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Usha Devi Vs. Ram Kumar Singh

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Court : Supreme Court of India

Decided On : Aug-05-2024

Judge : Hon'Ble Mr. Justice Vikram Nath Hon'Ble Mr. Justice Prasanna B. Varale

Appeal No. : C.A. No.-008446-008446 - 2024

Appellant : Usha Devi

Respondent : Ram Kumar Singh

Advocate for Pet/Ap. : AJAY KUMAR __

Judgement :

Reportable 2024 INSC599IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.8446 OF2024(Arising out of SLP (C) No.2997 OF2023 USHA DEVI & ORS. APPELLANT(S) VERSUS RAM KUMAR SINGH & ORS. RESPONDENT(S)

ORDER

1 Leave granted. This is the defendants appeal against the judgment and order dated 14.12.2022, passed by the High Court of Jharkhand at Ranchi in Second Appeal No.349 of 2005, Usha Devi & Ors. versus Ram Kumar Singh & Ors., confirming the judgment and decree of the First Appellate Court, decreeing the suit for specific performance filed by the respondents.

2. According to the plaint allegations, the facts are as follows:

2. 1 The dispute relates to plot No.2339, situated at Purulia Road, Kumhar Toli, Gali No.2, Namkum, District Ranchi, which belonged to Kisun Ram, the grandfather of the appellants. CIVIL APPEAL No.8446 OF20241 However, the plot was sub-divided amongst the co-sharers, and plot No.2339B of Khata No.252 came into the share of Bihari Lal, succeeded by the defendants after his death. 2.2 During his lifetime, Bihari Lal is said to have entered into an agreement with the plaintiff on 22.07.1983, for the sale of the land along with superstructure for a total sale consideration of Rs. 70,000/-. Out of the said amount, Rs. 1,000/- was paid in advance. 2.3 As per the said agreement, the sale deed was to be executed upon payment of the remaining amount of Rs. 69,000/- within a period of nine months. The sale deed was not executed within the time stipulated. 2.4 According to the respondents, the balance amount of Rs. 69,000/- was paid on 20.09.1985, for which an endorsement was made on the agreement dated 20.09.1985, and it was agreed that the sale deed would be executed by 30.11.1985. The plaintiffs-respondents were put in possession of the property at that stage. 2.5 The sale deed was still not executed, and a fresh agreement came to be executed between the parties on 17.12.1989. 2.6 The land in question, covered by the initial agreement to sell, was 10 katthas. However, in 1989, a fresh measurement CIVIL APPEAL No.8446 OF20242 exercise was undertaken according to which it came to only 9 katthas, and the price was enhanced from Rs. 7,000/- per kattha to Rs. 9,000/- per kattha. 2.7 At the time of the execution of the agreement dated 17.12.1989, an initial amount of 10,000/- was paid. Thus, out of the total sale consideration of 81,000/-, only Rs. 1,000/- remained as balance to be paid at the time of the execution of the sale deed. 2.8 As per this agreement to sell, the sale deed was to be executed and registered within one month i.e. up to 16.01.1990. It is interesting to note that agreement to sell also incorporated a clause at the end of the document stating that the said agreement would be valid for five years. Since the sale deed was not executed, the respondents instituted a suit for specific performance of the contract in September, 1993. 2.9 The affidavit filed along with the plaint was sworn and attested on 13.09.1993.

3. The appellants filed a written statement denying the plaint allegations. 3.1 According to the defendants, the said agreement to sell was a forged and fabricated document and did not bear the signatures CIVIL APPEAL No.8446 OF20243 of their father, Bihari Lal, who had since died in 1990. 3.2 The appellants further alleged that the suit was barred by limitation inasmuch as it was filed beyond the period of three years from the date of performance of the sale deed as per the agreement. 3.3 Various other issues were raised which we may not enter into, as primarily, it is the issue of limitation which will decide this appeal.

4. Based on the pleadings, the Trial Court framed the following issues: a) Is the suit as framed maintainable?. b) Have the plaintiffs got any valid cause of action of the suit?. c) Is the suit barred by limitation?. d) Is the suit bad due to non-joinder of necessary parties?. e) Whether so-called agreements were done between the plaintiffs and late Bihari Lal, husband of defendant No.1 and whether those agreements are binding on Defendant Nos. 1,2,4 and 5?. f) Are the alleged agreements forged, fabricated and concocted, which do not bear the signature of Bihari Lal?. g) Whether at the time of agreement, Bihari Lal was the CIVIL APPEAL No.8446 OF20244 absolute owner in possession of the suit property or whether the suit property was joint?. h) Is Ashok Kumar-defendant No.3 is the adopted son of Bihari Lal or the son of Shivlal and whether he has the right to contest this suit?. i) Whether the plaintiffs are entitled to the reliefs sought in the plaint and other reliefs?.

5. Both parties led evidence. The Trial Court, vide judgment dated 13.06.2004, dismissed the suit with costs. All the issues except the issue nos. 1, 2 and 3 were decided in favour of the plaintiffs. Insofar as issue no.3 is concerned it was held that the suit was barred by limitation.

6. The plaintiffs-respondents preferred an appeal registered as Title Appeal No.50 of 2004. The said appeal came to be allowed, vide judgment dated 03.09.2005, and the suit was decreed. The defendants were directed to execute and register the sale deed as per the terms and conditions of the agreement dated 17.12.1989, after receiving the balance consideration within 30 days.

7. Aggrieved by the same, the defendants-appellants preferred a second appeal before the High Court, which has since been dismissed by the impugned order, giving rise to the present CIVIL APPEAL No.8446 OF20245 appeal.

8. We need not enter into the other issues as we are convinced that the suit was barred by limitation. The limitation under Article 54 of the Limitation Act, 1963 for instituting a suit for specific performance of a contract would be 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. Article 54 of the Limitation Act, 1963 is reproduced hereunder: *** 54. For Specific Three The date fixed for the performance of Years performance, or, if no such a contract date is fixed, when the plaintiff has notice that performance is refused.

9. Coming to the facts of the present case, we find that in the agreement dated 17.12.1989, it is specifically mentioned that the sale deed would be executed within one month from the date of the said agreement. The period of one month would expire on 16.01.1990, and once there is a specific date fixed for performance, the limitation period would be three years from the said date, which would expire on 16.01.1993. The Trial Court thus held that the suit was barred by limitation as it was filed in CIVIL APPEAL No.8446 OF20246 September 1993.

10. The First Appellate Court and the High Court went on the consideration that the agreement further recorded that this agreement would remain valid for a period of five years from todays date i.e. date of the execution of the agreement to sell. Placing reliance on this clause, in our considered opinion, is totally irrelevant. The performance was to take place within one month. The validity of the agreement is something different and does not change the date of performance. What was the reason for incorporating this clause of validating the agreement for five years is not spelled out in the agreement, but in any case, it does not change the date fixed for the performance.

11. As such, the suit was liable to be dismissed on the ground of limitation alone. The appeal is thus liable to be allowed. Therefore, we have not entered into the other issues regarding the agreement to sell being valid or invalid.

12. Accepting that the plaintiffs-respondents paid an amount of Rs. 80,000/- to the defendant-appellant, and there being no relief claimed for refund of this money, in order to do complete justice between the parties, we feel it appropriate that the said amount of Rs. 80,000/- be returned to the plaintiffs along with 12% CIVIL APPEAL No.8446 OF20247 simple interest by the appellants within three months from today.

13. The appeal is accordingly allowed. The impugned order is set aside, and the suit is dismissed. However, it is directed that the appellants shall return the advance amount of Rs. 80,000/- with interest at the rate of 12 % per annum from the date it was paid to the appellants till the date it is paid. There shall however be no order as to costs. J.

(VIKRAM NATH) J.

(PRASANNA BHALACHANDRA VARALE) NEW DELHI AUGUST5 2024 CIVIL APPEAL No.8446 OF20248

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