Before Rajbir Sehrawat,J.

VED PARKASH— *Appellant*

versus

MAHENDER AND OTHERS—*Respondents*

RSA No. 1747 of 2017 (O&M).

November 16, 2017

A. ***Specific Relief Act, 1963— Section 20— Limitation Act, 1963, Art. 54 — Suit for specific performance Limitation — Agreement to sell between parties —Agreement stipulated sale deed to be executed one month after decision of title suit of vendor — Vendee not informed by vendor regarding decision of suit —Vendee became aware while searching documents regarding another suit filed by vendor against him — Suit not barred by limitation.***

Held that in the agreement to sell, it was stipulated that the sale deed will be executed within one month after the decision of the litigation, pending regarding the title of the defendant, is informed by the defendant to the plaintiff. However, no evidence had been led by the defendants as to when defendants informed the plaintiff about the decision of the suit.

(Para 10)

B. ***Specific Relief Act, 1963— Section 20— Limitation Act, 1963, Art. 54— Suit for specific performance —Limitation prescribed is three years from date fixed for performance— If no such date fixed only then plaintiff required to file suit within three years from notice of refusal of performance.***

Held that the period of limitation prescribed under Article 54 of the Act, is three years from the date fixed for performance. If there is no such date fixed, only then the plaintiff is required to file a suit within three years from the notice of refusal of performance of the agreement. In the present case, since there was a date and a legal event specified for performance of the agreement, therefore, a refusal, if any, on the part of the defendant, even before that, is irrelevant. The plaintiff is entitled to file a suit within three years from the date agreed for performance; as specified in the terms of the agreement.

(Para 15)

C. ***Civil Procedure Code, 1908— S.100 —Specific Relief Act, 1963— S.20—Limitation Act, 1963—Art. 54 —Suit for specific performance—Limitation—Limitation mixed question of fact and law— Defendant required to prove limitation by leading cogent evidence to satisfy that suit was time barred— However, neither defendant led any evidence specifically to show limitation nor has he pressed for limitation at time of argument Issue being mixed question of fact and law, cannot be recked up at stage of second appeal.***

Held that neither the defendant has led any evidence; specifically to show the limitation; nor has he pressed for the limitation at the time of argument. Therefore, this issue, being a mixed question of fact and law, cannot be recked up at the stage of second appeal before High Court.

(Para 17)

Rajiv Kataria, Advocate
for the appellant.

Sudhir Aggarwal, Advocate
for the respondents.

RAJBIR SEHRAWAT, J.(ORAL)

(1) This is the second appeal filed by the defendant No.1 in the suit challenging the concurrent judgment and decree passed by the Courts below, whereby, the suit for specific performance filed by the plaintiff hasbeen decreed.

(2) For the reference, the parties in the present appeal would be referred to as plaintiff and defendants; as they were described in the original suit.

(3) The brief facts of the case as mentioned in the suit are that the plaintiff filed a suit claiming that defendant-Sh. Singhram, now represented through legal representatives, entered into an agreement to sell dated17.11.1990 to the effect that he was the owner in possession of land measuring 1200 sq. yards comprised in Khasra No. 758 situated within the revenue estate of Village Nathupur Tehsil and District Gurgaon. It was further claimed by him that land is free from all sorts of encumbrances. Believing the representation made by the vendor/defendant, the plaintiff agreed to purchase the said property. The price of the land was settled at rate of Rs. 150/- per sq. yard and a total consideration for the sale was Rs. 1,80,000/-. Out of that Rs.

1,25,000/- was paid by the plaintiff to the vendor/defendant. Possession of the land was handed over to the plaintiff. It is further pleaded that the target datefor execution of the sale deed was agreed to be, a period of one month from the date of decision, of a civil suit which was pending regarding the title of the vendor/defendant over the land agreed to be sold. The date of decision of the suit was to be communicated by the defendants to the plaintiff. The suit was decided on 22.01.2003, however, the defendant did not communicate the date and did not show his readiness to execute the sale deed, therefore, the present suit was filed. It was further pleaded in the suit that the defendant, in the meantime, filed a suit for possession for seeking back possession of the suit property. However, the same was also dismissed. It was further claimed that although the title suit, filed by some other co-sharers against the defendant, was dismissed by judgment and decree dated 22.01.2003, however, in appeal learned District and Sessions Judge decreed that suit on 15.09.2003 and held the defendant to be the owner of the land measuring 600 sq.yards only. It was further claimed that as per the decision of the Civil Court, the defendants had got clear title of 1/4th share (600 Sq. yards) in khasra No. 758 which was agreed to be sold to the plaintiff, therefore, the suit was filed only for execution of the sale deed qua 600 sq. yards instead of agreed 1200 Sq. yards. Since, the amount had already been paid in excess, therefore, the plaintiff claimed specific performance of the agreement.

(4) On notice, defendant contested the suit. Since in the meantime, the vendor/defendant had expired, so he was represented by the legal representatives. Besides taking routine preliminary objections, the defendants claimed that vendor had share of 600 sq. yards only, being1/4th share in 2400 sq. yards; comprised in the khasra number as mentioned above. Therefore, the agreement cannot be interpreted as for 1200 sq. yards. Still further, it was alleged that agreement in question was forged and fabricated. The original defendant had expired, thereafter, the legal representatives of the defendant took the plea that the signatures of the defendant were obtained on a blank papers after intoxicating him.In the alternative, it was pleaded that the alleged agreement was executed only by way of collateral security and it was not intended to be an agreement to sell. Still further it was claimed that the suit was time barred. It was claimed that the denial on the part of vendor-Singh Ram was manifestly clear to the plaintiff, when the defendant had filed a suit for permanent injunction on 31.01.1995, challenging the present agreement in question; and denied the execution of the agreement.

Therefore, it was pleaded that the plaintiff was required to file suit within three years from 1995 whereas the suit has been filed in May, 2004.Hence, the suit was time barred.

(5) Parties led their evidence. It deserves to be mentioned here that there was specific issue regarding the limitation in the present suit. The onus to prove the issue was put upon the defendants.

(6) After hearing the parties and perusing the evidence, the trial Court decreed the suit filed by the plaintiff. The trial Court recorded the finding that since both the attesting witnesses had expired in the meantime, therefore, their sons were duly produced by the plaintiff to prove the signatures of the attesting witnesses. Besides this, plaintiff had himself stepped into the witness box and reiterated the contents of the agreement.

(7) Therefore, the agreement is proved. The trial Court further held that, otherwise also, the suit for possession by way of mandatory injunction, filed against plaintiff by Vendor-Singh Ram; was dismissed on 30.07.2003 and thereafter, legal heirs of the Singh Ram preferred an appeal, which was also dismissed on 17.09.2008. Therefore, the agreement was stood upheld. Still further the Court held that Handwritting Expert has also been examined by the plaintiff to compare the signatures of the defendant with the standard signatures. The Handwritting Expert has also proved the execution of the agreement. Still further, the trial Court recorded the finding that having failed on the validity of the agreement,the legal representative of the defendant had taken a plea that the plaintiff was not entitled to specific performance of the contract because the defendant himself was not the owner of the property on the date of execution of the impugned agreement dated 17.11.1990. However, the Court held that the defendants are estopped from taking such plea at this stage. Still further, the Court held that, moreover, it had come in the evidence that the possession was also delivered to the plaintiff on the date of the execution of the agreement dated 17.11.1990 and thereafter, plaintiff constructed his residential house and he is residing there. This fact stands even admitted by the defendants during the cross examination and also by the very fact that the suit for possession and the mandatory injunction was filed by the defendant for getting back possession from plaintiff, however, the same was dismissed by the Courts. Therefore, it was held by the Court that the plaintiff had taken possession of the suit property, in part performance of the agreement by paying substantial part of consideration and he was willing to perform his part of the

contract,therefore, the defendants shall be debarred from claiming any other right regarding the suit property.

(8) So far as the issue of limitation is concerned , the trial Court recorded a finding that defendants have neither led any evidence on this aspect nor had they pressed this issue during the course of argument, therefore, the limitation point was decided against the defendant.

(9) Aggrieved against the judgment and decree passed by the trial Court, defendant filed an appeal before the lower Appellate Court . However, the lower Appellate Court also dismissed the appeal filed by the appellant. While dismissing the appeal, the lower Appellate Court also recorded a finding that it has come in evidence that plaintiff had already paid a sum of Rs.90,000/- @ Rs. 150/- per sq. yards. As later it is found that the defendant was owner of only 600 sq. yards instead of 1200 sq. yards, therefore, an amount of Rs. 35,000/- had already been paid in excess to the vendor. Hence, the entire consideration stood paid to the defendants. However, after the death of their predecessor, the defendant had refusedto execute the sale deed in favour of the plaintiff. It was further recorded by the lower Appellate Court that since the suit regarding the title of the defendant/vendor was pending, therefore, once he was found to be the owner of the suit property to the extent of 600 Sq. yards then neither vendor nor his legal representatives have any right to plead that at thetime of entering into the agreement to sell, the vendor had no title. Asheld by the trial Court, the lower Appellate Court also held that the defendants, as legal representatives of the original vendor, have no rightto take the plea that the vendor had no title at the time of entering into the agreement.

(10) Regarding the plea of limitation raised by the defendant, the lower Appellate Court held that in the agreement to sell, it was stipulated that the sale deed will be executed within one month after the decision of the litigation, pending regarding the title of the defendant, is informed by the defendant to the plaintiff. However, no evidence had been led by the defendants as to when defendants informed the plaintiff about the decision of the suit. On the other hand, it is specific case of the plaintiff that he came to know about the decision regarding the title of the vendor/defendant when he was searching documents regarding another suit filed by the defendant against him and as computed from the date of the decision of the suit regarding title of the defendant; his suit is within prescribed limitation. Hence, the lower Appellate Court held that the suit was within limitation. Being aggrieved of the judgment and decree passed by the Courts below, the present appeal has

been filed by the defendant.

(11) While arguing the case, learned counsel for the appellant has restricted his argument only on the point of limitation. His submission is that since vendor had filed a suit seeking the possession of suit property from the plaintiff, way back in 1995, therefore, he had refused the performance of the agreement in question, to the knowledge of the plaintiff, hence, the plaintiff should have filed a suit within three years from 1995. Since he has not done so, therefore, it is barred by limitation. To substantiate his plea, learned counsel for the appellant has relied upon the judgment in the case of Hon'ble **Supreme Court in** titled as ***Venkappa Gurappa Hosur*** versus ***Kasawwa c/o Rangappa Kulgod***[1]; another judgment of Kerala High Court titled as ***Chakky Rudrani*** versus ***Velayudhan Krishanan***[2] and one more judgment of Hon'ble Andhra Pradesh High Courttitled as ***Reddipalli Yashodha Bai*** versus ***P.Sreenivasulu Reddy***[3]. Still further learned counsel for the appellant relies upon the judgment of the Hon'ble Supreme Court in case titled as ***Madina Begum and others*** versus ***Shiv Murti Prasad Pandey and others***[4].

(12) On the other hand, learned counsel for the respondents has submitted that the defendant cannot be permitted to reck up the issue of limitation after having waived the same. The defendant had taken a specific plea inwritten statement regarding the limitation. The specific 'issue of fact' was framed in the suit regarding limitation. The defendant was required to lead evidence to substantiate his plea regarding limitation as per the onus of proof. However, neither the evidence was led nor the issue was pressed at the time of arguments, as recorded by the trial Court, therefore, the issue has become redundant; as having been waived by the defendant. Second argument of the learned counsel for the respondents/plaintiff inthe present case is that the specified date for performance was mentioned in the agreement, which was one month after the communication received from the defendant qua the decision of the suit regarding his title. Since the defendant has never communicated him the date, therefore, he has filed a suit within three years from the date of decision of the suit regarding the title of defendant itself. Hence, the suit is within

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[1] 1997 AIR (SC) 2630
[2] 1996 (1) CicCC 69
[3] 2011 (34) RCR (Civil) 341
[4] 2016 (3) RCR (Civil) 952

limitation. The next argument of the learned counsel for the respondents is that mere filing of the suit in 1995 by the defendants does not start running of the limitation against the plaintiff in this case for two reasons. Firstly, it is his submission that in the agreement there was a date fixed for execution of the sale deed. Had the plaintiff filed a suit before that date then the defendant could have taken a plea that suit is pre-mature and liable to be dismissed. Secondly, it is his submission that even in the suit filed by the defendant; claiming possession from the plaintiff, he had not denied the existence of the agreement, specifically, rather he had tried to sidetrack the agreement only by saying that even if there is any agreement between the plaintiff and defendant; that stands lapsed because of a efflux of time. Hence, it is the submission of the learned counsel for the respondent that there is no specific plea regarding the denial of the agreement on the part of the defendant in the earlier suit. Hence, the limitation would not start from the date of filing of that suit. Still further learned counsel for the respondent submits that, admittedly, there was some litigation regarding the title of the suit of the defendant, though it has come on record that it was started after the date of agreement, however, this litigation is relatable to the clause of the agreement. In this litigation, the title of the defendant has been finally adjudicated upon by the Court. He has finally been found to be owner only qua 600 sq. yards of the land, vide final judgment dated 15.09.2003. Therefore, the plaintiff is entitled to file the suit within three years from the date the title of defendant becomes determined. In this regard, the counsel relies upon Section 13 of theSpecific Relief Act which says that if the seller agreed to sell with imperfect title and subsequently he gets title to the land, then the purchaser can compel him to specifically perform the agreement qua the land for which he had agreed to sell. It is the submission of the learned counsel that before the title is crystalized by the plaintiff; he could not have filed a suit; as per the clause of the agreement. Hence, his suit was within limitation.

(13) Having heard learned counsel for the parties and perused the record with able assistance of the learned counsel for the parties, this Court is of the view that the plea of the defendant regarding limitation is not sustainable.

(14) The judgments cited by the learned counsel for the appellant are distinguishable on the facts of their own case. Therefore, they are not of any help for the appellant/defendant. In the judgment of Hon'ble Supreme Court in case of ***Venkappa Gurappa Hosur*** (supra) although

the defendant had filed a suit for possession against the plaintiff, as in the present case, but, in that case the suit of the defendant was finally decreed, holding the agreement to be non-existent from the date of filing of the suit itself. Whereas, in the present case, the suit of the defendant was dismissed and the existence of the agreement was finally upheld in favour of the plaintiff on 30.07.2007, therefore, the limitation, in this case, cannot be said to have started from the date of filing of the suit. Otherwise also, it can be seen from the judgment and pleadings in that suit that there is no specific refusal of the performance or denial of existence of the agreement as such. However, only an attempt has been made to avoid the agreement to sell; by saying that the agreement stands lapsed by way of efflux of time. This, by no means, was categoric refusal to execute the sale deed, in view of the fact that, the date fixed for performance of the agreement had not crystalized or arrived on the date when the suit for possession was filed by the defendant. As has come on record, the date of performance of the agreement crystalized much later in the year 2003; with the determination of the title of the plaintiff through the proceedings which were referred to in the clause of agreement. So far as, the another judgment of Hon'ble Supreme Court rendered in ***Madina Begum' case*** (supra) is concerned, this judgment is only an authority on the point where the date of performance is not a specified date. In the present case, the date was very much specified, with reference to the date of decision of the Court, qua the title of the defendant.

(15) Decision of a Court comes only on a specified calendar date. So, if not any other date, then, at least, this date was specified in terms of calendar date, for the purpose of counting of limitation. Hence, the particular calendar date was very much discernible from the terms of the agreement. Therefore, it cannot be said that in the present case there was no date fixed for the performance and hence, the refusal shall be deemed to have arisen in the year 1995. The plaintiff is very much entitled to wait for determination of title of vendor by the Court; as was agreed between the parties. Therefore, this judgment is also not helpful to the defendant. On the other hand, learned counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court in titled as ***Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd)*** versus ***Ramesh Chander and others***[5]**.** His reliance is upon para No. 27 of the judgment which says that the period of limitation prescribed under Article 54 of the Act, is three years from the date fixed for

[5] 2011 AIR (SC) 41

performance. If there is no such date fixed, only then the plaintiff is required to file a suit within three years from the notice of refusal of performance of the agreement. In the present case, since there was a date and a legal event specified for performance of the agreement, therefore, a refusal, if any, on the part of the defendant, even before that, is irrelevant. The plaintiff is entitled to file a suit within three years from the date agreed for performance; as specified in the terms of the agreement.

(16) One more aspect need be taken note in this case is that it has come on record that plaintiff has constructed his house in some part of land which was given to him in possession by vendor on the date of agreement. Still further, it has been proved on record that the title of the defendant has been determined only qua 600 sq. yards and not qua 1200 sq. yards, as was agreed by the defendant to sell to the plaintiff. This title was determined only on 15.09.2003. Therefore, by any means, the suit for specific performance could not have been filed by the plaintiff for 600 sq. yards only, before the determination of the title of the defendant; because then his suit would have been dismissed even on that ground that there is no title of the defendant qua the suit property. This also justifies the action of the plaintiff in waiting till the title of the defendant was determined.

(17) Otherwise also, as has been recorded by the trial Court in this case, the defendant had claimed the limitation as an "issue of fact". A specific issue regarding the 'fact in issue' of limitation was framed. Since the limitation was 'issue of fact' as claimed in the case, the limitation in the present case was the mixed question of fact and law. The defendant was required to prove the limitation by leading the cogent evidence to satisfy that the suit was time barred. However, neither the defendant has led any evidence; specifically to show the limitation; nor has he pressed for the limitation at the time of argument. Therefore, this issue, being a mixed question of fact and law, cannot be recked up at the stage of second appeal before High Court.

(18) No other argument was raised.

(19) In view of the above, finding no perversity in the judgment and decree of the Courts below; the same are upheld. The present appeal fails and the same is dismissed being devoid of any merits.

Dr. Payel Mehta