

# SUPREME COURT OF INDIA

Shakuntala (Smt)

Vs.

Narayan Gundoji Chavan

(M Rao and R Sethi JJ.)

02.09.1999

## ORDER

1. Special leave granted.

2. This is an appeal against the judgment of the High Court of Karnataka dated 28-11-97 passed in Regular Second Appeal No. 936 of 1990. By that judgment the learned single Judge of the Karnataka High Court set aside the judgments of the trial Court and the first appellate Court and decreed the suit for specific performance.

3. It is not necessary to go into the previous litigation between the parties but it is sufficient to state that there was compromise between the parties on 8-3-77 which is sought to be specifically enforced in the present suit filed by the respondent-plaintiff. The compromise contained an agreement for sale of some property by the appellant-defendant to the respondent-plaintiff. The suit was filed by the respondent on 13-7-81.

4. It was agreed in the trial Court that the issue relating to limitation be tried as a preliminary issue. The said Court held that the suit was barred by limitation inasmuch as the vendor refused to execute the deed as per his notice dated 17-6-77. Counting three years from that date, the suit ought to have been filed on or before 17-6-80 but it was filed on 13-7-81. The suit was therefore held to be barred by limitation. This finding was affirmed by the lower appellate Court and the dismissal of the suit was confirmed.

5. In the High Court, the learned Judge proceeded on the assumption that the suit must be deemed to have been filed within the period of limitation inasmuch as the parties agreed that they should apply for permission to the appropriate local authority and that within one month from the date of the

grant of permission the sale deed had to be executed. The High Court found that such application for permission was not made before the local authority and that there fore, limitation did not start and on that ground the High Court reversed the findings of the Courts below and held the suit to be within time. On that basis, it even decreed the suit.

6. It is against this judgment that the 6th defendant, who is the successor-in-interest of the vendors, has filed the appeal.

7. It is clear from the findings of the High Court and the first appellate Court that on 17-6-1977 the defendant clearly refused to perform the contract and subsequently the property was also sold on 26-7-78 to the present appellant. It is clear that such a notice will amount to refusal on the part of the vendor to perform the contract covered by the compromise. But the High Court stated in paragraph 7 that the lower appellate Court committed a mistake in this behalf because the plaintiff had paid Rs. 1,000/- advance after 17-7-1977 and it was received by the defendant. Learned Counsel for the respondent-plaintiff tried to submit before us that once the defendant accepted Rs. 1,000/- subsequent to the notice dated 17-6-77, it must be held that the vendor was not standing by his refusal to perform the contract as stated in notice dated 17-6-77.

8. We, however, find on perusal of the plaint, the said amount of Rs. 1,000/- as mentioned by the High Court was not paid by the plaintiff to the defendant subsequent to notice dated 17-6-77. In fact the, averment in the plaint itself shows at para 5 that the plaintiff was ready and willing to perform his part of compromise and to pay Rupees 1,000/- in advance at the time of making application to the Deputy Commissioner Belgaum. The above statement in the aforesaid paragraph of the plaint is clear indication that no such amount of Rs. 1,000/- was paid nor received by the defendant subsequent to notice dated 17-6-77.

9. If that be the case the limitation necessarily started from 17-6-77 the date of refusal to perform his part of the contract and the suit was barred by time. The High Court was in error in taking a contrary view and in setting aside the judgments of the lower Courts. The judgment of the High Court is set aside and the judgment of the trial Courts affirmed by the first appellate Court, is restored.

10. The appeal is accordingly allowed. There shall be no order as to costs.