

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5569 OF 2007

SURESH RAMACHANDRA NARAYAN PETHKAR & ORS.

Appellant(s)

VERSUS

INDIRABAI VADUDEV AURANGABAD KAR & ORS.

Respondent(s)

O R D E R

Respondent No. 1 had filed a Suit for mandatory injunction on 20.06.1977. He has expired during the pendency of these proceedings and his legal representatives are pursuing the said suit. For the sake of convenience, he would be referred to as the original plaintiff.

The relevant facts which need to be noted are that agreement dated 28.11.1967 was allegedly executed between the appellants and defendant No. 1 (respondent No. 9 herein). As per this agreement between the parties, they had to exchange the two shops between themselves. However, for certain reason, this event did not occur, viz., the exchange of properties did not take place. Defendant No. 1 has also died and his son is brought on record who is respondent No. 9 herein. Defendant No. 1 sold the property to the appellants herein on 29.06.1977 by a registered sale deed.

The plaintiff had issued notice to Defendant No. 1 claiming performance of the said agreement dated 28.11.1967. In reply given by defendant No. 1 on 17.06.1977, defendant No. 1 took up the plea that no such agreement was entered into and, therefore, refused the performance thereof. It is thereafter,

that the Suit was filed on 20.06.1977 for mandatory injunction. During the pendency of the Suit, application dated 08.12.1982 was filed under Order VI Rule 17 of the Code of Civil Procedure (CPC) for amendment of the plaint and the suit was converted from the one for injunction to that of specific performance. After the application for amendment was allowed, the appellants herein filed application under Order VII Rule 11 CPC for rejection of the plaint on the ground that the suit was barred by limitation. This application was dismissed by the Trial Court. Order of the trial Court was challenged by filing civil revision which had also been dismissed by the High Court by the impugned judgment dated November 25, 2004, thereby affirming the order of the Trial Court.

The special leave petition was filed by the appellants challenging the said order in which leave was granted on 26.11.2007 and, at the same time, it was also directed that further proceedings in the suit shall be stayed.

We may record that the Trial Court has dismissed the application under Order VII Rule 11 CPC on the ground that it needed adjudication and, therefore, could be decided only after the evidence is led by the parties. Therefore, the question is as to whether evidence is required to decide the issue of limitation or it could be decided on the basis of admitted facts on record.

From the facts noted above, it can clearly be discerned that the suit filed by the plaintiff was barred by limitation and it does not require any evidence to prove that. As pointed

out above, the alleged agreement was executed on 28.11.1967. However, Suit for mandatory injunction was filed only on 20.06.1977.

No doubt, this amendment application was allowed. However, the impugned order shows that issue of limitation was kept open on these admitted facts of this case, we are of the opinion that while deciding the application for amendment, this fact should have taken note of and it was not even necessary to allow the application for amendment and left the question of limitation open. The suit for mandatory injunction was filed ten years after the alleged agreement and it was simply for mandatory injunction. The relief for specific performance was claimed by filing an application on 08.12.1982 i.e. five years after the filing of the suit. Such a relief would clearly be time barred under Article 54 of the Schedule to the Limitation Act which prescribes three years period of limitation for filing such suits. We have pointed out that in the plaint, is averred that the cause of action arose on 07.06.1977 when the defendant No. 1 refused to execute the registered sale deed. Even if it is to be taken as correct, the suit for specific performance could be filed within three years from the date of refusal. However, the above mentioned application for amendment incorporating the relief of specific performance was moved only on 08.12.1982 which is much beyond the period of three years. We, therefore, are of the opinion that the Suit as filed by the plaintiff, was time barred. In the facts of this case and Court's below committed an error in dismissing the application

of the appellant under Order VII Rule 11 of the Code of Civil Procedure as it did not need any evidence to decide the issue. This Civil Appeal is, accordingly, allowed with the application filed by the plaintiff under Order VII Rule 11 of the Code of Civil Procedure and rejected the plaint on the ground of limitation.

....., J.  
[A.K. SIKRI]

New Delhi;  
August 30, 2017.

....., J.  
[ASHOK BHUSHAN]

ITEM NO.102

COURT NO.6

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

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(PART-HEARD BY HONBLE A.K. SIKRI AND HONBLE ASHOK BHUSHAN, JJ.)

Date : 30-08-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)      Mr. C.V. Singh, Sr. Adv.  
                                 Mr. Nilakanta Nayak, Adv.  
                                 Mr. Dhananjaya B., Adv.  
                                 Mr. Naresh Narayan Palker, Adv.  
                                 Mr. Amit Yadav, Adv.  
                                 Mr. Shishir Deshpande, AOR

For Respondent(s)      Mr. Aaditya A. Pande, Adv.  
                                 Mr. Chander Shekhar Ashri, AOR

                                 Mr. A. Subba Rao, AOR  
                                 Mr. A. Venkatesh Rao, Adv.  
                                 Mr. KLDS Vinober, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The Civil Appeal is allowed in terms of the signed order.

(POOJA SEHGAL)  
SENIOR PERSONAL ASSISTANT

(MADHU NARULA)  
COURT MASTER

(Signed order is placed on the file)