

Mohan Ram Vs. Balram Ram

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Court : Jharkhand

Decided On : Dec-21-2004

Reported in : 2005(1)BLJR497; [2005(1)JCR373(Jhr)]

Judge : Hari Shankar Prasad, J.

Acts : [Specific Relief Act, 1963](#) - Sections 10; [Limitation Act, 1963](#) - Schedule - Article 54

Appeal No. : A.F.A.D. No. 72 of 1996 (R)

Appellant : Mohan Ram

Respondent : Balram Ram

Advocate for Def. : Manjul Prasad, Adv.

Advocate for Pet/Ap. : Debi Prasad,; N.R. Sinha and; L.K. Lal, Adv.

Disposition : Appeal allowed

Judgement :

Hari Shankar Prasad, J.

1. This second appeal is directed against the judgment dated 27.7.1996 and decree dated 7.8.1996 passed in Title Appeal No. 15/92, whereby and whereunder the learned First Additional District Judge, Palamau at Daltonganj dismissed the

appeal.

2. While admitting this appeal, the following substantial question of law was formulated :

'Whether the learned 1st appellate Court and the learned trial Court erred in law in not considering the non-mention of time limit in the agreement of reconveyance for the purpose of contract under the specific performance of contract which is a discrepancy one and that the decision arrived at by the learned 1st Appellate Court considering 11 years as the reasonable time limit can be illegally construed?'

3. The case of the plaintiff in brief is that the plaintiff-respondent and the defendant-appellant are the residents of same village and are neighbours and good relations always prevailed between them. The plaintiff and the defendant agreed to sell the land fully described in the schedule on consideration amount of Rs. 9,500/- with right to the plaintiff over such sale to obtain reconveyance on the same consideration amount and as per agreement, the defendant-appellant paid Rs. 2000/- as advance money out of total amount of Rs. 9,500/- and promised to pay the balance consideration amount of Rs. 7,500/- at the time of execution of sale deed and defendant-appellant also agreed to execute an agreement in favour of the plaintiff allowing him right to obtain reconveyance of the suit land on the same consideration amount. Pursuant to the agreement the plaintiff-respondent executed a sale deed on 10.1.1979 transferring the suit land in favour of the defendant-appellant after receiving the balance consideration amount of Rs. 7,500/- and got the same registered under the Indian Registration Act. The plaintiff delivered the registration receipt to the defendant after endorsing and also delivered the possession of the suit land. After execution of the sale deed the defendant on the same day executed an agreement to reconvey the suit land on the same consideration amount of Rs. 9,500/- but it was also agreed between plaintiff and defendant that time will not be the essence of the contract. Hence consequently no time was fixed in the agreement to obtain the reconveyance and as per terms of agreement plaintiff was at liberty to obtain the reconveyance on suit land as and when he becomes capable to pay the consideration amount of Rs.

9,500/- to obtain the sale deed in his favour with respect to the suit land as no time limit was fixed between the parties. The further case of the plaintiff is that the plaintiff within the knowledge of the defendant-appellant was always willing and representing to perform his part of contract and when as per terms of the agreement he was having Rs. 9,500/- in his hand, he informed the defendant-appellant for the same and requested him to execute and register the sale deed on several dates. The plaintiff on 31.3.1990 tendered Rs. 9,500/- to the defendant as consideration money for reconveyance of the suit land and requested him to execute and register the sale deed in his favour. The defendant-appellant did not accept the tender and directed the plaintiff to appear before him on 15.4.1990 when he will be able to fix a date for execution and registration of the deed. The plaintiff went to the defendant at his house on 15.4.1990 and tendered Rs. 9,500/- as consideration amount and requested him to receive consideration amount and to fix a date for execution and registration of the sale deed but again the defendant avoided to receive the consideration money and asked the plaintiff to again come on 1.5.1990 with the money. Plaintiff again went to him on 1.5.1990 and tendered the amount and requested him to fix a date but the defendant verbally refused to receive the money and to register the sale deed and, therefore, being aggrieved by the conduct of the defendant-appellant the plaintiff deposited the consideration amount in the State Bank of India, Daltonganj in S.B. Account No. Agr. 5/241 and served a notice on the defendant under registered post with A/D through his lawyer Sri Sidheshwar Singh on 8.5.1990 requesting him to fix a date within a week of receipt of the notice on which the defendant proposes to execute and register the sale deed. The notice was served on the defendant on 10.5.1990 and he sent a reply on 14.5.1990 through his lawyer Sri Muralidhar Pandey under registered post with A/D and denied the execution of agreement to sale. The reply of notice contains only wrong facts and the defendant simply intended to evade the execution of sale deed in favour of the plaintiff on wrong statement of fact.

4. The further case of the plaintiff is that he is always ready to pay the amount of Rs. 9,500/- as and when Court directs him to pay the amount to the defendant and if defendant agrees to receive the same.

5. The defendant appeared and filed written statement stating therein that suit is not maintainable and the plaintiff has got no cause of action and the cause of action for the suit shown in the plaint is prejudiced, baseless and imaginary and the suit is barred by law of limitation, waiver and acquiescence. The defendant has not admitted the fact mentioned in the plaint, which is denied that any agreement was executed in between the plaintiff and the defendant regarding reconveyance of the suit land at any time and the story of agreement is neither true nor correct. It is submitted that story of agreement is not correct because the alleged agreement is not a registered document and as per the case of the plaintiff the parties were present in Daltonganj Court on 10.1.1979 and on the same day the alleged deed of sale was executed by the plaintiff in favour of the defendant and was registered in the office of the Registrar and if the deed of alleged agreement was real and genuine the said agreement must have also been registered on the request of the plaintiff by the defendant but the plaintiff is making out a false case. The plaintiff was actually in dire need of money as he was facing a criminal case under Section 409, IPC being GR Case No. 637/75, which was pending in the Court of learned Judicial Magistrate, Daltonganj and for saving from the case the plaintiff sold suit land to the defendant for cash consideration but there was no such agreement or talk for reconveyance of the suit land with the defendant. The defendant has not entered into any sort of agreement and it is not within his knowledge. The allegation of tendering money on the dates mentioned in the plaint and also the allegation of refusal by the plaintiff is concocted story, as the question of tendering money did not arise as there was no such agreement for reconveyance and the defendant has prayed for dismissing the suit.

6. On the pleadings of the parties, the following issues were framed for their determination in the suit :

(I) Is the suit as framed maintainable?

(II) Has the plaintiff got any valid cause of action for the suit?

(III) Is the suit bared by law of limitation, waiver and acquiescence?

(IV) Had there been any agreement dated 10.1.1979 entered into by the parties of the case for reconveyance?

(V) Has the plaintiff entitled for the relief sought for?

(VI) To what relief or reliefs, if any, the plaintiff is further entitled.

7. Learned Court below decided issue Nos. 1, 2, 4, 5 and 6 in favour of the plaintiff and decreed the suit, as issue No. 3 was not pressed. Being aggrieved by the judgment and decree of the learned trial Court, the defendant-appellant preferred Title Appeal No. 15/92 and the learned First Appellate Court also dismissed the appeal and thereafter this second appeal has been filed and substantial question of law was formulated.

8. Learned Counsel for the appellant submitted that both the Courts below have committed error on the point of law, as the so called agreement for reconveyance of property, sold through execution of registered sale deed on the same day, did not incorporate the agreement in between the parties entered for reconveyance of the property, and when this fact is not incorporated in the original sale deed, the subsequent agreement to sell even on the same day will not have any value in the eye of law. It was further pointed out that the so-called agreement to sell is not a registered one and, therefore, this document has got no value at all. It was further submitted that time is not an essence of the contract but in any view of the matter the sale deed was executed on 10.1.1979 and agreement to sell is also said to have been entered on 10.1.1979 but suit for reconveyance of the property sold through execution of sale deed in favour of the appellant by the respondent is hopelessly barred by limitation, because it has been filed after 11 years of so called execution of agreement to sell. In this connection, reliance has been placed upon AIR 1977 Madras 247, wherein it has been held that agreement of reconveyance must form part of original sale and subsequent agreement to reconvey is not enough. In this connection, para 2 of the aforesaid judgment, is quoted hereinbelow :

'2. Having regard to what I have stated above, the only question that arises for consideration is, whether Ext. A-1 constituted an agreement of reconveyance or

was an agreement to sell the properties simpliciter. The learned Sub-ordinate Judge has recognized the fact that there was an interval of eight months before the sale deed dated 17.10.1962 and Ext. A-I agreement dated 17.6.1963 notwithstanding this, the learned Sub-ordinate Judge took the 1 view that having regard to the fact that the amount for which the properties were agreed to be sold was the very identical amount for which the defendant purchased the properties from Krishna Goundar and also having regard to the further fact that a long time was prescribed for the purchase of the properties by Krishna Goundar, the agreement Ext. A-I must be construed to be only an agreement to reconvey the properties and not an agreement to sell the properties simpliciter. He also took into account that the properties were worth Rs. 3,500/- on the date of Ext. A-2 and that still the plaintiff paid only Rs. 2,000/- for obtaining an assignment of the right, under Ext. A-I. That also, according to the learned Sub-ordinate Judge would show that Ext. A-1 agreement was not an agreement simpliciter, but also an agreement of reconveyance of the properties. However, he also noted one significant fact that is, the admission of DW 1, the defendant, that no agreement of reconveyance was executed on the date of sale by Krishna Goundar, nor was there any oral agreement for reconveyance of any time in respect of the suit properties. In my opinion, this finding and the above admission on the part of DW 1 are fatal to the case that Ext. A-1 constituted only an agreement to reconvey the properties. I am of the opinion that the very concept of an agreement to reconvey involves a contemporaneous understanding between the parties at the time of original sale itself that the vendee should reconvey the properties subsequently even though the formal document embodying this understanding may come into existence later. Otherwise, the very concept of reconveyance which has been recognized to be a concession or privilege conferred on the vendor by the vendee at the time of the original purchase of the properties will have no significance whatever. In this case, I may not attach any significance even to the fact that there was an interval of eight months between the date of original sale, namely, 17.10.1962 and the date of Ext. A-I namely 17.6.1963, if there had been an understanding on 17.10.1962 itself that Krishna Goundar, the vendor of the properties should have a right to repurchase the properties from the defendant later, subject to certain conditions or fulfillment of certain stipulation. But in this case, there is the clearest possible

evidence on the part of the defendant as DW 1, who was directly a party to the sale deed as well as Ext. A-I that no agreement of reconveyance was executed on the date of the sale, namely, 17.10.1962 and that there was no oral agreement for reconveyance at any time in respect of the suit properties. Therefore, Ext. A-1 is a totally independent transaction utterly unconnected with the dissociated from the original sale on 17.10.1962 and consequently Ext. A-I cannot be said to be an agreement to reconvey the properties. If there had been at least no evidence either way, namely, as to whether there was an understanding at the time of the original sale deed at all with regard to the reconveyance or not, the other features present in Ext. A-1 pointed out by the learned Sub-ordinate Judge, may tend to an inference that there should have been, such an understanding. In this case, there being direct evidence that there was no understanding at the time of the original sale to reconvey the properties, there can be no scope whatever for holding that Ext. A-I, constituted an agreement to reconvey the properties.'

9. Learned counsel further placed reliance on 1997 (10) SCC 66, wherein it has been held that plaintiff filing suit on 5.11.1972 for specific performance of the agreement, it was held that suit is hopelessly barred by limitation. Therefore, it was further pointed out that even though there is concurrent finding of learned Courts below on facts, still then second appeal is heard on the point of law only and law is that time is always an essence of contract. Further on 10.1.1979 the so-called agreement to sell was entered into but suit for specific performance of contract was filed in 1990, whereas under Article 54 of the Limitation Act period of limitation is three years only and in that view of the matter this suit is hopelessly time barred and even though concurrent finding of the learned Courts below on fact will not deprive the appellant from the right, which has accrued due to suit being hopelessly time barred and this is a law point and not a matter of fact.

10. On the other hand, learned counsel for the respondent has submitted that since both the Courts below have given concurrent findings about the claim of the plaintiff-respondent and even though the judgment is erroneous, the High Court or the Supreme Court will not interfere in the judgments of the learned Court below based on concurrent finding and hear in the instant case, both the Courts below have given a concurrent finding in favour of the plaintiff and, therefore, this second

appeal is not maintainable. In this connection reliance has been placed upon AIR 2002 SC 771, however, this case law is not applicable in the facts and circumstances of this case. Reliance has further been placed upon AIR 1993 SC 1742, wherein it has been held that there was an agreement to sell of immovable property and intention of the parties was to make time essence of contract, purchaser not willing to make part payment of amount within the stipulated time without fulfillment of some conditions which was contrary to the agreement, in that case it was held that purchaser was not entitled to specific performance of contract. In this connection learned counsel pointed out that so far as this second appeal is concerned, it was specifically mentioned in the agreement to sell that time will not be essence of agreement and when in a case where time was made essence of contract, and some conditions were not fulfilled, still then specific performance of contract was not decreed and, therefore, in the instant case also, since time was not essence of contract, so filing of the suit after 11 years will not stand time barred.

11. Originally, the agreement to sell though entered on 10.1.1979 but that was unregistered and that has got no value in the eye of law. Further from perusal of sale deed (Ext. 1), it will appear that there is no incorporation to the fact that both the parties are going to enter into an agreement to sell and since this agreement of sale is not entered into in the original document, the agreement to sell also has got no value in the eye of law. Further as per Article 54 of the Limitation Act, even though time may not be an essence of contract, still then provision of limitation will apply and this has been filed after 11 years of the agreement of sale and, therefore, this agreement of sale, from the fact that it is not registered, has got no value in the eye of law, as it is time barred.

12. In that view of the matter, this appeal is allowed and the judgment dated 27.7.1996 passed by the learned First Additional District Judge, Palamau at Daltonganj in Title Appeal No. 15/92 is hereby set aside. However, no order as to costs.