

Ajaib Singh

Vs

Gurbax Singh and Others

Civil Appeal No. 3066 of 1987

(Sabyasachi Mukharji, G. L. Oza JJ)

17.11.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Special leave granted.

2. The High Court in its judgment and order dated July 9, 1986, has observed that the question of limitation has been canvassed before the High Court. The High Court expressed the view that there was a lot of conflict between the various High Courts on the interpretation of Article 54 of the Limitation Act which governed the point of limitation. The High Court, however, did not decide this question and expressed the view that due to passage of time prices of lands had gone up sky-high and it would be unjust to enforce the agreement of sale entered into. In other words, it appears that without deciding the question whether the claim of the plaintiff was barred by limitation or not, the High Court exercised its discretion in refusing to grant the relief on the ground that there has been good deal of delay and the parties would suffer if specific performance of the agreement was granted. It appears from the facts that in this case the major portion of the agreed price has been paid long time ago and the balance thereof to be paid at the time of execution of the documents was a sum of Rs. 75 only. It further appears that possession of the premises was with the appellant for all these years in part performance of the agreement. In those circumstances, the principle upon which the High Court refused to exercise its discretion, in our opinion, was not applicable and such discretion was not proper. The High Court exercised discretion on wrong principles. See in this connection *Madamsetty Satyanarayana v. G. Yellogi Rao* ((1965) 2 SCR 221 : AIR 1965 SC 1405); *Dr. Jiwan Lal v. Brij Mohan Mehra* ((1973) 2 SCR 230 : (1972) 2 SCC 757 : AIR 1973 SC 559) and see also the observation in *Debendra Nath Mandal v. Sakhilal Kar* (AIR 1950 Cal 526 : 55 CWN 320).

3. In that view of the matter, we cannot sustain the exercise of discretion in the manner done by the High Court. This, however, does not decide the matter because the High Court declined to go into the facts and decide the question of limitation on merits, the High Court took the view in exercise of its discretion. Since we are not sustaining the High Court's exercise of discretion hence the order and the judgment of the High Court are set aside but the matter is remanded to the High Court for its decision on the merits. The matter should be disposed of by the High Court as early as possible. The appeal is accordingly allowed with no order as to costs.

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