G. Balaji, Ms. Shase, K.S. Mahadevan, Mrs. Swati Bansal, Rangarajan R., Rajesh Kumar, R. Ayyam Perumal, Anand Sathiyaseelan, Rakesh Sharma, Akshay Goel, Anurag Sahay, Rajat Sehgal, Samyak Jain, S. Mahendran, Satyendra Kumar, S. Gowthaman, B. Karunakaran, Mrs.

K. Balambihai, Ajith Williyam S, P. Shankar, Ajay Parbu S., Advs. for the appearing parties.

## JUDGMENT / ORDER OF THE SUPREME COURT

### JUDGMENT

**SANJIV KHANNA, J.**

#### *I.A. Nos. 1 of 2017 and 27407 of 2023.*

1. I.A. Nos. 1 of 2017 and 27407 of 2023, for permission to take on record additional evidence in the nature of documents, are not opposed. Accordingly, I.A. Nos. 1 of 2017 and 27407 of 2023 are allowed. The documents are taken on record. S. Nos. 2 – 12 in I.A. No. 1 of 2017 are marked as Exhibit Nos. S-1– S-11<sup>1</sup>, and S. Nos. 2 – 4 in I.A. No. 27407 of 2023 are marked as Exhibit Nos. S-12 – S-14<sup>2</sup>.

#### *C.A. Nos. 5342-5345 of 2023.*

1. The impugned judgment by the Division Bench of the Madras High Court at Madurai, dated 20.12.2016, in Appeal Suit (MD) No. 63 of 2007, affirms the judgment and decree of specific performance passed by the court of the Additional District and Sessions Judge,

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1 **Exhibit S-1** – a true copy of the judgment dated 23.12.1992 passed by the district munsif court in O.S. No. 508 of 1991; **Exhibit S-2** – a true copy of the lawyer’s notice dated 11.07.1994; **Exhibit S-3** – a true copy of the rejoinder notice dated 13.07.1994; **Exhibit S-4** – a true copy of the judgment dated 12.06.2002 passed by the district munsif court in O.S. No. 1164 of 1994; **Exhibit S-5** – a true copy of the deposition of PW-1 – plaintiff – Duraisamy, in O.S. No. 21 of 2004 dated 05.07.2004; **Exhibit S-6** – a true copy of the deposition of the DW-1 – first defendant – K. Sriram in O.S. No. 21 of 2004 dated 07.09.2006; **Exhibit S-7** – a true copy of the deposition of DW-2 – second defendant – Valliammai, in O.S. No. 21 of 2004 dated 15.09.2006; **Exhibit S-8** – a true copy of the deposition of DW-3 – Sivakami in O.S. No. 21 of 2004 dated 26.10.2006; **Exhibit S-9** – a true copy of the deposition of DW-4 – Singaram in O.S. No. 21 of 2004 dated 10.11.2006; **Exhibit S-10** – a true copy of the sale deed dated 08.05.1995 along with the power of attorney deed dated 28.11.1994; **Exhibit S-11** – a true copy of the notice dated 31.08.1991.

2 **Exhibit S-12** – a true copy of the judgement/order dated 03.11.1989 passed in O.S. No. 787 of 85 and docket orders in O.S. No. 787 of 85 along with photocopy of the original; **Exhibit S-13** – a true copy of the rejoinder notice sent on behalf of K. Sriram dated 31.08.1991; **Exhibit S-14** – a true copy of the rejoinder reply sent on behalf of A. Valliammai dated 16.09.1991.

Fast Track Court No.1, Tiruchirapalli, dated 28.12.2006, in O.S. No. 21 of 2004.

2. The appellant in Civil Appeal No. 5342 of 2023 is A. Valliammai, statedly owner of 11 acres of land situated at the west end of survey numbers 55/2B1 and 55/2B2 in 58, Agaram village, Tiruverambur sub-district, Trichi district<sup>3</sup>, having inherited the same being the second wife of late Ayyamperumal. Civil Appeal Nos. 5343 of 2023, 5344 of 2023 and 5345 of 2023 are preferred by S. Jayaprakash and others, A. Jeyakumar and others, and S. Balasubramanian and others, who are subsequent purchasers having purchased portions of the Suit Property.

3. A. Valliammai had entered into an agreement to sell dated 26.05.1988, Exhibit A-1, with respondent no. 3 – K. Sriram, for the sale of the Suit Property at the rate of Rs. 2,95,000/- per acre. An amount of Rs. 1,00,000/- was paid by K. Sriram to A. Valliammai as an advance. The balance sale consideration of Rs. 31,45,000/- was required to be paid within one year from 26.05.1988, that is, by 26.05.1989. However, vide endorsement dated 26.05.1989, Exhibit A-3, the timeline for payment of the balance sale consideration and execution of the sale deed was extended by 6 months, that is, till 26.11.1989.

4. In order to decide these appeals, before we refer to the facts leading to the filing of the suit for specific performance, we would like to reproduce two clauses of the agreement to sell (Exhibit A-1). The clauses read:

“The under mentioned 4.40 acres in survey number 55/2B 1 which is in my name which is located in the sale property east to west shift to the east end, north to south in favour of Ayyarmalai trust and after shifting it pass through survey numbers 55/2B 1 and 2B 2 and then sell the properties to you so the 11 acres properties which I sell to you shift to the west end into the above two survey numbers and ensure that the lone properties which I sell to you would come within the limit.

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3 For short, “Suit Property”.

I assure that there is encumbrance or dispute over the under described property except the original suit number 737/85 in the sub court. If any encumbrance or dispute is found later on, I assure that I will settle those encumbrances and disputes at my responsibility.”

5. On 11.07.1991, K. Sriram had issued a legal notice through his advocate, Exhibit A-6, requiring A. Valliammai to accept the balance sale consideration and execute the sale deed within one month. A. Valliammai had agreed to execute the sale deed within one year from the date of the agreement by executing single or multiple deeds in favour of K. Sriram or third persons, as suggested by him. On 14.04.1991, A. Valliammai had demanded Rs. 3,00,000/- as a part of the sale consideration, but on 07.07.1991, she had refused to accept the Rs. 3,00,000/- offered by K. Sriram. Further, A. Valliammai had expressed her willingness to sell only half of the Suit Property and that too at an enhanced consideration of Rs. 4,17,000/- per acre. A. Valliammai had assured to convert 4.40 acres of land belonging to the Ayyarmalai Trust<sup>4</sup>, to ensure that the property under sale in terms of the agreement to sell (Exhibit A-1) lies adjacent to Trichy to Tanjavur road. At his own expense, K. Sriram had put in great effort to facilitate such conversion. He had prepared the layout plan, submitted it to Triuverambur Panchayat Union and Madras Town Planning for their approval and had handed over the common land to Tiruverambur Panchayat Union. A. Valliammai had also promised to settle the partition suit in O.S. No. 787 of 1985, pending in Tiruchi sub court, filed by Rajamani Ammal, first wife of A. Valliammai’s husband, late Ayyamperumal Konar, that is, the original owner of the Suit Property. <sup>5</sup>

6. A. Valliammai responded *vide* reply sent by her advocate dated 09.08.1991, Exhibit A-7. She denied having demanded the payment of Rs. 3,00,000/-. Conversely, she alleged that K. Sriram had failed to perform and abide by the agreement to sell (Exhibit A-1) within the stipulated deadline due to his inability to complete the contract. The allegations made by K. Sriram were invented to postpone the execution of the sale deed. She had submitted an application for cancellation of the layout plan due to difficulty

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<sup>4</sup> For short, “Trust”.

<sup>5</sup> Rajamani Ammal and late Ayyamperumal Konar were childless.

in obtaining approval. She denied that K. Sriram had spent any money in putting up the layout. Only if the property belonging to the Trust is allotted on the east, then the property as described could be conveyed. She denied that the partition suit in O.S. no. 787 of 1985 was to be disposed of at her cost. K. Sriram was aware of the pendency. The sale deed was to be executed after disposal of the partition suit. A. Valliammai did not want to take the risk of conveying the property since the said partition suit had not been disposed of.

7. K. Sriram responded *vide* rejoinder dated 31.08.1991, Exhibit S-13, stating that the allegations made by A. Valliammai were incorrect. A. Valliammai wanted to extricate herself from the agreement. He was ready and willing to perform his obligations under the agreement to sell (Exhibit A-1). The demand to execute the sale deed was not pre-mature. K. Sriram had spent a lot of money to obtain an approval of the layout plan. K. Sriram had instructed his advocate to file a suit for specific performance. But before that he wanted to give one last opportunity to A. Valliammai to execute the sale deed in 2 weeks, when he would offer the balance sale consideration. Further, the partition suit in O.S. No. 787 of 1985 was dismissed for default on 04.07.1991. Wrong survey demarcation viz. the land belonging to the Trust stood corrected such that the Trust's property was situated on the east and the Suit Property on the west.

8. A. Valliammai responded *vide* rejoinder reply dated 16.09.1991, Exhibit S-14, in which she denied that a sale deed could be executed and specifically enforced. While accepting that the partition suit in O.S. No. 787 of 1985 had been dismissed for default, it was stated that an application for its restoration was filed. The suit might be restored. A. Valliammai claimed that she was illiterate. Although she was taken to the Revenue Office, she was unaware about the contents of the statement said to have been made by her. In any event, exchange of property requires a registered document. A partition deed cannot be corrected in the survey proceedings.

9. On 15.07.1991, K. Sriram filed a suit for permanent injunction in O.S. No. 1508 of 1991 to restrain A. Valliammai from dealing with the Suit Property till she executes the sale deeds. A. Valliammai, it was alleged, was negotiating with third parties to sell the Suit Property. K. Sriram would be

filing a suit for specific performance in a short time, and was waiting for a reply to his notice.

10. A. Valliammai contested the suit, and in her written statement, she had alleged that K. Sriram was never ready and willing to perform the agreement to sell (Exhibit A-1). He had therefore filed a suit of injunction instead of a suit of specific performance. She had claimed that time was essence of the contract. She had consented for extension of time till 26.11.1989, but K. Sriram had not paid the balance sale consideration till that date. Suit Property had been leased out to one A. Gopalakrishnan, who was in possession and was cultivating the land.

11. An order of temporary injunction was passed in favour of K. Sriram and against A. Valliammai by the trial court. However, on 23.12.1992 the suit was dismissed as not pressed. Liberty to file a fresh suit was neither prayed nor granted.

12. On 23.12.1992 itself, K. Sriram assigned his rights under the agreement to sell (Exhibit A-1) in favour of respondent no.1 – K.P. Murali and respondent no.2 - S.P. Duraisamy, vide assignment agreement dated 23.12.1992, Exhibit A-2.

13. K.P. Murali and S.P. Duraisamy, filed a suit for permanent injunction in O.S. No. 1651 of 1994 with a prayer to restrain A. Valliammai from dealing with the Suit Property. Decree for specific performance of the agreement to sale (Exhibit A-1) was not prayed. It appears that an interim injunction was not granted.

14. On 02.05.1995, A. Valliammai sold 5 acres, a portion of the Suit Property, for a sale consideration of Rs.7,50,000/- to B. Namichand Jain and three others. The purchasers were put in possession and enjoyment of such portions of the Suit Property.

15. On 27.09.1995, during pendency of the suit for permanent injunction in O.S. No. 1651 of 1994, K.P. Murali and S.P. Duraisamy filed a suit for specific performance in O.S. No. 1126 of 1995, subsequently renumbered as O.S. No. 21 of 2004. The present appeal arises from the judgment and decree of the trial court in the said suit, affirmed subsequently by the High Court in the impugned judgment.

16. The suit was defended by A. Valliammai on several grounds, including, *inter alia*, constructive *res judicata*, bar under Order II Rule 2 of the Code of Civil Procedure, 1908,<sup>6</sup> bar of limitation, failure to show readiness and willingness to perform the agreement to sell (Exhibit A-1) and invalidity of the assignment agreement (Exhibit A-2).

17. The trial court framed one issue, that is, whether the plaintiffs were entitled to the relief of specific performance. Trial court held that the execution of the agreement to sell (Exhibit A-1) and its extension by six months vide the endorsement (Exhibit A-3) were admitted. A. Valliammai had not led evidence regarding allotment of land to the Trust on the eastward side or her willingness to refund the advance amount. Further, K. Sriram was not aware of the status of partition suit in O.S. No. 787 of 1985. In terms of Order VIII, Rules 4 and 5 of the Code, A. Valliammai had not denied her intention to complete the agreement to sell (Exhibit A-1). K.P. Murali and S.P. Duraisamy had awaited the conclusion of the partition suit in O.S. No. 787 of 1985. Therefore the limitation period had not commenced till the disposal of the said partition suit on 30.04.1993. Correspondingly, the plea of *res judicata* was rejected since the decision to not file the suit of specific performance was considered to be bona-fide. K. Sriram was ready and willing to perform the agreement to sell (Exhibit A-1) since he had taken steps to divide the Suit Property into housing plots. The contention that the assignment agreement (Exhibit A-2) would not confer any rights to K.P. Murali and S.P. Duraisamy was rejected.

18. The High Court in the impugned judgment rejected the pleas of *res judicata* or bar under Order II, Rule 2 of the Code in view of the pendency of the partition suit in O.S. No. 787 of 1985. However, the allotment of the Trust property eastwards was held to be non-essential to the agreement to sell (Exhibit A-1). The High Court agreed with the trial court, that K. Sriram was ready and willing to purchase the Suit Property and had taken steps to execute the sale deeds. K. Sriram had also reserved his right to file a suit for specific performance during the suit for injunction in O.S. No. 1508 of 1991, which suit was subsequently dismissed as not pressed.

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6 For short, “Code”.



19. We must record at the outset that there is considerable force in the contention raised by the appellants relying upon the principle of constructive *res judicata* or Order II, Rule 2 of the Code. However, we are not giving an affirmative final opinion on these pleas. The appellants must succeed in this appeal since the suit for specific performance in O.S. No. 21 of 2004 is clearly and without doubt barred by limitation. To avoid prolixity, the arguments raised by the learned counsels for the parties would be referred to in our discussion and reasoning.

20. Article 54 of Part II of the Schedule to the Limitation Act, 1963<sup>7</sup> stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused<sup>8</sup>. Section 9 of the Limitation Act, 1963 stipulates that once the limitation period has commenced, it continues to run, irrespective of any subsequent disability or inability to institute a suit or make an application.<sup>9</sup>

21. It is an accepted position that Rs. 1,00,000/- was paid at the time of execution of the agreement to sell (Exhibit A-1), and the balance consideration of Rs. 31,45,000 was required to be paid by 26.05.1989. Time for payment of Rs.31,45,000/- and execution of the sale deed was extended till 26.11.1989 vide the endorsement (Exhibit A-3). If we take the date

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<sup>7</sup> For short, "Article 54".

<sup>8</sup> The Schedule

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

<sup>9</sup> Continuous running of time: Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.

26.11.1989 as the date for performance, the suit for specific performance filed on 27.09.1995, is barred by limitation. However, we agree with the submission raised on behalf of K.P. Murali and S.P. Duraisamy, that the aforesaid time, as fixed vide the agreement to sell and the endorsement (Exhibit A-1 and A-3), was not the essence of the contract and therefore, the first part of Article 54 will not be applicable.<sup>10</sup> Instead, the second part of Article 54 will apply.<sup>11</sup> On the interpretation of Article 54, this Court in *Pachanan Dhara and Others v. Monmatha Nath Maity*<sup>12</sup>, has held that for determining applicability of the first or the second part, the court will have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract. Therefore, we have to examine whether K. Sriram or his assignees, K.P. Murali or S.P. Duraisamy, had notice that performance had been refused by A. Valliammai and, if so, from which date.

22. We have elaborately referred to the correspondence exchanged between the parties, namely, notice dated 11.07.1991 (Exhibit A-6), reply dated 09.08.1991 (Exhibit A-7), rejoinder dated 31.08.1991 (Exhibit S-13) and reply to the rejoinder dated 16.09.1991 (Exhibit S-14). We have also referred to the written statement filed by A. Valliammai. These are admitted documentary evidence and the contents thereof are not in debate. In our opinion, K. Sriram, in the notice dated 11.07.1991 (Exhibit A-6) and rejoinder notice dated 31.08.1991 (Exhibit S-13), had acknowledged having notice that A. Valliammai had refused to perform her part of the contract. K. Sriram filed a suit for permanent injunction on 15.07.1991 to restrain A. Valliammai from selling the Suit Property to third parties. In the plaint, there is a specific averment and statement that A. Valliammai was making excuses and going back on the terms previously agreed. A. Valliammai was negotiating with third parties for sale of the Suit Property. She was not abiding by the statement made before the Tiruverumbur Panchayat Union. K.

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<sup>10</sup> *Supra* Note 8.

<sup>11</sup> *Supra* Note 8.

<sup>12</sup> (2006) 5 SCC 340.

Sriram had averred that he was going to file a suit for specific performance in a short time, and he was awaiting reply from A. Valliammai. The reply dated 09.08.1991 (Exhibit A-7) and rejoinder dated 16.09.1991 (Exhibit S-14) by A. Valliammai did not change the situation. These are written notices of refusal and not of acceptance of any obligation and affirmation. K. Sriram did not withdraw the suit for permanent injunction on the ground that he was satisfied with the reply and stand of A. Valliammai and hence the cause of action did not survive. K. Sriram continued with the suit and had enjoyed benefit of temporary injunction granted in his favour. The suit was un-conditionally dismissed as withdrawn on 23.12.1992, the day K. Sriram had transferred/assigned his rights under the agreement to sell (Exhibit A-1) in favour of K.P. Murali and S.P. Duraisamy (Exhibit A-2). K. Sriram, K.P. Murali and S.P. Duraisamy were aware of the refusal and thus the cause of action had arisen forcing them to approach the court with a prayer for injunction against A. Valliammai.

23. It was submitted before us, that in A. Valliammai's deposition as PW-2, in front of the trial court, she had accepted that no notice was served on K. Sriram to pay the balance sale consideration on the date prescribed under the agreement to sell (Exhibit A-1) and that she had remained quiet with the hope that K. Sriram would show and therefore the limitation period under the second part of Article 54 had not commenced. We do not agree. The question to be examined and answered is whether K. Sriram had notice of A. Valliammai's refusal or unwillingness to perform her part of the agreement. The relevant portion of deposition of A. Valliammai as PW-2 does not refer to her refusal or acceptance, but merely refers to the factual position that she had not issued any notice or at one point of time she had hope. This deposition cannot be read as acceptance and willingness of A. Valliammai. At the risk of repetition, we state that in the reply dated 09.08.1991 (Exhibit A-7) and the rejoinder dated 16.09.1991 (Exhibit S-14), A. Valliammai had contested the assertions or allegations made against her by K. Sriram, and her denial and refusal to abide and comply by the agreement to sell (Exhibit A-1) was affirmed.

24. Once we accept A. Valliammai's refusal and K. Sriram's notice of her refusal, the submission on behalf K.P. Murali and S.P. Duraisamy relying on Section 63 of the Indian Contract Act, 1872, that a promise may

extend time for performance of a contract and the submission relying on *S. Brahmanand and Ors. v. K.R. Mutugopal*<sup>13</sup>, that extension of time need not be in writing and can be proved by oral evidence, including conduct and forbearance on the part of the other party, have to be rejected. Refusal and forbearance are opposites.

25. The High Court in the impugned judgment had rejected the contention that the allotment of the Trust property eastwards had any bearing on filing of the suit for specific performance. We agree with the said finding. In fact, *vide* rejoinder dated 31.08.1991 (Exhibit S-13), K. Sriram stated that the survey demarcation was already corrected in the survey map such that the Trust property was situated on the east and the A. Valliammai's property on the west.

26. The submission stating that the agreement to sell (Exhibit A-1) was to be specifically performed only after disposal of the partition suit in O.S. No. 787 of 1985 is misconceived and wrong. We have quoted the relevant clause of the agreement to sell (Exhibit A-1). It do not state that the sale deed was to be executed only after disposal of the partition suit. A. Valliammai had only faithfully stated that there was no encumbrance or dispute over the Suit Property except the partition suit. The disputed Suit Property could still be sold and transferred. K. Sriram was clearly aware of the pending suit while executing the agreement to sell (Exhibit A-1), which was agreed despite the pending litigation. It was submitted on behalf of K.P. Murali and Duraisamy that, A. Valliammai, in her reply dated 09.08.1991 (Exhibit A-7) claimed that it was not possible for her to execute the contract till the disposal of the said partition suit. The argument is without merit, as this assertion by A. Valliammai shows her refusal to perform the agreement to sell (Exhibit A-1). A decision in the said suit was not a condition precedent to the execution of sale deed under the agreement to sell (Exhibit A-1). Neither had K. Sriram read the said reply as concurrence or acceptance by A. Valliammai to execute the sale deed post the decision in the said partition suit. On the other hand, as recorded previously, K. Sriram had continued to press the suit for permanent injunction in O.S. No. 1508 of 1991. Another fallacy in the argument raised on behalf of K.P. Murali and K.P. Duraisamy is

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13 (2005) 12 SCC 764

that A. Valliammai's reply dated 09.08.1991 (Exhibit A-7) is not being read in its entirety. This is not a proper manner to construe a notice or reply and the contents and purport thereof. K. Sriram, and subsequently, K.P. Murali and K.P. Duraisamy had filed suits for permanent injunction.

27. For the aforesaid reasons, the 3-year limitation period to file a suit for specific performance commenced as early as when the K. Sriram had filed suit for injunction on 15.07.1991. A. Valliammai's reply dated 09.08.1991 (Exhibit A-7) or reply to rejoinder dated 16.09.1991 (Exhibit S-14) were again sufficient written notice to K. Sriram of her refusal and unwillingness to perform the agreement to sell (Exhibit A-1). The limitation period of three years under the second part of Article 54, which is from the date when the party had notice of the refusal by the other side, had expired when the suit for specific performance was filed on 27.09.1995. Suit in O.S. No. 21 of 2004 is barred by limitation.

28. Accordingly, the impugned judgment and decree for specific performance, as affirmed by the Division Bench, is set aside.

29. K. Sriram had paid an advance of Rs. 1,00,000/- to A. Valliammai. This position is accepted. In view of our findings, the suit filed by K.P. Murali and S.P. Duraisamy, being barred by limitation, K.P. Murali and S.P. Duraisamy are not entitled to a decree for refund of Rs.1,00,000/- with interest. During the course of hearing, the parties had tried to negotiate a settlement but it had not actualised. A. Valliammai had agreed to pay Rs. 50,00,000/- (Rupees Fifty Lakhs Only) to K.P. Murali and S.P. Duraisamy. The reason was that K. Sriram had spent money in obtaining approval of layout plans. A. Valliammai has sold most of the Suit Property except for about 1 acre of the land. K.P. Murali and S.P. Duraisamy have deposited Rs. 31,45,000/- in terms of the decree passed in their favour, which amount has been converted into interest bearing fixed deposit receipt(s). Keeping in mind the aforesaid facts and circumstances, we exercise our power under Article 142 of the Constitution of India, to do substantial justice with the direction to A. Valliammai to pay Rs.50,00,000/- (Rupees Fifty Lakhs Only) to K.P. Murali and S.P. Duraisamy. The figure keeps in mind the advance of Rs.1,00,000/- paid on 26.05.1988 and the expenses incurred by K. Sriram, and interest etc. A decree of Rs.50,00,000/- is passed in favour of K.P. Murai and S.P. Duraisamy against A. Valliammai in the above terms.

It is also directed that in case Rs.50,00,000/- is not paid by A. Valliammai within 6 (six) months, she shall be liable to pay interest @ 8% per annum on Rs. 50,00,000/- from the date of this judgment till the date on which the payment is actually made.

30. In view of the aforesaid discussion, Civil Appeal Nos. 5343, 5344 and 5345 of 2023, preferred by S. Jayaprakash and others, A. Jeyakumar and others, and S. Balasubramanian and others, are allowed and the decree of specific performance passed in favour of K.P. Murali and S.P. Duraisamy is set aside. O.S. No. 21 of 2004, preferred by K.P. Murali and S.P. Duraisamy, decided by Additional District and Sessions Judge, Fast Track Court No. 1, Tiruchirapalli will be treated as dismissed. Civil Appeal No. 5342 of 2023 preferred by A. Valliammai is allowed to the extent that the decree of specific performance in respect of the suit land is set aside, and is substituted by a decree of Rs. 50,00,000/- payable with effect from the date of this judgment along with an interest @ 8% per annum which A. Valliammai will be liable to pay if she fails to pay Rs. 50,00,000/- within six months from the date of this judgment. O.S. No. 21 of 2004, filed by K.P. Murali and S.P. Duraisamy and decided by the Additional District and Sessions Judge, Fast Track Court No.1, Tiruchirapalli is decreed in the above terms against A. Valliammai.

31. K.P. Murali and S.P. Duraisamy are entitled to withdraw the amounts previously deposited by them, in terms of the decree of the trial court along with the interest accrued thereon.

32. In view of the facts and circumstances of this case, we hold that there will be no order as to costs.

Headnotes prepared by:  
Divya Pandey

Appeals disposed of.