

CASE NO.:
Appeal (civil) 1576 of 2007

PETITIONER:
S.V. Matha Prasad

RESPONDENT:
Lalchand Meghraj & Ors

DATE OF JUDGMENT: 26/03/2007

BENCH:
C.K. Thakker & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

(arising out of SLP) Nos. 12237-12239/2004)

HARJIT SINGH BEDI, J.

Leave granted.

These appeals arise out of the following facts:
Ramakrishna Mudaliar, the owner of the suit property executed two sale deeds dated 26.3.1959 and 31.3.1959 in favour of Mrs. Rajaby Fathima Buhari, and as per an oral understanding between the two (which was subsequently reduced into writing under an agreement dated 24.3.1959) it was agreed that in case the purchase amounts constituting the sale deeds were repaid within three years, the properties would be re-conveyed on payment of 10% in addition to the sale price, etc. It appears that some time in May 1960 Mrs. Buhari, despite notice, failed to re-convey the suit property on which Ramakrishna Mudaliar and his son Matha Prasad, the present appellant, through his first wife filed Suit No. C.S. No. 43/1962 for specific performance of the agreement of re-conveyance dated 24.3.1959. The said suit was decreed on 10.11.1965 on which Mr. Buhari and Mrs. Buhari filed two appeals. A Division Bench of the High Court allowed the appeals by its judgment dated 13.5.1972 whereupon Ramakrishna Mudaliar alone preferred a Special Leave Petition to this Court. Leave was granted and the appeal was duly numbered as C.A. No.224/1974. Matha Prasad, who was also one of the plaintiffs in C.S. No. 43/1962, however, preferred no appeal. Mrs. Buhari and Ramakrishna Mudaliar both died some time in the years 1980/1982 on which their legal representatives were also brought on record in the various litigations which were then pending between them. Matha Prasad aforementioned and the legal representatives of Ramakrishna Mudaliar thereafter assigned all their rights, including the right to obtain re-conveyance of the suit properties by executing several registered documents in favour of Lalchand Meghraj and Chimandas Meghraj respondent Nos. 1 and 2 (hereinafter referred to as the "assignees"). The assignees filed I.A. No.1/1994 for being impleaded as parties in the appeal pending in the Supreme Court, but the Court while allowing the appeal, and decreeing the suit for specific performance, dismissed the I.A. as the appeal itself was being disposed of on merits. An application for a review of the order qua the I.A. was also dismissed on 1.11.1995. Matha Prasad thereafter filed Execution Petition No.48/1997 impleading the legal

representatives of Mrs. Buhari and ignoring the assignees as also the other legal heirs of Ramakrishna Mudaliar. The assignees thereupon filed Application Nos. 2005-2006/1998 praying that they be impleaded as parties in the Execution Petition. The Master of the High Court in his order dated 19.4.1999 issued notice to the legal representatives of Ramakrishna Mudaliar and also directed Matha Prasad to take steps to serve them for 10.6.1999 and the applicant/assignees were also directed to file the assignment deeds executed by the legal representatives of Ramakrishna Mudaliar. Matha Prasad, however, filed Application Nos.1106-1108/2000 seeking a recall of the order of the Master dated 19.4.1999 and also a stay of the proceedings pending before him. The learned Single Judge in his order dated 3.7.2000 set aside the order dated 19.4.1999 and dismissed the applications. Pursuant to this order of the learned Single Judge, the Master by his order dated 7.7.2000 directed delivery of possession forthwith and the execution of the deeds of re-conveyance in favour of Matha Prasad alone within one month from the date of the order. The legal representatives of Ramakrishna Mudaliar thereupon filed Application Nos.2871-2873/2000 against the order of the Master dated 7.7.2000. The learned Single Judge of the High Court modified the order of the Master holding that the applicants as decree holders along with Matha Prasad were entitled to a re-conveyance of the property in dispute in respect of their share, if any, of the property but that was to be decided in separate proceedings. Matha Prasad filed an appeal against this order but a Division Bench dismissed the appeal and a Special Leave Petition filed in this Court too was dismissed on 17.4.2003. It appears that on coming to know of the order dated 3.7.2000, the assignees and several others filed Application Nos. 2154-56/2003 making a prayer for the setting aside of the said order and also for the condonation of the delay of 971 days delay in filing the applications. These applications were dismissed by the learned Judge dated 8.12.2003 solely on the ground that they were barred by limitation. An appeal was preferred against the order of the learned Judge which has been allowed by the Division Bench vide order dated 27.4.2004. This order has been impugned by way of the present appeal by Matha Prasad. The Division Bench held that two matters were required to be considered :

(1) whether the appellants had properly explained the delay of 971 days? and

(2) whether the appellants were entitled to canvas the case on merits in Application Nos. 1106-1108/2000 before the learned Single Judge ?

The Division Bench then went on to examine both the issues and observed that from the facts of the case it was apparent that the order dated 3.7.2000 dismissing Application Nos. 2005-2006/1998 had been made without notice to the applicants and without their knowledge and that an examination of the merits of the controversy was closely interlinked with the question of limitation, which necessitated a decision on merits as well.

The learned counsel for the parties have been heard at great length. Several issues have been raised by the learned counsel with regard to the nature of the assignments and the right of the assignees to seek a re-conveyance of the property. It has been pleaded by the learned counsel for the appellants that the learned Single Judge had dealt with the matter on limitation alone and as such the Division Bench

should not to have gone to the merits of the controversy. The learned counsel for the respondents have, on the contrary, emphasized that the question of limitation and the right of the assignees being closely interlinked, and the matter being about 4 decades old, clearly justified the composite order. Both the counsel have also referred to various provisions of the CPC, the Transfer of Property Act and the Contract Act and also relied upon a large number of judgments of the Supreme Court and the various High Courts in support of their respective contentions. We, however, feel disinclined to go into the merits of the controversy, as we are of the opinion that the Division Bench ought to have confined its decision only to the question dealt with by the learned Single Judge viz. the question of limitation. The Division Bench has dealt with the issue of limitation in paragraphs 18 and 19 of the impugned judgment and from a reading thereof, we observe that Application Nos. 1106-1108/2000 filed by the assignees in which notice had been issued on 19.4.1999 for 10.6.1999 by the Master were dismissed by the learned Single Judge by order dated 3.7.2000 without notice to the applicants i.e. the assignees. In this situation, the Division Bench was justified in holding that the order of the learned Single Judge was not sustainable. The learned counsel for the appellant, has, however, urged that no particulars had been spelt out in the application justifying the condonation of a delay of 971 days. We are of the opinion, however, that the applicants have explained the delay and we accordingly endorse the observations of the Division Bench on this aspect.

As noted above, the learned Single Judge had dismissed the applications by order dated 3.7.2000 wholly on the ground of limitation. By the impugned judgment, the Division Bench has not only condoned the delay but taken a decision on merits as well. We are of the opinion that the second exercise was not justified as the only issue before the Division Bench was the question of limitation. We, accordingly, set aside the judgment of the Division Bench to the extent that it goes on to the merits of the controversy but maintain it in so far that it deals with the question of limitation. Ipso facto the matters are restored to a re-hearing on merits. We accordingly remand the applications to the learned Single Judge for fresh decision with a request that in the background of the long pending litigation, the applications should, if possible, be taken up on a priority basis uninfluenced by any observations by the Division Bench of the High Court in the order dated 27.4.2004 or of this Court in these proceedings. We also observe that as we have dealt only with the question of limitation, it would be open to all the parties to the litigation, whether before us today or not, to raise all other pleas open to them in law.

The appeals are accordingly disposed of.