

Ramzan

Vs

Hussaini

Civil Appeal No. 4754 of 1989

(L. M. Sharma, Dr. T. K. Thommen JJ)

24.11.1989

JUDGMENT

SHARMA, J. -

1. Special leave is granted.
2. This appeal arises out of a suit filed by the respondent against her brother, the appellant, for specific performance of an alleged contract of sale dated June 23, 1965 in respect of a house. The property was under a mortgage and according to the plaintiff's case, the defendant had agreed to execute a deed of sale on the redemption of the mortgage by her, which she did in 1970. In spite of her repeated demands the defendant failed to respect the agreement which necessitated the institution of the suit.
3. The defendant-appellant, besides pleading limitation, denied the agreement as also the plaintiff's allegation that she had redeemed the mortgage.
4. The question of limitation was taken up by the trial court as a preliminary issue and decided in favour of the plaintiff. The order has been confirmed by the High Court by the impugned judgment.
5. The plaintiff served a notice in July 1984 demanding specific performance before filing the suit. It has been contended on behalf of the appellant that since the alleged agreement is said to have been executed in June 1965, the suit is barred by limitation, and alternatively, even counting the period of limitation from the alleged redemption in 1970, the suit has been filed after more than 14 years, that is, long after the expiry of three years' period prescribed under Article 54 of the Limitation Act. The High Court has rejected the argument holding that since the cause of action of the suit was dependent on the redemption of the mortgage and no period was fixed within which it was necessary for the respondent to have redeemed the mortgage, it cannot be said that a date was 'fixed' within the meaning of the third column of Article 54, which read thus;

#Description of suit Period of limitation Time from which period begins to run "54.
For specific three years The date fixed for the performance Performance, or, if no
such date is fixed, when the plaintiff has notice that performance is refused."##

As the notice preceding the suit was admittedly served within three years, the defendant's plea of limitation was rejected.

6. The relevant provisions in the alleged agreement of sale as quoted in the judgment of the trial

court reads as follows :

"This house is under mortgage with Jethmal Bastimal for Rs. 1000. When you will get this house, the description of which is given below, redeemed from M/s Jethmal Bastimal and take the papers of the registry in your possession, on that day I will have the sale deed of the said house, written, executed and registered in your favour."

The question is whether a date was 'fixed' for the performance of the agreement and in our view the answer is in the affirmative. It is true that a particular date from the calendar was not mentioned in the document and the date was not ascertainable originally, but as soon as the plaintiff redeemed the mortgage, it became an ascertained date. If the plaintiff had, immediately after the redemption, filed the suit, could it be thrown out on the ground that she was not entitled to the specific performance asked for? We do not think so. She would have been within her rights to assert that she had performed her part of the contract and was entitled to insist that her brother should complete his part. The agreement is a typical illustration of a contingent contract within the meaning of Section 31 of the Indian Contract Act, 1872 and became enforceable as soon as the event of redemption (by the plaintiff herself) happened. We agree with the view of the Madras High Court in *R. Muniswami Goundar v. B. M. Shamanna Gouda* (AIR 1950 Mad 820) expressed in slightly different circumstances. The doctrine of *id certum est quod certum reddi potest* is clearly applicable to the case before us which in the language of Herbert Broom (in his book dealing with legal maxims) is that certainty need not be ascertained at the time; for if, in the fluxion of time, a day will arrive which will make it certain, that is sufficient. A similar question had arisen in *Duncombe v. Brighton Club and Norfolk Hotel Company* ((1875) 10 QB 371), relied upon in the Madras case. Under an agreement, the plaintiff had supplied some furniture to the defendant for which payment was made but after some delay. He claimed interest. The rule at common law did not allow interest in such a case, and the plaintiff in support of his claim relied upon a statutory provision which could come to his aid only if the price was payable at a certain time. Blackburn, J. observed that he did not have the slightest hesitation in saying that the agreement contemplated a particular day, which, when the goods were delivered would be ascertained, and then the money would be payable at a certain time; but rejected the plaintiff's demand on the ground that the price did not become payable by the written instrument at a certain time. The other learned Judges did not agree with him, and held that the statute did not require that the document should specify the time of payment by mentioning the day of payment. If it specified the event upon which the payment was to be made, and if the time of event was capable of being ascertained, the requirements of the section were satisfied. The same is the position in the case before us. The requirement of Article 54 is not that the actual day should necessarily be ascertained upon the face of the deed but that the basis of the calculation which was to make it certain should be found therein. We, accordingly, hold that under the agreement the date for the defendant to execute the sale deed was fixed, although not by mentioning a certain date but by a reference to the happening of a certain event, namely, the redemption of the mortgage; and, immediately after the redemption by the plaintiff, the defendant became liable to execute the sale deed which the plaintiff was entitled to enforce. The period of limitation thus started running on that date. The case is, therefore, covered by the first part of Article 54 (third column) and not the second part.

7. The learned counsel for the respondent relied on several decisions in support of the opinion of the High Court in the impugned judgment but they do not appear to help him. In *Sathula Venkanna v. Namuduri Venkatakrisnayya* (AIR 1918 Mad 492) it was observed that in cases where a right to enforce specific performance vests in a third party to whom the ascertainment of the date of which performance becomes due need not necessarily be known, the doctrine *certum est quod certum reddi*

potest does not apply. Without expressing their final opinion the learned Judges observed that it might be right to apply the doctrine between the actual parties to the contract who would get the benefit and be subject to the liabilities under that contract; "but in cases where a person is entitled to bring a suit on the contract who may not and need not, and very likely may not be aware of the date becoming fixed," the doctrine could not apply. In *Kruttiventi Mallikharjuna Rao v. Vemuri Pardhasaradhirao* (AIR 1944 Mad 210) the vendor promised to execute the sale deed when both of his brothers, who were studying elsewhere, returned to the village. It was held that it was not a case where it could be said that a date was fixed for the performance of the contract as the event mentioned therein was too indefinite to be regarded as fixing a date. The performance was dependent on both the brothers of the vendor coming to the village, in which the intending purchaser had no say at all. Apart from the question of limitation, the defendant could not effectively rely upon such a clause to defeat the very contract. In *Kashi Prasad v. Chhabi Lal* (AIR 1933 All 410 (2)) the plaintiff created two usufructuary mortgages and thereafter a third mortgage in favour of the defendants for a sum of Rs. 8500. Out of this sum an amount of Rs. 6000 was left with the mortgagees for payment to the earlier creditors. The suit was instituted on the allegation that the defendants had failed to redeem the earlier mortgages. The plaintiff prayed for a direction to the defendants to redeem the mortgages. The document did not indicate as to the time when the defendants were obliged to redeem the earlier mortgages, and a plea of limitation was taken on the ground that the date was fixed by necessary implication and could be ascertained by reference to the surrounding circumstances. In this background the court observed that the use of the word 'fixed' implies that it should be fixed definitely and should not be left to be gathered from surrounding circumstances of the case. All these cases are clearly distinguishable.

8. For the reasons mentioned above, the impugned judgments of the High Court and the trial court are set aside and the suit is dismissed. The appeal is accordingly allowed, but the parties are directed to bear their own costs throughout.

</html