

# RAJASTHAN HIGH COURT

Chandrawali

Vs.

Narender

Civil Revn. No. 515 of 2003

(Dinesh Maheshwari, J.)

29.10.2004

## ORDER

**Dinesh Maheshwari, J.**

1. The petitioners are the defendants No. 1 to 5, heirs of Ram Pratap, in a suit for specific performance filed by the non-petitioners No. 1 to 3, who are the heirs of Bhupendra Singh.

2. The present revision is directed against the order dated 3rd March, 2003 passed by the learned trial Court on Issue No. 8 which was framed for determination of the question as to whether the suit was within limitation. An agreement for sale is alleged to have been executed on 9th December, 1982 by the deceased Ram Pratap in favor of the deceased Bhupendra Singh for selling of 12 bighas of land situated in Kila Nos. 3, 4, 5, 6, , 8, 14, 15, 16, 17, 24 and 25 of Murabba No. 37 at Chak -2. Tehsil Ganganagar. Inter alia, it is the averment of the plaintiffs that the aforesaid land was agreed to be sold by Ram Pratap to Bhupendra Singh at a consideration of Rs. 10,000/- per bigha. Out of the total consideration of Rs. 1,20,000/-, Rs. 50,000/- were received by the vendor at the time of execution of the agreement, the sale document was agreed to be executed on 15th March, 1983 with other stipulation that Fardkhata and NOC from Income-tax Department shall be obtained by the vendor and then the sale-deed would be executed. It was agreed that upon obtaining the requisite documents, the vendor would receive the remaining sale consideration and execute the sale-deed in favor of vendee or his nominee. It has also been averred that the possession of the entire land was delivered in part performance of the agreement on 9th December, 1982 itself and since then late Bhupendra Singh and after him the plaintiffs are in possession of the land and using and occupying the same. The

plaintiffs have alleged payment of the remaining consideration by Bhupendra Singh to Ram Pratap of Rs. 40,000/- on 14th March, 1983 and Rs. 30,000/- on 21st March, 1983 and thereafter only the registration expenses were to be borne by the purchasers and else they were always ready and willing to have the sale-deed executed. It has been averred in the plaint that thereafter Ram Pratap executed sale-deed for 5 bighas of land comprised in Kila Nos. 4, 7, 14, 17 and 24 at the instructions of late Bhupendra Singh in favor of his nominated person, namely, Sumer Singh son of Ram Narain, resident of Sri Ganganagar and the sale-deed for remaining 7 bighas was yet to be executed. The plaintiffs have alleged the defendants to be avoiding to execute the sale-deed for remaining 7 bighas and that on 17th October, 1995 they had filed a suit for dispossessing them before the Assistant Collector (Revenue), Sri Ganganagar and have also prayed for appointment of Receiver. The plaintiffs have alleged themselves to be always ready and willing to perform the contract. Regarding limitation it has been averred that the cause of action for the suit arose when the agreement was executed on 2nd December, 1982 and thereafter when Ram Pratap received the sale consideration. This apart, in terms of the conditions of the agreement Ram Pratap and thereafter his heirs have not executed sale-deed by obtaining Fardkhata and NOC from the Income-tax Department, therefore, the cause of action is uninterruptedly continuing because till the requisites are not obtained, the sale-deed cannot be executed. Therefore, the suit was within limitation.

3. In the written statement, firstly it has been averred that the entire land was not the self acquired property of Ram Pratap and his share in the total ancestral land of 56 Bighas 16 Biswas was only to the extent of 1/6th i.e. about 8 Bighas and 9.3 Biswas and he had already sold land of about 10 Bighas 10 Biswas. Therefore, he was not entitled for any thing in relation to the remaining 46 Bighas and 6 Biswas of land. The sale agreement, receiving of consideration and delivery of possession have been denied. Further, payment on 14th March, 1983 and 21st March, 1983 have also been denied. Regarding the sale deed in favor of Sumer Singh, this fact has also been denied and it has also been the objection of the defendants that Sumer Singh has not been impleaded a party in the suit and if at all Ram Pratap has executed any sale deed in favor of Sumer Singh at the instructions of Bhupendra Singh then Sumer Singh was a necessary party for determination of the questions involved in the case.

4. Shorn of other details, it is relevant to notice for the present purposes that on the pleadings of the parties the Court has framed 11 issues on the questions, as to whether the alleged agreement was executed after receiving earnest of Rs. 50,000/-, as to

whether possession was handed over in part performance; as to whether R. 40,000/- was received on 14th March, 1983 and Rs. 30,000/- on 21st March, 1983, whether the purchasers were ready and willing to perform their part under the agreement; as to whether sale deed for 5 Bighas of land was executed in favor of Sumer Singh at the institutions of Bhupendra Singh as to whether Sumer Singh was a necessary party in the suit and as to whether Ram Pratap was not entitled to sell the disputed land? Apart from these issues, Issue No. 8 has been framed on the question as to whether the suit has been filed within limitation?

5. A perusal of the record shows that after framing of issues on 3rd Feb. 1997 the matter was posted for plaintiff's evidence but the defendants filed an application on 17th Feb. 1997 with the request that Issue No. B regarding limitation ought be decided in the first place. Thereupon the learned trial Court passed an order on 22nd Oct. 1997 and rejected this application. This order dated Oct. 1997 was the subject-matter of revision before this Court and this revision petition No. 1164/97 was heard and decided by this Court on 20th July, 2000. This Court found that Issue No. 8 being a pure issue of law was required to be decided on the pleadings of the parties and consideration of Article 54 of the Limitation Act. The revision petition was allowed, impugned order was set aside and the trial Court was directed to try and decide Issue No. 8 as a preliminary issue on the basis of the pleadings of the parties and considering Article 54 of the Limitation Act or any other provision of law that may be pressed into service by the parties. This order dated 20th July, 2000 passed by this Court has admittedly become final.

6. After passing of the order dated 20th July, 2000 the plaintiffs attempted an improvement of the plaint and, therefore, moved two applications respectively on 9th Oct. 2000 and 31st January, 2001 seeking amendment in the plaint. In the first application dated 9th Oct. 2000, averments were sought to be inserted in the plaint that the defendants filed the suit for recovery of possession and appointment of Receiver on 17th Oct. 1995 and withdrew the suit and thereafter filed fresh suit on 19th January, 1998 which was still pending. From this it is apparent that the defendants are not willing to get the document registered and, therefore, by filing of the suit, the refusal by the defendants was clearly apparent and, therefore, the suit was within limitation. Quoting the observations made by this Court in its order dated 20th July, 2000, the defendants objected the proposed amendment and requested firstly the hearing on Issue No. 8 in terms of the directions of this Court. After filing of the reply by the defendants, the second application was filed by the plaintiffs seeking to

incorporate the plea to the effect that if under any provision of law the specific performance was not considered proper, then, in the alternative the plaintiffs were entitled for a permanent injunction against the defendants to maintain possession on the land in question as they are in possession of the same for over 12 years as rightful owners . This application was again contested by the defendants on the ground that firstly arguments on Issue No. 8 were required to be heard and the application was not maintainable. The learned trial Court considered both these applications on merits and rejected both of them by the order dated 26th July, 2001.

7. The plaintiffs came up in revision against this order dated 26th July, 2001. This Court took up for consideration this revision petition No. 921/2001 and this Court found that in terms of the directions already issued by this Court to the trial Court (vide order dated 20th July, 2000) to decide Issue No. 8 as preliminary issue, the learned trial Court should have decided that issue as preliminary issue first rather than deciding the application under Order 6, Rule 17, Civil Procedure Code. This Court therefore, disposed of the revision petition No. 921/2001 by the order dated 21st Feb. 2002 and while setting aside the order dated 26th July, 2001, directed the trial Court to first decide issue No. 8 as directed by this Court by the order dated 20th July, 2000 and thereafter, if occasion arises, the trial Court will decide the applications under Order 6, Rule 17, Civil Procedure Code afresh.

8. Thereafter, the learned trial Court heard the parties on Issue No. 8 in terms of the directions of this Court. By the impugned order dated 3rd March, 2003 the learned trial Court decided this issue No. 8. The learned trial Court proceeded to read the recitals in the agreement and at the reverse side of the same also and constructed the pleadings of the parties to the effect that on 21st March, 1983 Ram Pratap received Rs. 30,000/- remaining sale consideration and gave out that as per his convenience he will obtain Fardkhata and NOC and then get the document registered. The learned trial Court was also of opinion that the refusal by the defendant to execute the document came for the first time when they filed the suit before the Assistant Collector, Sri Ganganagar on 17th Oct. 1995 and on that basis found the suit filed on 20th Nov. 1995 to be within limitation and decided issue No. 8 in favor of the plaintiffs.

9. Learned counsel for the petitioner defendants has assailed the impugned order with the submissions that in any case refusal of performance was clear to the vendee at least on 21st March, 1983 when allegedly the remaining sale consideration was taken and part of the land was sold and the learned trial Court has acted illegally in not

considering the effect of all the averments of the plaintiff. The learned counsel for the non petitioners has supported the impugned order with the submissions that Fardkhata and NOC were to be obtained by the vendor and till that was done, nothing was required to be done by the purchaser. The refusal would only be counted from the date the defendants filed the suit before the revenue Court i.e. on 17th Oct. 1995 and, therefore, the suit was within limitation.

10. Having heard the learned counsel for the parties and having perused the record, this Court is clearly of the opinion that the impugned order deserves to be set aside and the matter deserves to be remanded back to the trial Court for decision on Issue No. 8 afresh. The learned trial Court was enjoined by the order dated 20th July, 2000 passed by this Court that the issue of law regarding limitation will be tried and decided as a preliminary issue on the basis of the pleading of the parties and Article 54 of the Limitation Act or any other provision of law that may be pressed into service by the parties.

11. A comprehensive reading of the plaint and the written statement and the issues framed in this case shows a fact that according to the plaintiffs the vendor late Ram Pratap executed sale deed for 5 Bighas of land out of the total 12 Bighas of land agreed to be sold. This sale deed has been alleged to have been executed in favor of Sumer Singh son of Ram Narain, resident of Sri Ganganagar at the instructions of the vendee Bhupendra Singh. Regarding these averments in para 5 of the plaint the defendants have answered in the negative in their written statement and have denied execution of any sale deed by Ram Pratap in favor of nominee of Bhupendra Singh. Thereafter, it has been asserted that if any sale deed has been executed by Ram Pratap at the instructions of Bhupendra Singh in favor of Sumer Singh, then Sumer Singh was a necessary party in the suit. As noted above, on these averments Issue No. 9 has been framed as to whether Sumer Singh was a necessary party in the suit and Issue No. 6 has also been framed on the question as to whether sale deed of 5 Bighas of land was executed at the instruction of Bhupendra Singh in favor of Sumer Singh.

12. When the pleadings of the parties and their respective cases are to be constructed, the effect of the facts emerging from this averment of execution of the sale deed of 5 Bighas at the instructions of Bhupendra Singh in favor of Sumer Singh would definitely arise for consideration. However, the learned trial Court in this case has failed to construe the pleadings in totality. The meaning and effect of the pleadings in para No. 5 has not been considered by the learned trial Court and the same amounts to a material irregularity in exercise of its jurisdiction. On this count alone the impugned

order cannot be sustained and is liable to be set aside.

13. Any other probe into any other aspect of the matter is already closed down in view of the order dated 20th July, 2000 passed by this Court whereunder only pleadings of the parties and provisions of law are required to be looked at. However, one part of the pleadings having been omitted from consideration by the learned trial Court, this Court considers it proper and in the interest of justice that the impugned order dated 3rd March, 2003 be set aside and the matter be remanded back to the learned trial Court to decide issue No. 8 afresh after a comprehensive reading and construction of the pleadings of the parties. However, it is made clear that these directions shall not be construed in any manner any modification of the order dated 20th July, 2000 which has already become final and these directions are only supplementary to and in the aid of the directions issued on 20th July, 2000 for an effective just and proper decision on Issue No. 8.

14. In the result the revision petition succeeds to the extent indicated above the impugned order dated 3rd March 2003 is set aside and the matter is remanded back to the trial Court for decision on Issue No. 8 afresh in the light of the directions issued by this Court on 20th July, 2000, on 21st Feb. 2002 and so also by this order. There shall be no order as to costs.

15. The record of the trial Court be sent back forthwith and the parties are directed to appear before the trial Court on 23rd Nov. 2004.

Revision allowed.