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C.A.No. 7431 OF 1997

ITEM NO. 103

COURT NO.9

SECTION XVII

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

CIVIL APPEAL NO. 7431 OF 1997

ASGARI BANO .. APPELLANT
VERSUS

ASRAF JAHAN & ORS... RESPONDENTS
(With office report)

DATE: 14/10/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For appellant (s)Mr. Irshad Ahmad, Adv.

For respondent (s)Mr. H.L. Agrawal, Sr.Adv.

Mr. R.K. Gupta, Adv.

Mr. Saurab Agrawal, Adv.

for Mr. K.K. Gupta, Adv.

Mr. Manish Mohan, Adv.

Ms. Anita Mohan, Adv.

Mr. Ardhendu Mauli Prasad, Adv.

for Mr. Ugra Shankar Prasad, Adv.

Upon hearing counsel the Court made the following

O R D E R

Mr. Irshad Ahmad, learned counsel for the appellant made his submissions from 11.10 a.m. to 11.50 a.m. Learned counsel for the respondents made their submissions in reply for few minutes.

The appeal is dismissed in terms of the signed order. No costs.

Sarita(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7431 OF 1997

ASGARI BANO

APPELLANT

VERSUS

ASRAF JAHAN & ORS.

RESPONDENTS

O R D E R

The plaintiff filed a suit for specific performance of the contract claiming that Mohammad Nur uddin executed an agreement on 12.2.1975 to sell the property in question in favour of the plaintiff. The said suit was resisted by the defendants. The Trial Court, in the light of the pleadings of the parties, framed as many as seven issues. Issue No.3 was as to whether the suit filed by the plaintiff was barred by limitation. The Trial Court, after considering the evidence both oral and documentary, found that the suit filed by the plaintiff was barred by time. It also recorded a finding that the plaintiff has not shown that she was ready and willing to perform her part of the agreement. In that view, the suit was dismissed. The plaintiff filed the

First Appeal challenging the decree passed by the Trial Court. The First Appellate Court held that the suit filed

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by the plaintiff was within time and recorded a finding on the readiness and willingness in favour of the plaintiff.

In view of the conclusion arrived at, the First Appellate Court upset the decree passed by the Trial Court and decreed the suit. The defendants filed the Second Appeal before the High Court. The High Court, after hearing learned counsel for the parties, agreed with the findings recorded by the Trial Court that the suit was clearly barred by time and it also found that the plaintiff failed to plead readiness and willingness to perform her part of the agreement. Consequently, the Second Appeal was allowed, the decree passed by the First Appellate Court was reversed restoring the decree passed by the Trial Court. Hence, this appeal by the plaintiff. The learned counsel for the appellant contended that the High court was not right and justified in setting aside the decree passed by the First Appellate Court. According to him, the suit filed by the plaintiff was within time from the date the plaintiff got the knowledge about the execution of Hibanama (gift) by late Nuruddin in favour of his wife.

He further submitted that sufficient averments are made in the plaint to show that the plaintiff was ready and willing

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to perform her part of the agreement and that the Trial Court as well as the High Court were not right in saying that the averments in the plaint are not there in that regard.

In opposition, the learned Senior counsel for the respondents made submissions supporting the impugned order for the very reasons recorded therein.

The facts that are not in dispute are: the agreement was executed in favour of the plaintiff on 12.2.1975 and the suit for specific performance was filed by her in March, 1979 without any prior notice to the defendants about the so called agreement. Late Nuruddin executed a registered gift deed in favour of his wife on 25.7.1975. In the plaint the plaintiff has not pleaded as to when he came to know about the afore-mentioned gift deed by late Nuruddin in favour of his wife. The Trial Court, having considered the documentary and oral evidence and taking note of the fact that the gift deed was registered one, recorded a finding that the suit was clearly barred by time. It is clear that no date was specified for the parties for execution of the

sale deed. It is only mentioned in the agreement that the sale deed shall be executed within 15 days from the date late Nuruddin obtained permission from the competent

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Authority. The Trial Court noticed that Article 54 of the Limitation Act was applicable to the facts of the case and rightly so, in our opinion. The Trial Court looked to the evidence of DW-1, wife of late Nuruddin, namely, Bibi Asraf Jahan and of DW-2, Abdul Hamid, the tenant in occupation of the property in question. Looking to their evidence and also taking note of the fact that the gift deed executed in favour of DW-1 being a registered document, the plaintiff should be deemed to have notice the same coupled with the absence of any averment made as to the date of knowledge by the plaintiff, the Trial Court held that the suit was barred by time. Unfortunately, the First Appellate Court did not consider this evidence and did not also consider the fact of Explanation-I to Section 3 of the Transfer of Property Act. There was no good reason for the Appellate Court to take a contrary view on the point of limitation, that too without dispelling the reasons recorded by the Trial Court. The High Court, as is clear fr

om the impugned judgment, took the view that in the circumstances and having regard to the pleadings, the evidence placed on record and the legal position as to the notice of the registered document, was

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right in reversing the judgment of the First Appellate Court, that being a substantial question of law.

This being the position, we have no hesitation in holding that the suit was clearly barred by time. Having reached to this conclusion, it is unnecessary for us to go into the question as to whether the plaintiff was ready and willing to perform her part of the agreement as required under Section 16(c) of the Specific Relief Act, although, the High Court has recorded a finding on this point against the plaintiff.

We may notice one more thing that respondent No.4 has died, but, no steps were taken to bring his legal representatives on record inspite of the time granted by this Court. Other respondents are sufficiently representing the estate of the deceased respondent No.4. At any rate, in the view we have taken to dismiss the appeal not bringing L.Rs. of respondent No.4 on record is of no consequence.

Thus, viewing from any angle, the appeal essentially fails and accordingly, it is dismissed. No costs.

.....J.

(SHIVARAJ V. PATIL)

.....J.

New Delhi, (D.M. DHARMADHIKARI)
October 14, 2003.