

Bismillah Begum (dead) by L.rs.

Vs

Rahmatullah (dead) by Lrs.

(S. B. Majmudar, M. Jagannadha Rao JJ)

21.01.1998

JUDGMENT

M.JAGANNADHA RAO J.

1.The appellants are the legal representatives of the deceased plaintiff. The suit was filed on 7.2.1958 seeking specific performance of a contract of reconveyance dated 8.2.1955.

2.The brief facts of the case are that the appellants' predecessor in interest who owned the suit house property in Kanpur executed a registered sale deed dated 8.2.1955 for Rs.2,000/- in favor of the sole defendant (who has also since died) and also simultaneously obtained an agreement of reconveyance from the defendant on the same day. It appears that the said agreement for reconveyance stipulated that in case the seller was able to pay back the consideration within a period of three years and certain expenses and other monies expended by the purchaser towards repairs the seller would be entitled to get back the property. It is on the basis of the above said agreement of reconveyance that the seller filed the present suit on 7.2.1958.

3.In the courts below the questions as to whether time was the essence of contract and whether the plaintiff was ready and willing to perform her part of the contract were debated. The courts below held that the plaintiff was not ready and willing to perform the contract by way of offering to repay-what has quoted in the reconveyance agreement-within the period stipulated therein. It was also held that time was the essence of the contract. When the matter came up in Second appeal to the High Court it was argued for the appellant-vendor relying upon a decision in the case of A.H.Mama Vs.Flora Sassoon (AIR 1928 PC 208) that time was not the essence of the contract in contracts of sale regarding immovable property. However, the High Court held that a close scrutiny of the plaint did not reveal that there was any averment on the part of the plaintiff that she was ready and willing to perform her part of the contract. It was no doubt averred in the plaint that the vendor had spoken to the defendant orally several times to receive the stipulated amount and execute the reconveyance deed and get it registered, but no dates on which the vendor allegedly spoke to the defendant were mentioned. In fact the plaintiff relied on a notice by telegram dated 6.2.1958 which was referred to in the plaint and on the paragraph relating to cause of action, proposing to repay. Apart from the said notice there was no other documentary evidence to show that any effort was made within the period of three years for repayment of the consideration for the purpose of obtaining reconveyance. The High Court has also observed that the above said notice dated 6.2.1958 issued by the vendor to the defendant purchaser was not addressed to his proper address and in fact it never reached the defendant. Under such circumstances, the High Court dismissed the Second Appeal holding that there was neither any plea nor proof of readiness and willingness on the part of the plaintiff to perform her part of the contract.

4. In this appeal, learned counsel for the appellants has contended that time is not the essence of the contract in relation to contracts of immovable property and that it is also not necessary to tender the amount or to deposit the consideration amount in court except when directed by the Court. It will be noticed that a provision to that effect has now been incorporated in Section 16(c) of the Specific Relief Act, 1963 but there was no such statutory provision before 1963 Act. Learned counsel for the appellants also relied upon a decision of the Calcutta High Court in *Manik Lal Vs. Shankar Lal* (AIR 1962 Cal 103) for the proposition that delay in payment of the sale consideration even in the case of reconveyance contract would disentitle the plaintiff to obtain specific performance if such delay had occurred on account of the defendant's attitude.

5. Even assuming that the above said decision of the Calcutta High Court would support the point canvassed by learned counsel for the appellant it will be noticed that the finding in the above said Calcutta case was that the plaintiff was unable to perform his part of the contract because of the defendant's attitude. But in the present case before us there is no proof that any attitude of the defendant towards the plaintiff was the cause for the plaintiff not being able to pay the amount to the defendant. As already stated, the findings of fact arrived at by the courts below that no effort has been made by the plaintiff to pay the sale consideration to the defendant are findings of fact, binding in Second appeal.

6. We may also add that in contracts relating to reconveyance of property time is always essence of the contract as laid down by the Federal Court in the case of *Shanmugam Pillai & Ors. Vs. Annalakshmi Ammal & Ors.* (AIR 1950 FC 48) and also laid down by this Court in *Caltex (India) Ltd. Vs. Bhagwan Devi Marodia* (AIR 1969 SC 405). The relevant passage in the judgment of this Court in *Caltex (India) Ltd.* at page 407 in para 3 reads as follows:

"At common law stipulations as to time in a contract giving an option for renewal of a lease of land were considered to be of the essence of the contract even if they were not expressed to be so and were construed as conditions precedent. Equity followed the common law rule in respect of such contracts and did not regard the stipulation as to time as not of the essence of the bargain. As stated in *Halsbury's Laws of England*, 3rd edn. Vol. 3, Article 281, p. 165 : "An option for the renewal of a lease, or for the purchase or re-purchase of property, must in all cases be exercised strictly within the time limited for the purpose, otherwise it will lapse." This passage was quoted with approval by Danckworts L.J. in *Hare Vs. Nicoll*, 1966-2 QB 130, 145. A similar statement of law is to be found in *Foa's General Law of Landlord and Tenant*, 8th ed., Art. 453 p. 310, and in *Hill and Redman's Law of Landlord and Tenant*, 14th ed., p. 54. The reason is that a renewal of a lease is a privilege and if the tenant wishes to claim the privilege he must do so strictly within the time limited for the purpose. "the aforesaid reasons, the appeals fails and is dismissed. No costs.

7. The above passage refers both to options for renewal and options to repurchase where, in regard to immovable property, as a matter of law time becomes essence of the contract. Therefore in regard to contracts of reconveyance relating to immovable property, the principle laid down in *A.H. Mama Vs. Flora Sassoon* (AIR 1928 PC 208)-that time is not normally essence of the contract in contracts relating to immovable property-does not apply. It is in fact, so observed in *Caltex (India) Ltd.* case. In view of the above said decision of this Court relating to contract of reconveyance, and inasmuch as the amount was not paid within the stipulated time, the said option in favor of the plaintiff must be deemed to have "lapsed".