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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:04.08.2026	Pronounced on:01.09.2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

CRP. No.1462 of 2026
and CMP. Nos.7160 & 7161 of 2026

1.P.Sampath
2.S.Thenmozhi
3.S.Vadivukkarasi
4.S.Ramyabharathi
5.S.Gururagavan ..Petitioner

Vs

1.B.Vasanthi
2.S.Deepa
3.S.Thaswanth Chakravarthy
(a minor son represented by his next friend
mother 2nd respondent, Deepa)

..Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order dated 13.11.2025 in I.A. No.3 of 2024 in O.S. No.384 of 2023, on the file of the Subordinate Court, Tiruchengode.

For Petitioner(s): Mr.D.Shivakumaran

For Respondent(s): Mr.B.Jawahar

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ORDER

The defendants are the revision petitioners, aggrieved by the dismissal of I.A. No.3 of 2024 in O.S. No.384 of 2023, filed by them invoking Order VII, Rule 11(d) of CPC, to reject the plaint.

2. I have heard Mr.D.Shivakumaran, learned counsel for the revision petitioners and Mr.B.Jawahar, learned counsel for the respondents.

3. An interesting question that arises for consideration in the present revision is with regard to the issue of limitation for seeking refund of advance paid under an agreement of sale. In order to appreciate the submissions of the respective learned counsel, I would herein below, summarize their submissions:-

4. Mr.D.Shivakumaran, learned counsel for the revision petitioners/defendants would firstly contend that the plaintiffs alleged that an advance of Rs.2,00,000/- was paid out of an agreed sale consideration of Rs.2,25,000/-, under an agreement of sale dated 29.09.2004. In and by the said argument, the parties had contemplated one year time for payment of balance sale consideration of Rs.25,000/- and admittedly, no suit was filed for specific

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performance and the suit was filed only for refund of the advance amount of Rs.2,00,000/- paid by the agreement holders. Mr.D.Shivakumaran, learned counsel for the revision petitioners would contend that the petitioners are disentitled to seek refund beyond the period viz., 29.09.2008, when the limitation for filing of the suit for specific performance, lapsed.

5. According to Mr.D.Shivakumaran, learned counsel for the revision petitioners, the right to recover the advance also stood lapsed on the said date, viz., 29.09.2008, when the three year period from the date fixed for payment of balance sale consideration lapsed. Mr.D.Shivakumaran, learned counsel for the revision petitioners, further contends that the Section 16(C) of the Specific Reliefs Act, 1963, contemplates a personal bar on the plaintiffs and when the plaintiffs are not even entitled to the relief of specific performance and admittedly, which has never been sought for by them, the question of invoking Section 55(6)(b) of the Transfer of Property Act, 1882 cannot enure to their benefit to contend that the suit filed within 12 years is maintainable, as the plaintiffs had a charge over the advance amount paid under the agreement of sale. According to Mr.D.Shivakumaran, there is no specific Article in the Limitation Act, providing for a limitation period, for seeking refund of advance and therefore, the residuary Article viz., Article 113 of the Limitation Act, 1963 alone

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can be applied and admittedly, the suit not having been filed before 2008 and filed only in the year, 2023 is hopelessly barred by limitation.

6.Mr.D.Shivakumaran, learned counsel for the revision petitioners, would further state that in order to render a finding that the suit is barred by limitation, no further pleadings beyond the plaint were required and without noticing the same, the Trial Court has erroneously dismissed the reject the plaint application, relying on inapplicable case law and also by wrongly placing reliance on the proceedings in W.P. No.17882 of 2023, which Writ Petition was disposed of by this Court, holding that the Sub Registrar need not be directed to remove the entry reflecting the sale agreement, as time barred. Relying on the ratio laid down by the Hon'ble Division Bench in *N.Ramayee Vs. Sub Registrar and another,* reported in *2020 (6) CTC 697,* where the Hon'ble Division Bench, held that merely because there is an entry relating to previous agreement of sale, it will not be a bar for dealing with the property. He would further contend that the Trial Court, ought not to have framed the order passed by the Writ Court to, in any manner, come to the aid of the respondents/plaintiffs, in order to save limitation.

7. Per contra, Mr.B.Jawahar, learned counsel appearing for the respondents/plaintiffs, would contend that on the date of the agreement, the

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vendor was only a mere allottee and his right became absolute only on 30.06.2014. It is therefore the submission of Mr.Jawahar, learned counsel that the charge available to the plaintiffs over the advance amount of Rs.2,00,000/- would effectively commence only from 30.06.2014 and suit having been filed within a period of 12 years is saved by Section 55(6)(b) of the Transfer of Property Act, 1882. It is his further submission that in view of the allotment conditions, there was also an additional bar for executing a sale deed for a period of three years, which lapsed only on 29.06.2017 and therefore, even from this angle, the suit was in time and rightly, the Trial Court has dismissed the application to reject the plaint holding that the issue of limitation will have to be decided only after trial.

8. I have carefully considered the submissions advanced by the learned Counsel on either side.

9. At the outset, before proceeding to adjudicate the issue that arises for consideration in the present suit, I would like to refer to an Article of Mr.P.Valliappan, learned Senior Counsel published in *2026 (4) CTC Part 8 Index 8(1)* on whether a sale agreement creates a statutory charge under Section 55(6)(b) of the Transfer of Property Act and what would be the relevant Article under

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the Limitation Act, 1963 for filing a suit to recover the advance amount.

10. Going by the provisions and phraseology employed, Mr.P.Valliappan, learned Senior Counsel has observed that Section 55(6)(b) of the Transfer of Property Act, enables the buyer, unless he has wrongfully refused to accept the delivery, to a charge on the property, for the purchase money paid in advance, and interest thereon and when there is an absence of a provision in the contract to the contrary, a statutory charge under Section 55(6)(b) does not arise merely on an agreement of sale, but would stand attracted only on completion of sale. Consequently, finding that there is no specific provision in the limitation Act, applicable to refund of advance, paid under an agreement of sale, the Author has concluded that the residuary Article 113 alone can apply and not Article 62, which applies to a suit to enforce payment of money secured by a mortgage or otherwise charged upon immovable property.

11. Keeping the view of the learned Senior Counsel, applying the ratio laid down by this Court as well as the Hon'ble Supreme Court in relevant case laws, I now proceed to discuss the relevant facts which are necessary to decide this revision petition. In order to invoke Order VII Rule 11(d) of CPC, to reject the plaint on the ground that it is barred on the ground of limitation, there is no

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second opinion that the Court can go only by the averments in the plaint and plaint documents.

12. In this regard, I have examined the plaint in O.S. No. 384 of 2023. The summary of the plaint is as follows:-

The plaintiffs are legal heirs of late.B.Suresh. The suit property is a residential house. The first defendant was allotted the suit property by the Tamil Nadu Housing Board. On 29.04.1993, even at the stage of allotment, the first defendant entered into an agreement of sale with one B.Suresh, under whom the plaintiffs claim right. The sale consideration was fixed at Rs.2,25,000/- and an agreement was drawn up between the said Suresh and the defendants 1 and 2 on 29.09.2004, on which date, a sum of Rs.2,00,000/- was paid as advance by B.Suresh to the defendants 1 and 2. The agreement was registered on the file of the Sub Registrar, Thiruchengode in Doc. No.3682 of 2004. The parties had agreed that the balance sale consideration of Rs.25,000/-, would be paid within one year and a sale deed would be executed in favour of B.Suresh. It is also contended in the plaint that B.Suresh was ready and wiling to get the sale deed in his name, but however, the first defendant was not in a position to obtain sale deed in his name and only on 30.06.2014, the Tamil Nadu Housing Board, executed a registered sale deed in favour of the first defendant.

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13. The plaintiffs aver that the said Suresh was always ready and wiling to perform his part of the contract by paying the balance sale consideration of Rs.25,000/-, across registration of sale deed in his favour, but however, the defendants 1 and 2, postponed the lawful demands of Mr.B.Suersh, stating that there is a bar of three years from 30.06.2014 to alienate the suit property to third parties. In view of the same, the said B.Suresh, in good faith waited for the bar to pass and thereafter the said B.Suresh, died on 12.08.2019 and the plaintiffs being his legal representatives demanded the defendants to receive the balance sale consideration and execute sale deed in their favour. According to the plaintiffs, the defendants dodged the plaintiffs, citing difference of opinion with the third defendant and sought for more time to complete the sale transaction. The plaintiffs believed the defendants 1 and 2 and did not take any legal action. However, to their shock on 05.04.2023, the first defendant had issued a notice to the Sub Registrar, Thiruchengode to cancel the entry reflecting the registered sale agreement between B.Suresh and the defendants 1 and 2 in the Encumbrance Certificate. A copy of the said notice was sent to the plaintiffs and on receipt of the same, they realized the malafide intention of the first defendant, to defeat the rights of the plaintiff to get the sale deed in respect of the suit property.

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14. The plaintiffs sent a reply on 29.04.2023, opting to seek refund of the advance of Rs.2,00,000/-, together with interest at 12% per annum, thereby clearly waiving the right to the seek specific performance of the agreement of sale. The plaintiffs contending that they are entitled to refund of the advance of Rs.2,00,000/- with interest, have filed the suit on the above narrated facts and circumstances. In the plaint, they have also admitted to the factum of a Writ Petition being filed in W.P. No.17882 of 2023 and that they have also entered appearance by engaging a Counsel. Ultimately, the suit was filed for recovery of Rs.6,53,465/- being the principal sum of Rs.2,00,000/-, together with future interest.

15. The defendants took out I.A. No.3 of 2024, invoking Order VII, Rule 11(d) CPC, contending that the suit is hopelessly barred by Limitation, having lapsed even on 29.09.2008 itself, solely due to the inaction of Mr.B.Suresh and even assuming the bar is considered from the date of sale deed executed by the Housing Board in favour of the first defendant on 30.06.2014, the suit ought to have been filed atleast immediately after 30.06.2017, which admittedly has not been done and the said B.Suresh was alive for a good two years and more, until his demise on 12.08.2019.

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16. To the said Application, seeking rejection of the plaint, the respondent/plaintiff filed a counter affidavit contending that the cause of action arose only when the first defendant sent a representation to the Sub Registrar in August 2023 and further in view of sale deed itself being executed only on 30.06.2014 by the Housing Board in favour of the first defendant and there also existing a bar to alienate the property in favour of third parties for a period of 3 years from 30.06.2014, the suit could not have been filed before 29.06.2017. It is further contended by the plaintiff that the limitation for seeking refund is 12 years as they have a charge on the advance paid under the agreement of sale. The plaintiff therefore sought for rejection of the plaint.

17. The Trial Court, on considering the arguments advanced on either side, dismissed the Application to reject the plaint finding that the issue of limitation depends on the nature of transaction and date of accrual of cause of action, which is a mixed question of law and facts and therefore, has to be decided only after trial and cannot be adjudicated at the preliminary stage. In order to appreciate the question that arises for consideration, I would like to usefully extract some of the relevant provisions of the Limitation Act as well as Transfer of Property Act.

Section 55 6(b) of the Transfer of Property Act:-

"55.Rights and liabilities of buyer and seller:-

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

.....

(6) The buyer is entitled---

(a).....

(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 earners (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."

Similarly, Article 62 of the Limitation Act, 1963 is placed under Part V, dealing with suits relating to immovable property.

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*

18. The plaintiffs take shelter only Article 62 of the Limitation Act and Section 55(6)(b) of the T & P Act, to contend that the suit is well within time. However, the defendants contend that it is only the residuary Article 113, that would apply and therefore, the suit is hopelessly barred by limitation. Firstly, before delving further into the facts of the present case and the questions of law that arise, I can straight away find that the plaint and plaint documents alone are sufficient to decide whether the suit is barred by limitation or not. All relevant dates and circumstances are pleaded in the plaint. Therefore, nothing outside the

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plaint or the plaint documents is to be looked into for discerning whether the suit is in time or not.

19. The plaintiffs admittedly, claim under one B.Suresh, who had originally entered into an agreement for sale with the first defendant and paid an advance of Rs.2,00,000/-. It is an admitted position that the said B.Suresh, during his lifetime, never filed a suit for specific performance and even the plaintiff claiming under B.Suresh, have issued a notice seeking refund of Rs.2,00,000/- with interest alone, implying that they are waiving their right to seek specific performance of the agreement of sale between Suresh and the defendants 1 and 2. All these facts are borne out from the plaint itself.

20. Further, as contended by the plaintiffs, on the date of the agreement the first defendant was only an allottee and not the absolute owner. The sale deed came to be executed only on 30.06.2014 by the Tamil Nadu Housing Board in favour of the first defendant. There is also a covenant between the Housing Board and the first defendant/allottee that the allottee cannot deal with the property, especially, by way of sale for a period of three years, from the date of sale deed being executed in his favour. Applying this bar of three years also, the first defendant as rightly contended by the plaintiffs, could not have executed any sale

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deed in favour of the said Suresh, upto 29.06.2017. However, on and from 30.06.2017, the bar is raised and there was no impediment for the first defendant or the second defendant, joining the first defendant and executing a sale deed in favour of Mr.B.Suresh. Mr.B.Suresh, was alive until, 12.08.2019 and during his lifetime, he has not even chose to issue a notice seeking either enforcement of the agreement or for refund of advance. It was only when the first defendant sent a representation to the Sub Registrar on 05.04.2023, seeking to cancel the entry, pertaining to the sale agreement and reflect the same in the Encumbrance Certificate and a copy of the said representation being marked to the plaintiffs, that the plaintiffs have woken up and issued a reply notice on 29.04.2023, seeking for refund of the advance amount of Rs.2,00,000/-, together with interest, alleging that they have a charge on the suit property for the said advance and interest, which is payable by the first defendant.

21. As rightly observed by the learned Senior Counsel, Mr.P.Valliappan, it is relevant to go by the intention of the legislature. Section 55 of the Transfer of Property Act, enumerates the rights and liabilities of a buyer and seller. Even going by Sub Section (6) Clause (b) of Section 55,, it deals only with a charge being made available to a buyer, who has not improperly declined to accept the delivery of property, over the amount of purchase money paid by the buyer in

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anticipation of delivery of the property in his favour. The Section therefore does not become available to be taken advantage of by an agreement holder and since the phraseology employed, it abundantly makes it clear that it is available and arises only in respect of a concluded sale transaction and not to a sale agreement which has not been enforced or fructified into a sale deed.

22. As rightly penned by the learned Senior Counsel, Mr.P.Valliappan, an agreement of sale by itself does not create a statutory charge and a statutory charge under Section 55(6)(b) of the Transfer of Property Act, arises only upon satisfaction of conditions enumerated in the statute. Article 62 of the Limitation Act applies only to enforcement of money due by a mortgagee or otherwise charge upon immovable property and it is not applicable to refund claims like the case on hand. Examining Articles 6 to 55 of the Limitation Act, 1963, which deals with causes of action arising out of contract, I find that there is no provision which contemplates a suit for refund of advance paid under an agreement of sale. In such circumstances, the residuary Article 113 of the Limitation Act alone applies and in any event, when the agreement holder is not even entitled to a statutory charge under Section 55(6)(b), then Article 62 cannot be relied upon and the plaintiffs will have to show that the suit has been filed within a period of three years.

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23. In the facts of the present case, the suit ought to have been filed within a period of three years which begins from the date fixed for performance or in the absence of such a date, from the date on which, performance was refused. Having already discussed the facts of the present case, it is noticed that since there was a bar of three years for executing sale deed in favour of any third party, limitation period for seeking refund would arise from 30.06.2017 onwards, and the suit ought to have been filed on or before 29.06.2020. Admittedly, the suit is not filed within the said period and the shelter attempted to be taken only under Section 55(6)(b) of the Transfer of Property Act, read with Article 62 of the Limitation Act is misconceived. The residuary Article 113 only alone would apply to a case where refund of advance amount is sought for by an agreement holder or persons claiming under the agreement holder.

24. In such view of the matter, the question of law in the present case, is not a mixed question of fact and law which has to be tested during trial and since relevant dates are specifically pleaded in the plaint, it is sufficient to apply the legal provisions in order to find that the suit is filed beyond the period of limitation. In such circumstances, the petitioners are certainly entitled to seek rejection of the plaint invoking under Order VII, Rule 11(d) CPC, being a bar of

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limitation for instituting the suit for recovery of money seeking refund of advance, with interest. The Trial Court has therefore clearly fell in error in dismissing the reject the plaint application and hence, I am inclined to allow this revision.

25. In fine, this Civil Revision Petition is ***allowed*** and the order in I.A. No.03 of 2024 passed by the learned Additional Subordinate Judge, Tiruchengode is set aside and consequently, the O.S. No.No.384 of 2023, is rejected as barred by limitation. No costs. Consequently, connected Miscellaneous Petitions are also closed.

01-09-2026

Index: Yes
Speaking order
Neutral Citation: Yes
RKP
To
The Additional Subordinate Judge, Tiruchengode, Namakkal.

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P.B.BALAJI, J.

RKP

Pre-delivery Order in
CRP. No.1462 of 2026
and CMP. Nos.7160 & 7161 of 2026

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