Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 15/09/2026

(2000) 03 MAD CK 0101

In the Madras High Court

Case No : Appeai No. 796 of 1986

The Andavar Finance (P) Ltd. APPELLANT

Vs

S. Manikkaswami and 8 others RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Chit Funds Act, 1982 — Section 12
Contract Act, 1872 — Section 125
Transfer of Property Act, 1882 — Section 55(4)(b), 55(5)(b)

Citation : (2000) 03 MAD CK 0101

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : R. Sivaraman for Mr. B. Rajagopalan, for the Appellant; J. Srinivasamohan for Mrs. Radhagopalan, Advocate for 1st Respondent and Mr. K. Subramanian Advocate for the respondents 3 to 7 and 9 and the respondents 2 and 8 not appearing in person, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—This appeal is filed by the plaintiff against the judgment and decree passed by the learned Subordinate Judge, Mayiladuthurai in O.S. No. 46 of 1984 dated 1.8.1985. Respondents 1 to 3 herein were defendants 1, 2 and 4 in the suit and respondents 4 to 9 are the legal representatives of the third defendant. Though the Registrar of Chit Funds, Mayiladuthurai was the fifth defendant in the suit, since no relief has been claimed against him, he is not impleaded as a party in the appeal. The suit was filed for a decree directing defendants 1 to 4 to pay plaintiff personally the suit amount with a charge on the suit property for the suit amount together with subsequent interest and also for a direction that if the court deems fit, a sum of Rs. 35,000/- of the suit amount be paid to the fifth defendant, in default of which the plaintiff be at liberty to execute the decree for the realisation of the amount with subsequent interest and also for a direction that in default of the payment, the suit property be ordered to be sold and also for other consequential reliefs.

2. The plaintiff has averred in the plaint that under a registered deed of sale dated 31.3.1972, he sold the suit property to the first defendant for a sum of Rs. 40,000/- out of which Rs. 5,000/- was to be adjusted towards the amount due by the plaintiff to the first defendant and the balance of Rs. 35,000/- was to be paid by the first defendant to the fifth defendant on behalf of the plaintiff. The plaintiff had earlier given the suit property as security u/s 12 of the Chit Funds Act in favour of the fifth defendant and to have the encumbrance cleared, and to have an unencumbered title to the suit property, the first defendant was directed to pay the amount of Rs. 35,000/- to the fifth defendant in lieu of the security over the suit property given by the plaintiff. It is also stated that the possession of the property was also given to the first defendant on the date of deed of sale, i.e., 31.3.1972. According to the plaintiff, the first defendant has not paid the said amount as directed in the deed of sale to the fifth defendant and the fifth defendant has issued notices to the first defendant on 3-4-1972 and on 28-4-1972 and the first defendant received the notices. The plaintiff has stated that instead of paying the amount to the fifth defendant, the first defendant has sold the suit property in favour of the second defendant on 16.12.1980 and the second defendant in his turn sold the suit property in favour of the third defendant and his son on 10.2.1982 and the defendants 3 and 4 were now in possession and enjoyment of the suit property. The plaintiff has stated that the plaintiff is entitled to recover the amount of Rs. 35,000/- and since a charge has been created, the plaintiff is entitled to recover the amount of Rs. 35,000/- by sale of the suit property. According to the plaintiff, the charge is also enforceable against the alliances as they have purchased the property with the knowledge of the encumbrance over the suit property. The plaintiff has also claimed interest on the amount from the date on which possession was handed over i.e. 31-3-1972 at the rate of 6% p.a.

3. The first defendant has filed a written statement stating that the plaintiff has no locus standi to file the suit and the plaintiff has no right over the suit property. It is stated that the fifth defendant alone is entitled to recover the money in the manner known to law and it is not open to the plaintiff to get back the money.

4. Defendants 2, 4 and 5 have also filed separate written statement and in the written statements, and in the written statement of the fourth defendant, it is stated that there is no company existent or Functioning as Andavar Finance (Private) Ltd.,

5. The trial Court on the basis of the pleadings framed four issues, for consideration and the trial court held that the deed of sale dated 31.3.1972 was validly executed by the plaintiff. The trial Court held that the plaintiff is not entitled to the sum of Rs. 35,000/- but at the same time, the defendants 1 to 4 were directed to deposit the said sum into court within a period of 3 months from the date of decree. In so far as the finding that the plaintiff is not entitled to the sum of Rs. 35,000/- and in so far as direction that defendants 1 to 4 do deposit the money are concerned, the findings of the trial Court have become final as

there is no appeal or memorandum of cross-objection on these points.

6. The plaintiff is aggrieved by the findings of the trial Court that the plaintiff is not entitled to interest on Rs. 35,000/- and the scope of the appeal is confined to the question whether the plaintiff is entitled to interest on the sum of Rs. 35,000. The appeal has been filed on the ground that the appellant sold the property to the first defendant on 31.3.1972 and possession was also handed over to the first defendant on the same day and hence, the first defendant is liable to pay interest at the reasonable rate on the unpaid purchase money in the hands of the purchasers. The provisions of the Interest Act are also referred and according to the appellant, the denial of interest on the unpaid purchase money by the purchasers is not correct in law.

7. Mr. R. Sivaraman, learned counsel appearing for the appellant, submitted that u/s 55(4)(b) of the Transfer of Property Act, the plaintiff is entitled to have a charge over the property in the hands of the first defendant as part of the purchase money was not paid and under the same provision, the plaintiff is also entitled to interest on the said amount from the date on which possession was delivered to the first defendant, Learned Counsel relied upon the decision of the Privy Council in Ratanlal Choonilala Panalal v. The Municipal Commissioner for the City of Bombay (36 M.L.J. 1) and submitted that in the case of sale of property in the absence of any contract to the contrary, the plaintiff is entitled to get interest on the unpaid purchase money from the date when the new owner enters into possession. Learned counsel also referred to the Full Bench decision of the Allahabad High Court in the case of Mt. Naima Khatun Vs. Basant Singh and submitted that the amount kept in the hands of the first defendant is a part of the purchase money which remain unpaid and since the amount belongs to the plaintiff, and as it has not been paid to the fifth defendant as directed in the deed of sale, it is a money due to the plaintiff and therefore the plaintiff is entitled to claim. Interest on the unpaid purchase money which remained in the hands of the first defendant. Learned counsel also referred to the decision of the Supreme Court in Hirachand Kothari (Dead) by Lrs Vs. State of Rajasthan and Another, and submitted that under the provisions of the Interest Act, the first defendant is liable to pay interest on equitable grounds.

8. Learned counsel for the first respondent, on the other hand, submitted that the provisions of Section 55(4)(b) can not be construed in. isolation, but it must be construed along with the provisions of the Section 55(5)(b) of the Transfer of Property Act, and since the first defendant is bound to pay the balance of purchase money as directed by the plaintiff, he is liable to pay the said amount to the person entitled to the money. According to him, the sale in favour of the first defendant was free from encumbrance and since the plaintiff is not entitled to the principal amount, on equitable grounds, the plaintiff is also not entitled to claim interest. Learned counsel for the first respondent relied upon the Special Bench decision of the Andhra Pradesh High Court in Subbaian v. Suryanarayana (AIR 1959 A.P.638) in support of his submissions.

9. On consideration of the submissions made by the learned counsel for the appellant and the learned counsel for the first respondent, the following points arises for consideration-

1. What are the appellant is entitled to claim interest u/s 55(4)(b) of the Transfer of Property Act?

10. In order to decide the said point, it is necessary to refer to Section 55(4)(b) of the Transfer of Property Act and the said section reads as under:-

"55. In the absence of a contract to the contrary the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the Rules next following, or such of than as are applicable to the property sold:

x x x

x x x

(4) The Seller is entitled-

(a) xxx.

(b) Where the ownership of the property has passed to the buyer before payment of the whole of the purchase money, to a charge upon the property in the hands of the buyer, any transfers without consideration or any transfers with notice of non-payment, for the amount of the purchase money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered."

It is also necessary to refer to Section 55(5)(b) of the said Act which reads as under:-

"(5) The buyer is bound-

(a) x x x

(b) to pay or tender, at the time and place of completing the sale, the purchase money to the seller of such person as he directed provided that, where the property is sold free, from encumbrances, the buyer may retain, out of the purchase money, the amount of any encumbrances, on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto."

11. There is no dispute that on 31.3.1972, the suit property was sold by the plaintiff to the first defendant by a registered deed of sale and on perusal of the terms of the deed, it is clear that the property was sold for a total consideration of Rs. 40,000/- and the obligation of the first defendant to pay the sum of Rs. 40,000/- was discharged by way of adjustment of the sum of Rs. 5,000/- due by the plaintiff to the first defendant in a chit transaction and the balance of Rs. 35,000/- was adjusted by directing the first defendant to deposit the said

amount with the fifth defendant as the suit property was given as security by the plaintiff in favour of the fifth defendant for a sum of Rs. 35,000/-. It is significant to notice that no time limit has been fixed in the deed of sale to deposit the said sum of Rs. 35,000/- with the fifth defendant and another important aspect of the deed of sale is that the property was sold free from all encumbrances.

12. As already observed by me, in so far as the finding of the trial Court that the plaintiff is not entitled to the said sum of Rs. 35,000/- and the direction given to defendants 1 to 4 to deposit the sum of Rs. 35,000/- are concerned, that part of the judgment of the trial Court has become final and the only question that arises is whether the plaintiff is entitled to claim interest on the sum of Rs. 35,000/- from the date of the handing over the possession to the first defendant. There would have been no difficulty in holding that the plaintiff is entitled to claim interest, if the unpaid purchase money was with the vendee and the vendee was obliged to pay the money to the vendor. The decision of the Privy Council in Ratanlal Choonilal Panalal''s case (36 M.L.J. 1) is an authority for the proposition that in the case of sale or acquisition of land, in the absence of any contract, interest on unpaid purchases money runs from the date from which the new owner enters into possession. However, the facts of the present case are slightly different. The jural relationship between the vendor and the vendee in respect of the unpaid purchase money which was directed to be paid to a third party was subject matter of consideration in some of the earlier decisions of this court.

13. In Avvari Subba Row and Others Vs. Kondamudi Varadaiah (deceased) and Others, a property was sold free of mortgage with a portion of the purchase money was kept by the buyer to pay off the mortgage debt and subsequent to the sale, the Madras Agriculturists Debt Relief Act (Act 4 of 1938) was introduced as a result of which the debts of the agriculturists were scaled down and the question arose who would be entitled to the benefit of scaling down under the said Act. This Court held that the vendor would be entitled to the benefit of scaling down under the Agriculturists Debt Relief Act and he would also be entitled to the excess money that remained in the hands of the vendee. The further question that arose was whether the vendor is entitled to claim interest on that amount and in that context, Patanjali Sastri, J. (as his Lordship then was) speaking for the Bench, held that when a sale is made free from the encumbrances and a portion of price was left with the vendee to pay off the encumbrance, the vandee sets as an agent of the vendor as regards the disposal of the sum retained, and the agency is one which cannot be revoked as the vendee has himself an interest in the money being applied in the manner indicated. The learned Judge also considered the question whether interest can be awarded u/s 55(4)(b) of the Transfer of Property Act and held that the provision clearly presupposes that the purchase money or part thereof remaining unpaid is payable to the seller and can have no application to a case where the buyer is entitled and allowed to retain the amount out of the purpose money for payment to the person entitled thereto., The Bench held that the vendor is not

entitled to interest on the amount remaining unpaid and there is no legal basis for the claim of the vendor to interest on the amount retained by the vendee for payment to clear the encumbrance.

14. The view expressed in Subba Row''s case was followed by another Bench of this court in Sriniasavaradachariar v. Dasu Reddiar (1944) I MLJ 269=57 L.W.202).

15. A Full Bench of the Allahabad High Court in Mt. Naima Khatun Vs. Basant Singh has pointed out that where a property has been transferred by a vendor to a vendee and there is a direction to the vendee to pay off a third party, the transaction can be regarded as any one of the following characteristic:-

"(1) The amount left in the hands of the vendee may be a part of the purchase money remaining unpaid, in which case it is obviously money belonging to the vendor and if not paid as directed is still due to be paid to the vendor.

(2) Or it may amount to a convenient with an undertaking to relieve the vendor from his existing liability in which case a suit on the convenient may lie,

or

(3) It may be a mere promise to perform an act for consideration or a contract of indemnity in which case a suit for damages incurred on the breach of the contract would lie under S. 125 of the Contract Act; but it must be proved that less has been sustained."

The Allahabad High Court held that the case of the plaintiff therein fell within the first category as the plaintiff in that case had failed to perform his duty and in that circumstances, he would not be allowed to retain the money in his hand. However, the facts of the case are different as the finding of the trial Court that the plaintiff is not entitled to the money from the first defendant has become final and that part of the judgment of the trial Court has not been challenged and hence, it is not necessary to consider whether the plaintiff is entitled to the sum of Rs. 35,000/- from the first defendant.

16. Further, it is relevant to notice that on the basis of the decision of this court in Srinivasavaradachariar''s cases (1944) I MLJ 269=57 L.W.202), the vendee acts as an agent of the vendor as regards the disposal of the sum so retained by him to discharge on encumbrance on the property sold to him, although the agency is one which can not be revoked as the vendee had himself an interest in the money being applied in the manner indicated. A Special Bench of the Andhra Pradesh High Court in D. Subbaiah Vs. G. Suryanarayana and Others,) held that while Section 55(4)(b) of the Transfer of Property Act creates a lien in favour of the vendor, Section 55(5)(b) of the same Act offers protection to the vendee to enable him to retain the purchase money to discharge any encumbrance on that property existing on the date of sale to be paid to the person entitled to it and the vendee is given a right to keep a portion of the purchase money to discharge the encumbrance existing on the property and the exact relationship between the

vendor and vendee is that of agency coupled with interest and that agency cannot be revoked.

17. The scope of Section 55(4)(b) was considered in Muthia Chetty v. Sinna Velliam Chetty ILR 35 Mad. 625 and this court held that the provisions of Section 55(4)(b) does not give the vendor an absolute right to interest on the purchase money irrespective of the equities and circumstances of the case and the court held as under:-

"The object of the clause is to give the vendor a lien on the property for unpaid purchase money and it declares that the lien will inure for the interest as well as for the principal of the purchase money, assuming that interest is payable. It does not enact that the vendor is entitled to interest in every case."

18. Therefore the question whether the plaintiff is entitled to interest would depend upon the equity and circumstances of each case. In Kasi Vasi Chokkalinga Tambiran Vs. Ramanadan and Others, this Court held that when purchase money is left with vendee for paying a prior mortgage debt and he has not paid it, he is liable in a mortgage suit to pay it to the mortgagee with interest unless it is left with him as a security for the payment of balance of mortgage money by mortgager and the property purchased by him is liable to be sold in execution in preference to another purchased free from encumbrances.

19. Coming to the facts of the case, it is not a case where due to some subsequent events, the debt due to the fifth defendant was discharged, nor there is any reduction in the debt payable to the fifth defendant, not the remedy of the fifth defendant to recover the same is barred by the law of limitation, nor his right to the money got extinguished by operation of law, or by act of parties. As already held by me, Section 55(4)(b) and Section 55(5)(b) should be read together and there is agency coupled with interest and the plaintiff is not entitled to the amount of Rs. 35,000/- from defendants 1 to 4 and consequently, there is no equity in his favour to award interest. The plaintiff has not proved that he suffered certain damages due to non-payment of the money. As observed by this court in Muthia Chetty''s case (I.L.R.35 Mad. 625), the plaintiff has no absolute right or interest on the unpaid purchase money and Section 55(4)(b) of the Transfer of Property Act merely provides for interest on the unpaid purchase money and on the facts of the case, I hold that the plaintiff is not entitled to claim interest on equities.

20. In so far as the decisions relied upon by the learned counsel for the appellant are concerned, they are distinguishable on the facts of the case, and hence it is not necessary to consider the same. I hold that the trial Court has rightly held that the plaintiff is not entitled to interest on the sum of Rs. 35,000/- which was directed to be paid to the fifth defendant and as already observed by me, the deed of sale does not stipulate any time limit, within which the amount of Rs. 35,000/- should be paid by the First defendant to the Fifth defendant and there is also no evidence to show that the fifth defendant has made a demand for the

repayment of the sum, but the plaintiff has refused to pay the same. In so far as defendants 2 to 4 are concerned, they have purchased the property with the knowledge of the encumbrance. Since I have held that the plaintiff is not entitled to claim interest the suit as against them has also to be dismissed, in so far as the claim of interest is concerned. Consequently, I do not find any justifiable reason to interfere with the judgment and decree of the trial court. The appeal fails and it is dismissed. In the circumstances, there will be no order as to costs.