

CASE NO.:
Appeal (civil) 6141 of 2000

PETITIONER:
Janardhanam Prasad

RESPONDENT:
Ramdas

DATE OF JUDGMENT: 02/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. Sinha, J.

Appellant herein and one M. Manoharan (1st Defendant) entered into an agreement for sale in respect of a property in suit. 1st Defendant and respondent No. 1 herein entered into another agreement for sale on 11.4.1983. In the former agreement the transaction by way of execution of the deed of sale was to be completed within a period of three months, whereas in the later case, no time limit was fixed. The 1st Defendant executed a registered deed of sale in favour of the appellant herein on 4.9.1985.

The 1st Defendant contended that he had asked the 2nd Defendant to execute a deed of sale in his favour and he had gone to the registration office, but 2nd Defendant did not turn up. As Respondent was working in Saudi Arabia, his affairs were being looked after by his father-in-law, Shri C.M. Raman Chettiar, and his wife, Smt. Vijaya. According to the 1st Defendant, he had paid Rs.7,700/- by way of part payment of the entire amount of consideration which was fixed at Rs.17,000/-. When he came back from Saudi Arabia in August, 1983, May, 1984, 1985 and 1986, he asked the Respondent No.2 to execute the deed of sale on receipt of the balance amount, but he had been avoiding to do the same.

The suit for specific performance of contract was thereafter filed. The said suit was dismissed. However, the First Appellate Court, on an appeal preferred thereagainst by the Respondent No.1, allowed the appeal and decreed the suit. By reason of the impugned judgment, the High Court has dismissed the second appeal.

Respondent had served a notice upon said M. Manoharan to perform his part of contract on 15.9.1986. The Respondent did not examine himself in the suit. His father-in-law and his wife had been examined on his behalf. In his deposition before the Court it is accepted that defendant Nos.1 and 2 were friends and, therefore, the stipulations, which are ordinarily made in an agreement for sale, were not made.

P.W.1, the father-in-law of respondent, in his evidence, stated :

"...He has assured to come but not come. He has avoided. We have waited in the Registrar's office. 20 days after Ex.A2. He has not come as assured. We came to know that he was cheating. He was not willing to execute the sale deed. I have not given notice immediately\005"

Thus, within a period of 20 days from the date of the agreement for sale dated 11.4.1983, the father-in-law of the Respondent No.1, was aware

that the defendant No.2 was not ready and willing to perform his part of contract and in fact, "cheating" him. We, therefore, fail to understand as to why a notice was served for the first time on 15.9.1986 and not soon thereafter.

The High Court in the second appeal formulated the following purported substantial questions of law :

- a) Whether the judgment and decree of the lower appellate Court are not erroneous in not considering the well known principle of consensus as idem as lacking in Ex.A-1, the agreement of sale?
- b) Whether the judgment and decree of the lower appellate Court are not erroneous in not rejecting the agreement of sale which is not signed by the plaintiff or his agent in not holding that the suit is barred by limitation?
- c) Whether the judgment and decree of the lower appellate Court are not palpably wrong in upholding an incomplete agreement of sale, Ex.A-1, produced by the plaintiff in preference to the agreement of sale, Ex.B-1, a complete sale agreement prior to the agreement of sale Ex.A-1?
- d) Whether the findings of the lower appellate Court are not correct in drawing adverse inference against the 1st defendant on the ground of non-reply to the plaintiff's belated notice?
- e) Whether the judgment and decree of the lower appellate Court are not palpably wrong in not considering and applying the provisions of Contract Act and Specific Relief Act?
- f) Whether the lower appellate Court has not erred in not considering the lack of consensus ad idem in the agreement of sale?
- g) Whether the lower appellate Court has not erred in not considering the suit is barred by limitation?"

The High Court further proceeded on the premise that as the original deed was produced by the respondent and not by the appellant, the Court of First Appeal did not commit any illegality in giving preference to the claim of the defendants. In regard to the period of limitation, the High Court opined that in terms of Article 54 of the Limitation Act, 1963 the suit was not barred by limitation, holding :

"...There must be a demand in writing by the person who is entitled to a right under the document and refusal by the other who is bound under a document, to execute the same, and only on refusal, the cause of action, as such, would arise. The contract, being one for agreement of sale relating to immovable property, as held by the Courts uniformly, time cannot be the essence of the contract. Further, in the agreement in favour of the plaintiff, there is no period mentioned. It is to be pointed out that it is only in the agreement executed by the second defendant in favour of the first defendant, there is some period, namely, three months, has been mentioned\005"

Mr. V. Prabhakar, the learned counsel appearing on behalf of the appellant submitted that the applicability of the provisions of Article 54 of the Limitation Act must be considered having regard to the back drop of events as noticed hereinbefore.

From the records it appears that the appellant herein has been in possession of the suit land. He has dug a well. He has altered the foundations.

Applicability of the provisions of Article 54 of the Limitation Act must, therefore, be determined having regard to the aforementioned factual matrix in mind. It reads as under :

"For specific performance of a contract Three years The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

The Court, in applying the period of limitation, would first inquire as to whether any time was fixed for performance of agreement of sale. If it is so fixed, the suit must be filed within the period of three years, failing which the same would be barred by limitation. Here, however, no time for performance was fixed. It was for the Courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a finding in that behalf, to see whether the suit was filed within three years thereafter.

The question was considered in R.K. Parvatharaj Gupta v. K.C. Jayadeva Reddy [(2006) 2 SCC 428], which in terms was noticed and applied in Gunwantbhai Mulchand Shah & Ors. v. Anton Elis Farel & Ors. [(2006) 3 SCC 634]. {See also Pukhraj D. Jain & Ors. v. G. Gopalakrishna [(2004) 7 SCC 251].}

The 1st Defendant was a friend of the 2nd Defendant. Admittedly, the usual stipulations were knowingly not made in the agreement of sale dated 11.4.1983. The 1st Defendant may or may not be aware about the agreement entered by and between the respondent herein. But he cannot raise a plea of absence of notice of the deed of sale dated 4.9.1985, which was a registered document. Possession of the suit land by the appellant also stands admitted. Registration of a document as well as possession would constitute notice, as is evident from Section 3 of the Transfer of Property Act, 1882, which is in the following terms :

"...."a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanaion I. \026 Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-

section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that \026

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II. \026 Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III. \026 A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material :

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

Admittedly, father-in-law and wife of the Respondent No.1 had been looking after his affairs. They were, therefore, acting as his agents. They would be deemed to have notice of the registration of the document as also the possession of the appellant herein. If they had the requisite notice, in our opinion, the Respondent No.1., having regard thereto, should have filed a suit for specific performance of contract within the prescribed period. In fact they should have done so expeditiously having regard to the discretionary nature of relief he may obtain in the suit. They did not do so. They waited for more than two years from the date of execution of deed of sale. Even if the suit was not barred by limitation on that account, it was a fit case, where the Court should have refused to exercise its discretionary jurisdiction under Section 20 of the Specific Relief Act, 1963.

But before we advert to the said question, we may consider the effect of refusal on the part of the 2nd Defendant to execute the deed of sale within 20 days from the date of entering into the said agreement for sale. We have noticed hereinbefore that father-in-law of the Respondent No.1 categorically stated that he, at all material times, he was aware that the 2nd Defendant was refusing to execute the agreement of sale. They had, therefore, the notice, that the defendant no. 1 had refused to perform his part of contract. The suit should have, in the aforementioned situation, been filed within three years from the said date. We are not oblivious of the fact that performance of a contract may be dependent upon several factors. The conduct of the parties in this behalf is also relevant. The parties by their conduct or otherwise may also extend the time for performance of contract from time to time, as was noticed by this Court in Panchanan Dhara & Ors. v. Monmatha Nath Maity

(Dead) through LRs. & Anr. [(2006) 5 SCC 340].

In that view of the matter, the suit ought to have been filed by 1st May, 1986. The suit was filed on 22.9.1987 and therefore, it was barred by limitation.

Furthermore, the appellant is in possession of the said land. He had dug a well. He had made improvement on the suit land. Digging of well as also making improvements was within the notice of the respondent. The witnesses examined on his behalf had categorically admitted the same. In that view of the matter too, in our opinion, it was a fit case where the discretionary jurisdiction of the Court under Section 20 of the Specific Relief Act should not have been exercised and, instead, monetary compensation could be granted. {See M. Meenakshi & Ors. v. Metadin Agarwal (Dead) by LRs. & Ors. [(2006) 7 SCC 470].}

This question was yet again considered in Jai Narain Parasrampuriah (Dead) & Ors. v. Pushpa Devi Saraf & Ors. [(2006) 7 SCC 756], wherein it was held that for balancing the equities in a given case, compensation can be awarded in lieu of grant of decree of specific performance of contract.

We, therefore, are of the opinion that the judgment passed in favour of the respondent no. 1 may be substituted by a decree directing defendant No.1 to refund the sum of Rs.7,700/- with 12% interest thereon from the date of payment till the date of realization.

The appeal is allowed in part and with the aforementioned modification. However, the parties shall pay and bear their own costs in this appeal.