

Mohammad Khan Vs. Suratsingh

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Court : Madhya Pradesh

Decided On : Oct-11-1961

Reported in : AIR1963MP137; 1962MPLJ185

Judge : T.C. Shrivastava, J.

Acts : Limitation Act, 1908 - Schedule - Articles 97 and 116

Appeal No. : Second Appeal No. 649 of 1959

Appellant : Mohammad Khan

Respondent : Suratsingh

Advocate for Def. : A.L. Halve, Adv.

Advocate for Pet/Ap. : A. Razak, Adv.

Disposition : Appeal dismissed

Judgement :

T.C. Shrivastava, J.

1. This second appeal has been filed by the plaintiff against the dismissal of his suit by the Courts below.

2. The following facts are not in dispute. The respondent Suratsingh sold Khasra Nos. 60, 65 and 66, area 2.06 acres, of village Banwar, Tahsil and District Damoh, to the appellant for Rs. 180/- by a registered sale deed, dated 26-10-1947. The appellant-plaintiff was placed in possession of the lands. In April, 1950, Nathusingh and Raghubar, claiming to be owners of the lands, dispossessed the plaintiff. The plaintiff then filed a suit against them which was dismissed on 22-1-1955. It was held in that suit that the lands belonged to Nathusingh and Raghubar and that the respondent, who had sold them to the appellant, had no title over them. On 21-1-1958 the present suit was instituted for recovery of the amount of consideration of the sale deed.

3. The suit was resisted by the defendant on several grounds which it is not necessary to state for the purpose of this appeal. It has been found by the Courts below that the plaintiff had paid Rs. 180/- as consideration for the lands and that he was entitled to a refund of the same. The trial Court dismissed the suit on the ground that there was no agreement by the defendant to refund the consideration in case the plaintiff was dispossessed. The lower appellate Court interpreting the sale deed held that an express clause for refunding the consideration to the plaintiff was incorporated in the sale deed. However, the Court held that the claim was barred by time and therefore dismissed the suit.

4. The agreement for refunding the consideration in case the plaintiff was dispossessed is contained in the sale deed which is registered. Accordingly, the lower appellate Court found that the proper article applicable was Article 116 of the Limitation Act. Both the parties before me do not dispute the correctness of this view. It is, however, contended by Shri A. Razak for the appellant that the lower appellate Court was in error in holding that the period of limitation commenced from April, 1950, when the plaintiff was dispossessed by Nathusingh and Raghubar. According to him, the period of limitation should have been counted from 22-1-1955, that is, the date on which the suit against Nathusingh and Raghubar filed by the plaintiff was dismissed and the claim should have been held within time.

5. The only question which thus arises for determination in this appeal is whether the period of limitation under Article 116 of the Limitation Act should be counted from the date of dispossession or from the date on which the suit filed by the plaintiff against Nathusingh and Raghubar for recovery of possession failed. The matter came up for consideration before a Full Bench in *Kashirao v. Zabu*, 28 Nag LR 31 : (AIR 1932 Nag 5). Subhedar, A. J. C., referring to the decision of Seshagiri Aiyar, J., in *Subbaraya v. Rajagopala*, ILR 38 Mad 887 : (AIR 1915 Mad 708), observed as follows :

'In ILR 38 Mad 887 : (AIR 1915 Mad 708), Seshagiri Aiyar, J., classified under the following three heads the several cases cited before him :

(a) Where from the inception the vendor had no title to convey and the vendee has not been placed in possession of the property;

(b) Where the sale is voidable on the objection of third parties and possession is taken under the voidable sale; and

(c) Where though the title is known to be imperfect the contract is in part carried out by giving possession of the properties.

The learned Judge held that in the first class of cases the starting point of limitation would be the date of the sale, while with regard to those of the other two classes the cause of action to claim damages would arise only when vendee's possession is disturbed because 'the property is in possession and that is what at the outset under a contract of sale a purchaser is entitled to and so long as his possession is not disturbed he is not damnified'.

The instant case falls under class (c), as the vendor had an imperfect title and he had given possession to the vendee. In such a case, the limitation started from the date of dispossession. Niyogi, A.J.C. (as he then was) in the same case drew a distinction between 'a covenant for title' and 'a covenant for quiet enjoyment' and stated that the starting point of limitation for the breach of a covenant of title is the date on which the sale deed is executed; but in the case of a breach of a covenant for quiet enjoyment, there is no breach of the covenant till there is an interference

with the enjoyment of the purchaser. In the latter case, the limitation would start from the date of dispossession. The instant case is a case in which the covenant for quiet enjoyment has been broken.

6. In *Ambadas v. Wamanrao*, 30 Nag LR 138 : (AIR 1934 Nag 16), the property belonged to two brothers, Wamanrao and Rangrao, jointly, Wamanrao sold it to Ambadas and Ambadas then brought a suit for possession against both of them. The Court held that the field was the joint family property of Wamanrao and Rangrao and that the sale being without legal necessity did not bind Rangrao's share. The vendee thus lost half share in the property and sued for recovery of the proportionate share of the consideration. It was held that Article 116 of the Limitation Act applied and the cause of action for the refund of consideration arose when Wamanrao was held entitled to a half share. It has to be noted that that was a case in which the sale was voidable at the option of a co-sharer. Such a sale is valid so long as it is not avoided and therefore the cause of action was held to arise on the date on which Wamanrao succeeded in getting it set aside.

7. The cause of action, in the instant case, to bring a suit for recovery of the consideration arose on the date of dispossession of the plaintiff by Nathusingh and Raghubar inasmuch as the consideration failed on that date. Shri Razak contended that it was the duty of the plaintiff to file a suit for recovery of possession from Nathusingh and Raghubar and only after he failed in obtaining possession he could sue for the refund of the consideration. No authority has been shown to me for this proposition. It appears to me that the plaintiff was not bound to bring a suit against Nathusingh and Raghubar for recovery of possession. As Nathusingh and Raghubar were asserting a title superior to that of the respondent, the appellant could have brought a suit for refund of consideration immediately after dispossession. Agreeing with the lower appellate Court I hold that the consideration failed in April, 1950, when the plaintiff was dispossessed by Nathusingh and Raghubar; and as he brought the present suit after the lapse of more than six years after that date, it was barred by time.

8. The appeal is accordingly dismissed with costs.

