

MADHYA PRADESH HIGH COURT

Mithu Khan

Vs.

Pipariyawali

Second Appeal No. 335 of 1972

(Rampal Singh, J.)

23.11.1984

JUDGMENT

Rampal Singh, J.

1. The appellant-defendant has preferred this second appeal under Section 100 of the Civil Procedure Code, against the judgment and decree passed by Additional District Judge, Vidisha, in Civil Appeal No.10A of 1972, dated 27-6-1972.

2. The respondent No.1-Plaintiff filed a suit in the Court of Civil Judge, Class II, Vidisha, against the appellant and respondents Nos.2 and 3, alleging that defendant No.2, Paras Ram executed an agreement for sale on 5-2-1960 of his agricultural land, survey No.545/1, named 'Bada Gadha', situate in village Aharkotra, District Vidisha, for a consideration of Rs. 550/-. This amount was paid by him in two instalments, first of Rs. 400/-and second of Rs. 150/-. This second installment was paid by him on 21-9-1963, for which he was given a receipt executed by respondent No.2 Paras Ram. The plaintiff further averred that he was given the possession of the suit land. According to the plaintiff the appellant and the respondent No.3, with full knowledge of this agreement, purchased the suit land by a registered sale deed from respondent No.2 on 31-1-1960. Upon this, the appellant and respondent No.3 ejected him illegally from the suit land and took possession in the month of Asad Samvat 2026. The plaintiff, therefore, filed this suit praying for a decree of specific performance of contract with a direction to execute a valid sale deed in his favour. He further prayed for the ejection of the appellant and respondent No.3 from the suit land and restoration of possession to him.

3. The respondent No.2 denied the facts contained in the plaint but took the stand that the property was a joint Hindu family property, consisting of himself, Madhosingh and

Jaswant Singh etc. The respondent No.2 further averred that he has no independent title over the suit land.

4. The suit was decreed in favor of the respondent and aggrieved by it, the appellant and respondent No.3 preferred an appeal in the District Court, Vidisha. The first appellate Court dismissed their appeal. Appellant, alone, therefore, invoked the provisions of Section 100 of the Civil Procedure Code.

5. During the pendency of this appeal, plaintiff-respondent No. 1 died and he was substituted by his legal representatives and they were brought on record.

6. Sri K.N. Gupta, learned counsel for the appellant has attacked the impugned judgment on various grounds of law. He has characterized Ex. P1, the agreement to sell as void on the ground that no specification of the property, i.e.the Survey number and the area of the land has been given. I anxiously examined the document and found that it contains the name of the land as 'Bada Gadha', the name given in the plaint. Merely because it does not contain the survey number or the area, the document cannot be branded as a void agreement. In villages, the lands are known by name rather than by its survey number. This custom of naming a piece of agricultural land seems to be based upon the legendary illiteracy of the country.

7. The suit property is a joint family property and Paras Ram respondent No. 2 had no right to sell the land, is not tenable. The appellant has purchased this land from Paras Ram alone on 31-1-1968. However, the concurrent finding of fact is that Paras Ram alone is the proprietor of the suit land.

8. The submission of the appellant that the suit was time barred is also without substance. Article 54 of the New Limitation Act provides that the limitation is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused. No date has been fixed in the agreement Ex. P1. Hence this case falls in the second category. The suit land was sold to the appellant by registered sale deed on 31-1-1968. The plaintiff had no notice of this sale from respondent No. 2. This suit was filed on 4-3-1968. Article 54 of the Limitation Act has been reproduced from Article 113 of the old Limitation Act. The first part of Article 54 of the Limitation Act does not apply to loosely worded agreements in which the promiser undertakes to execute a sale deed, not on the

happening of a particular event. For applying the second part of Article 54 of the Limitation Act, it is necessary to establish not only that the promisor refused to perform the contract, but also that the promisor had knowledge of such refusal more than, three years prior to the suit for specific performance of a contract. It is apparent that no definite date was fixed. The maxim, 'certum est quod certum reddi potest' cannot be invoked in reference to a loosely worded document like Ex. P1. It is apparent, thus, that this case does not fall in the first part of Article 54 of the Limitation Act. When respondent No. 2 executed sale deed of the suit land on 31-6-1968 in favor of the appellant, the plaintiff filed the suit on 4-3-1968, just within four months from the knowledge of the transaction. In my opinion, the suit was filed within the period of limitation.

9. Last material submission of the appellant is that, in a case of specific performance of contract, the plaintiff is required to plead and prove that he is ready and willing to perform his part of the contract and absence of such averment shows unwillingness on his part. This submission is not tenable. The plaintiff, after he paid the full amount to respondent and obtained from him the receipt of the last payment, completes his part of the contract. The proof as to readiness and willingness by plaintiff to perform his part of the contract has to be adjudged in the broad perspective. The Court in suitable cases should look into the totality of the circumstances and the allegations made in the plaint and from them come to the conclusion whether necessary allegations have been made by the plaintiff in that regard or not. No particular language or phraseology is needed to be employed by the plaintiff. A literal compliance of the language appearing in the provision is not imperative, nor is this the requirement of law (see in case of *Ramesh Chandra v. Chunnilal*).¹

10. Other submission of the appellant need not be considered. The concurrent findings of fact how so erroneous, cannot be disturbed in second appeal. The findings of fact of both the courts below are sound and need no interference.

11. In consequence, this appeal is dismissed. The legal representatives of the plaintiff shall get the costs throughout. Counsel fee Rs. 100/- if already certified.

Appeal dismissed.

Cases Referred.

1. AIR 1971 SC 1238