

# SUPREME COURT OF INDIA

Ahmadasaheb Abdul Mulla (D) by proposed Lrs.

Vs.

Bibijan

C.A.No.4190 of 2000

(Dr. Arijit Pasayat and Tarun Chatterjee JJ.)

21.04.2008

## JUDGMENT

**Dr.Arijit Pasayat, J.**

1. Challenge in this appeal is to the order passed by a learned Single Judge of the Karnataka High Court allowing the Second appeal filed by the respondents under Section 100 of the *Code of Civil Procedure, 1908* (in short the 'CPC'). The present respondents are the plaintiffs. They had filed the suit for specific performance of the contract on sale which was decreed by the trial court but was dismissed on the ground of limitation by the first Appellate Court and therefore the Second Appeal was filed.

2. Background facts in a nutshell are as follows:

“The plaintiff No.1's husband entered into an agreement of sale of house property No.CTS 2565, Ward No.5, of Mudhol corresponding Municipal No. 536, on 15-11-1974 for consideration of Rs.6,000/-. A sum of Rs.1000/- was paid and subsequently two sums of Rs.300/- and Rs.600/- were paid on 21-12-1974 and 13-8-1975. But in the mean time, a suit was filed by the defendant's wife and children in O. S. No.72/76, wherein the plaintiff's husband was made a party. Questioning the agreement of sale, and the suit came to be dismissed on 4-8-1977. The first appeal preferred in R. A.84/77 subsequently numbered as R, A, 83/79 came to be dismissed on 18-8-1979 and the second appeal preferred in RSA No.385/80 also came to be dismissed on 5-6-1980. Therefore the present suit is filed on 15.9.1981 for specific performance of agreement of sale.

The defendant contended that the suit house belonged to his deceased father and his deceased father made an oral gift of the suit, property in favour of himself and his wife, and minor children by delivery of possession. As he had no source of income to meet his family needs, the deceased husband of the plaintiff promised to lend him money and the defendant agreed to give the property as security. Under such circumstances he executed the suit agreement and received loan from Modinsaheb.

He has not parted with the possession. He further contended that the suit is barred by limitation and the plaintiff was never ready and willing. Ultimately, he resisted the suit by contending that the suit house is the only shelter for him and his family members he cannot be directed to comply with agreement of sale. The trial Court accepted the agreement as to the payment made thereon as correct, and holding that the defendant is not a debtor within the meaning of the relevant Act, granted the decree for specific performance rejecting the plea of non-joinder and loan raised by the defendant.

The appellate Court found that the trial court is right in accepting the case of the plaintiff regarding the agreement and parting with the possession by way of part performance and also that no hardship would be caused to the defendant by grant of specific performance as provided under Section 20 of the *Specific Relief Act, 1963* (in short 'the Act'). But on the ground of limitation, holding that the pendency of the other suit will not save the limitation within the meaning of section 14 of the *Limitation Act, 1963* (in short 'Limitation Act') dismissed the suit.

The second appeal was admitted on the following questions of law:

"Whether the contention taken that the cause of action for filing the suit arises only, when the other suit questioning the title of his own wife and children, was over as per dictum of *Lakshminarayana Reddiar v. Singaravelu Naicker & Anr.* AIR 1963 Mad.24".

The High Court noticed that as held by the Madras High Court in *Lakshminarayan's* case (supra) the time taken for redemption wherein the title deed was primarily involved has to be excluded under Section 14 of the Limitation Act. It was held that no contra decision was cited and, therefore, with reference to Section 113 of the *Limitation Act, 1908* (in short the 'Old Act') this suit was within time."

3. Learned counsel for the appellant submitted that the true import of Section 113 of the Limitation Act has not been kept in view.

4. Learned counsel for the respondent on the other hand supported the order of the High Court.

5. In *S. Brahmanand v. K.R. Muthugopal*<sup>1</sup> after noticing the decisions rendered by various High Courts, this Court inter alia observed as follows:

"16. It would be useful to set out the provisions of Article 54 before critically appraising the arguments presented to us on both sides.

"Description of suit Period of limitation Time from which period begins to run

54. For specific Three years the date fixed performance of a contract for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

17. Though, at first blush, it may appear that the use of the expression "date" used in this article of the *Limitation Act, 1963* is suggestive of a specific date in the calendar, and we cannot forget the judicial interpretation of this expression over a long period of time. Different High Courts took different views of the matter, which has been a subject-matter of controversy. Some interpreted the expression strictly and literally, while others have taken an extended view.

18. In *Kashi Prasad v. Chhabi Lal* the High Court dealing with Article 113 of the *Limitation Act, 1908*, which was in pari materia with Article 54 of the Schedule to the *Limitation Act, 1963*, took the view that the force of the word "fixed" implies that the date should be fixed definitely and should not be left to be gathered from the surrounding circumstances of the case. It must be a date clearly mentioned in the contract whether the said contract be oral or in writing.

19. In *Alopi Parshad v. Court of Wards* also the Court was concerned with Article 113 of the *Limitation Act, 1908*. A suit for specific performance was brought on an agreement of sale where the time for performance of the contract was "after passing of a decree". Though no date for performance was fixed for the agreement, the trial court had opined that time must be held to have begun to run from the date on which the decree was passed in view of the maxim *id certum est quod certum reddi potest* ("That is sufficiently certain which can be made certain".) The Lahore High Court was of the view that statutes of limitation must be strictly construed and that the respondents before it had failed to bring a case specifically within the purview of the first part of Article 113 and that the case did not fall within the first part but fell within the second part of Article 113. The judgment of the Allahabad High Court in *Kashi Prasad* was approvingly referred to and followed. This judgment was taken in appeal before the Privy Council and approved by the Privy Council in *Lala Ram Sarup v. Court of Wards*.

20. In *Kruttiventi Mallikharjuna Rao v. Vemuri Pardhasaradhirao* a contract was entered into on 18-7-1934 and the vendor promised to execute the sale deed when both his brothers who were studying elsewhere returned to the village for the next vacation i.e. in May-June 1935. The High Court held (AIR p.218h) that this was "too indefinite to be regarded as fixing a 'date' for the performance of the contract and the period of limitation must be computed from the date of refusal to perform".

21. In *R. Muniswami Goundar v. B.M. Shamanna Gouda* interpreting the expression "date fixed" in Article 113 of the *Limitation Act, 1908* the doctrine of *id certum est quod certum reddi potest* was pressed into service along with its exposition in Broom's *Legal Maxims* and it was held that it was wide enough to include a date

which though at the time when the contract was made was not known, but could be ascertained by an event which subsequently was certain of happening.

22. In *Hutchegowda v. H.M. Basaviah* upholding the view in *Muniswami Goundar* it was held that an agreement to execute the sale deed after the "Saguvali chit" is granted fell within the first part of Article 113 of the Limitation Act, 1908.

23. In *Purshottam Sava v. Kunverji Devji* the judgment of the Madras High Court in *R. Muniswami Goundar* was followed and it was held that the expression "date fixed" can be interpreted as meaning either the date fixed expressly or a date that can be fixed with reference to a future event which is certain to happen.

24. In *Lakshminarayana Reddiar v. Singaravelu Naicker* it was held that the phrase occurring in the third column of Article 113 of the Limitation Act, 1908 "the date fixed for the performance" must not only be a date which can be identified without any doubt as a particular point of time, but it should also be a date which the parties intended should be the date when the contract could be performed.

25. In *Shrikrishna Keshav Kulkarni v. Balaji Ganesh Kulkarni* the agreement for sale of a property stated that the sale was to be executed after the attachment which the creditors had brought, was raised. Noticing the fact that there was absence of any indication as to when the attachment would be raised, the Court treated it as a case in which no date was fixed for performance of the contract and, therefore, falling within the second part of Article 54 of the Limitation Act, 1963.

26. *P. Sivan Muthiah v. John Sathivasagam* arose from a suit for specific performance with an alternative prayer for recovery of advance paid under the agreement of sale. Referring to Article 54 of the Limitation Act, 1963 the Court took the view that the expression "date fixed" could mean either the date expressly fixed or the date that can be fixed with reference to a future event, which is certain to happen. If the date is to be ascertained depending upon an event which is not certain to happen, the first part of Article 54 would not be applicable, and in such an eventuality, it is only the latter part of Article 54 that could be invoked by treating it as a case in which no date had been fixed for performance and the limitation would be three years from the date when the plaintiff had notice that performance is refused. This was a case where performance was due after the tenants in the property had been vacated. The Court took the view that since eviction of the tenants was an uncertain event, the time must be deemed to have run only from the date when the plaintiffs had notice that the performance had been refused by the defendants.

27. In *Ramzan v. Hussaini* a suit was filed for specific performance of a contract of sale in respect of a house. The property was mortgaged and according to the plaintiff, the defendant had agreed to execute a deed of sale on the redemption of the mortgage by the plaintiff herself, which she did in 1970. In spite of her repeated demands, the defendant failed to perform his part, which resulted in a suit being filed. The question

that arose before this Court was whether the agreement was one in which the date was "fixed" for the performance of the agreement or was one in which no such date was fixed. This Court answered the question in the affirmative by holding that, although a particular calendar date was not mentioned in the document and although the date was not ascertainable originally, as soon as the plaintiff redeemed the mortgage, it became an ascertained date. This Court also agreed with the view expressed in the Madras High Court in *R. Muniswami Goundar* and held that the doctrine *id certum est quod certum reddi potest* is clearly applicable. It also distinguished *Kruttiventi Mallikharjuna Rao* and *Kashi Prasad* as cases that arose out of their peculiar facts.

28. In *Tarlok Singh v. Vijay Kumar Sabharwal* the parties by agreement determined the date for performance of the contract, which was extended by a subsequent agreement stipulating that the appellants shall be required to execute a sale deed within 15 days from the date of the order vacating the injunction granted in a suit. The suit was initially dismissed and, thereafter, a review application was also dismissed as withdrawn on 22-3-1986. On 23-12-1987 a suit was filed for perpetual injunction. In that suit, an application came to be made under Order 6 Rule 17 CPC for converting it into a suit for specific performance of an agreement dated 18-8-1984. This amendment was allowed on 25-8-1989. It was held that since the amendment was ordered on 25-8-1989, the crucial date for examining whether the suit was barred by limitation was 25-8-1989. Since the injunction was vacated when the original suit was initially dismissed and the review application came to be dismissed on 22-3-1986, it was held that it was a situation covered by the first part of Article 54 and, in any event, on 25-8-1989 the suit was barred by limitation."

6. This court took the view that judgments of different High Courts have taken different views and were at variance with the decision of the Privy Council. However, in view of the decisions in *Ramzan v. Hussaini*<sup>2</sup> and in *Tarlok Singh v. Vijay Kumar Sabharwal*<sup>3</sup> there was no necessity to go into the larger issue as the plaintiffs were entitled to succeed in that case in altogether on different grounds.

7. It appears from the judgment in *S. Brahmaiah's* case (supra) this court felt that there was a need for clarifying legal position. But declined to refer the matter to a larger Bench because of the different factual scenario and the fact that the decisions were holding field for long time and there were decisions of the co-ordinate Bench of two Hon'ble Judges taking a particular view.

8. In view of the importance of the issues involved, we feel it would be proper if this case is heard by a Bench of three Hon'ble Judges. We, therefore, refer the matter to a larger Bench. The records be placed before the Hon'ble Chief Justice of India for necessary directions.

<sup>1</sup>(2005 12) SCC 764)

<sup>2</sup>(1990(1) SCC 104)

<sup>3</sup>(1996(8) SCC 367)