

Smt. Dhanno

Vs

Lehna Singh and Others

Civil Appeal No. 4246 of 1983

03.02.1988

JUDGMENT

1. A suit instituted by respondents 1 and 2 claiming pre-emption in respect of a transaction of sale of land under a registered sale deed executed on June 12, 1979 was dismissed by the trial court on the ground that the suit was barred by limitation though the trial court negated the other transactions raised by the appellant-defendant. The lower appellate court reversed the decision rendered by the trial court and came to the conclusion that the suit was within limitation. Accordingly, the suit of respondents 1 and 2 was decreed. The appellant approached the High Court by way of second appeal. The High Court dismissed the appeal in limine. Thereupon the original defendant 2 in whose favour the sale deed was executed by the original owner has approached this Court by way of present appeal by special leave.

2. Insofar as the point of limitation is concerned, the relevant provision is embodied in Article 97 of the Indian Limitation Act which reads thus :

#97. To enforce a right One year When the purchaser takes under theof pre-emption whether sale sought to be impleadedhe right is founded on physical possession of the whole oflaw or general usage or part of the property sold, oron special contract whether the subject-matter of the sale does not admit of physical possession of the whole or part of the property when the instrument of sale is registered.##

3. The trial court has recorded a finding to the effect that the suit was time-barred on the premise that physical possession of the land in question was made over by the vendor to the vendee on the date on which the sale deed was executed that is to say on June 12, 1979, on the basis of a recital contained in the sale deed. It was overlooked that the appellant in his written statement had not raised any plea on the premise that the possession of the land in question had been handed over to him on that day, and that the suit was time-barred by reason thereof, having regard to the fact that the suit was instituted one year after the said date of taking possession. Not only such a plea was not raised but the appellant did not even step into the witness box to testify that he had secured the physical possession of the land in question on June 12, 1979. As a matter of fact what was sold was an undivided one-half share in the land. Under the circumstances, the trial court was not justified in upholding the plea that the suit was barred by limitation it having been instituted on July 16, 1980. The lower appellate court has rightly taken into account the relevant provision embodied in Article 97 of the Indian Limitation Act which provides to the effect that where physical possession of the land is not capable of being handed over the limitation would commence on the expiry of one year from the date of registration of the document. Admittedly, the document was registered on July 14, 1979. The suit could therefore have been instituted till July 13, 1980. But the courts were closed on account of summer vacation on that day. The suit was instituted on the first day of the reopening of the court on July 16, 1980. Under the circumstances, we are of the opinion that the view taken by

the lower appellate court was unexceptionable and the suit instituted by respondents 1 and 2 rightly decreed. The High Court was accordingly fully justified in dismissing the appeal.

4. We are told that respondents 1 and 2 have already deposited the decretal amount of Rs. 54,650 in the trial court pursuant to the direction of the lower appellate court and that it has been deposited in a bank. The aforesaid amount along with the interest, if any, which may have been credited to the account in the bank, can now be withdrawn by the appellant.

5. We accordingly dismiss the appeal with the aforesaid observation. No costs.

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