

# RAJASTHAN HIGH COURT

Saroj Raheja

Vs.

Addl. Civil Judge (S.D.) Sri Ganganagar

C.W.P. No. 6744 of 2005

(Dinesh Maheshwari, J.)

25.11.2005

## ORDER

**Dinesh Maheshwari, J.**

1. The petitioner has submitted this writ petition being aggrieved of the order dated 1-9-2005 passed by the Additional Civil Judge (Senior Division), Sri Ganganagar in Civil Suit No. 26/2001 whereby the learned trial Court has rejected an application filed by the petitioner for deciding the issue of limitation as a preliminary issue.

2. From the documents produced on record and the averments made in the writ petition, it appears that the plaintiff-respondents have filed a suit on 11-12-2000 seeking specific performance of an agreement to sell dated 22-10-1977 alleged to have been executed by one Nemi Bai in favor of Balwant Singh. The plaintiffs and defendants No. 2 and 3 are the sons of Balwant Singh. According to the plaintiff averments, Smt. Nemi Bai had expired on 2-9-1987 and her only heir was her daughter Yasoda Devi, who had also expired on 6-3-1999 and the defendant No. 1, the present petitioner is her only heir. The dispute relates to 10 big has of agricultural land in Murabha No. 52 at Chak 10 G Chhoti. According to the plaintiffs the land in question was allotted by Rehabilitation Department to Smt. Nemi Bai and she agreed to sell the same to Balwant Singh on consideration of Rs. 4000/- per bigha; received Rs. 32,000/- on 22-10-1977; delivered possession of the land; and it was a term of the agreement that after obtaining Sanad of the land and getting khatedari recorded in the revenue records, information thereof would be extended to the purchaser. Taking other averments of their readiness and willingness to get the sale deed executed, allegations have been made against the defendant petitioner that on account of appreciation in the

price of land, she was not executing the sale deed and ultimately refused on 28-11-2000 to execute the sale deed which gave rise to the cause of action.

3. It appears from the order sheet dated 4-8-2003 produced on record as Annexure-3 that the said suit was tried and posted for judgment when it was noticed that the petitioner-defendant No. 1 was not personally served and the proceedings were conducted by her power of attorney holder and, therefore, fresh summons were issued. The petitioner has put in appearance and filed her written statement on 7-8-2004 (Annexure 4) wherein the factum of agreement has been totally denied and, inter alia, an objection about limitation has been taken with the averments that the plaint has been presented after about 25 years and the plaintiffs have not shown as to how the suit was within limitation.

4. After filing of the pleadings, the learned trial Court has framed issues and has also allowed the plaintiffs to produce documents on record by the order dated 19-4-2005 and has also allowed the plaintiffs a fresh opportunity to lead evidence. However, an application was submitted by the petitioner on 12-7-2005 with the submissions that an issue was framed to the effect as to whether the suit was liable to be dismissed being barred by time and this issue being a legal issue, was required to be heard and decided before any other proceedings in the suit.

5. The learned trial Court has proceeded to refer to the pleadings of the parties, the terms of the agreement in question and observed that at this stage of proceedings, whether the limitation was to be counted from 22-10-1977 (the date of alleged agreement) or from the date of issuing of notion or from the date of the plaintiff asking for the performance were all mixed questions of facts and law which could be determined only after evidence of the parties. The learned trial Court also observed that in the present suit proceedings, the evidence of the plaintiffs has been nearly completed and in such circumstances it was not considered appropriate to decide the issue as a preliminary issue.

6. Learned counsel for the petitioner vehemently contended that having regard to the provisions of Section 3 of the Limitation Act, the issue of limitation ought to have been decided by the Court in the first instance and the order passed by the trial Court suffers from an error apparent on the face of the record.

7. Having heard learned counsel for the petitioner and having examined material

placed on record, this Court is satisfied that the learned trial Court cannot be said to have acted illegally or without jurisdiction in passing the impugned order dated 1-9-2005 (Annexure 7).

8. Having regard to the pleadings of the parties, subject-matter of dispute and the stage of the proceedings, when the issue of limitation was clearly a mixed question of facts and law and the case has already registered progress inasmuch as the plaintiff's evidence was nearing completion, it cannot be said that the learned trial Court has committed any such jurisdictional error in refusing the application of the petitioner which would result in manifest failure of justice so as to warrant any interference under Article 227 of the Constitution of India.

9. The writ petition fails and is dismissed summarily.  
Petition dismissed.