

CASE NO.:
Appeal (civil) 937 of 2006

PETITIONER:
R.K. Parvatharaj Gupta

RESPONDENT:
K.C. Jayadeva Reddy

DATE OF JUDGMENT: 02/02/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Civil) No. 18120 of 2005]

S.B. SINHA, J :

Leave granted.

This appeal is directed against a judgment and order dated 09.03.2005 passed by a learned Single Judge of the High Court of Karnataka dated 09.03.2005 in RSA No.266 of 2000 whereby and whereunder the Second Appeal filed by the Respondent herein was allowed decreeing the suit for specific performance filed by the plaintiff-respondent.

The facts relevant for this case are as under :

The Appellant was at all material times, the owner of agricultural lands bearing Survey Nos.12, 13, 14 and 16 situated in Village Sheganayakanahalli Village, Sarjapur Hobli, Anekal Taluk. The parties hereto entered into an agreement for sale on or about 13.10.1982, wherefor a sum of Rs.65,000/- was fixed as consideration. Allegedly, a sum of Rs.16,500/- was paid to the Appellant by way of earnest money whereupon the Respondent was put in physical possession of the lands in question. Allegedly, a sale deed was to be executed and registered upon disposal of an appeal pending before the Karnataka High Court.

It is not in dispute that the Appellant had taken a sum of Rs.42,000/- by way of loan from the Central Bank of India wherefor the original title deeds were deposited therewith. The Plaintiff-Respondent was to deposit the mortgage amount in the Bank in terms of the said agreement for sale. On or about 24.04.1984, the Appellant herein served a notice upon the Respondent herein, alleging that he had not performed his part of the contract, having not deposited the requisite amount in the Central Bank of India towards the agricultural loan raised by him on the security of the property. In connection with the said loan, the Central Bank of India had filed a suit wherefor a notice was served upon him. In that situation, the aforementioned notice was issued asking the Respondent to deposit the amount to the Central Bank of India forthwith and get the sale deed executed within fifteen days from the date of receipt of the notice failing which the agreement to sell would stand cancelled and the Appellant would be at liberty to deal with the property to the best of his advantage and in such case, if he suffers any damages, the Respondent would be responsible therefor.

The amount admittedly was not paid to the Central Bank of India by the Respondent in terms of the said notice. He allegedly deposited a sum of Rs.10,000/- on 25.05.1985. The said sum of Rs.10,000/- evidently was not

the entire amount required to be deposited by way of repayment of the agricultural loan raised by the Appellant herein. A suit for specific performance of the contract and injunction, was filed by the Respondent on 26.09.1989. The said suit was decreed by the trial court, inter alia, holding that the same was not barred by limitation. It was further held that though there had been a stipulation for completion of the deed of sale within a period of four months from the date of the agreement; in view of the fact that the Appellant was also to perform his obligation to inform the Respondent about the disposal of the case pending before the High Court and as no such information was given as regard the status of the case, a decree for permanent injunction had to be passed in his favour. The Appellant herein preferred an appeal thereagainst and by the judgment and order dated 01.01.2000, the said appeal was allowed on the ground that the suit was barred by limitation. A Second Appeal came to be filed by the Respondent herein wherein the following purported substantial question of law had been framed :

"Whether the finding of the first appellate Court that the suit of the plaintiff is barred by time by reversing the judgment of the trial court is perverse, is contrary to law and the material on record?

The High Court reversed the judgment and decree passed by the First Appellate Court and came to the conclusion that as the time was not of the essence of the contract, the suit was not barred by limitation. The High Court while allowing the second appeal remitted the matter back to the First Appellate Court with the direction to dispose of the same insofar it related to the relief for specific performance of the agreement of sale dated 13.10.1982 in accordance with law.

Mr. S.N. Bhat, learned counsel appearing on behalf of the Appellant, would draw our attention to the aforementioned notice dated 24.04.1984 and submit that in view of the fact that the contract stood repudiated, the Respondent was required to file a suit within a period of three years therefrom

Mr. P.R. Ramasesh, learned counsel appearing on behalf of the Respondent, on the other hand, would submit that on a bare perusal of the agreement dated 13.10.1982, it would be apparent that the time was not of the essence of the contract. It was urged that the contract was a contingent contract and, thus, a sale-deed could be executed by the parties pursuant thereto only upon fulfilment of the conditions stipulated therein, namely, (i) furnishing of information by the Appellant to the Respondent about the status of the suit; and (ii) permission of the competent authority for sale of land; and in that view of the matter, the trial court and the High Court must be held to have correctly held that the suit was not barred by limitation.

Article 54 of the Limitation Act reads thus :

"

54.
For specific
performance of
a contract
Three
years
The date
fixed for the
performance,
or, if no such
date is fixed,

when the
plaintiff has
notice that
performance
is refused.

"

In terms of the said Article, a suit for specific performance of a contract is required to be filed within three years; in the event no date is fixed for the performance, within a period of three years from the date when the plaintiff has notice that performance is refused. The notice dated 24.04.1984, thus, is required to be construed in the context of the agreement dated 13.10.1982 entered into by and between the parties.

There cannot be any doubt whatsoever that in respect of a contract for sale of immovable property, time is not of the essence of the contract, but the question as regard the conduct of the Appellant must be considered in the backdrop of the events noticed hereinbefore.

He had taken an agricultural loan from the Bank. He deposited the original title deed with the Bank. He was to pay interest on the said amount of loan. A dispute was pending between the Appellant and one Chikkanarayanappa in the High Court. The Central Bank of India obtained a decree for a sum of Rs.42,000/- against the Appellant. As per the agreement for sale, the Respondent was to pay the said amount on behalf of the Appellant and get the loan discharged. The Appellant was to get only such amount from the Respondent which might have been remaining after discharge of the loan taken by him from the Central Bank of India.

The sale deed was to be executed within a period of four months. However, if the dispute between the Appellant and the said Chikkanarayanappa was not disposed of within the said period, the Appellant was required to have permission from the State.

It is now accepted that no permission at the relevant point of time was required to be obtained from the State, for sale of the land. It is furthermore not in dispute that the litigation pending between the Appellant and the said Chikkanarayanappa had not been disposed of within a period of four months. Even if the said dispute, in terms of the stipulation contained in the agreement for sale, was not to come to an end, the sale deed was to be executed and the balance sale consideration was to be left with the Appellant after deducting the advance amount so as to enable the Respondent to pay the same to the Bank till the said dispute comes to an end wherefor a separate agreement was to be entered into.

The notice dated 24.04.1984 must be construed having regard to the aforementioned backdrop of facts. From a perusal of the said notice, it appears that prior thereto, the Appellant had received notice from the court of the Civil Judge, Bangalore, in connection with the said loan. From 1982 to 1984, the Respondent did not take any steps to make any inquiry as regard the disposal of the said litigation before the High Court. He did not pay any amount to the Bank.

The Appellant, therefore, had good reasons to serve the aforementioned notice calling upon the Respondent to deposit the entire amount to the Bank. There is nothing on record to show that despite receipt of the said notice dated 24.04.1984, the Respondent took any step to deposit the said amount. He was, thus, not ready and willing to perform his part of contract. He has, as noticed hereinbefore, deposited a sum of Rs.10,000/- only in the year 1985, i.e. after more than one year thereafter.

Evidently, he was not interested in payment of the loan amount to the Bank on behalf of the Appellant as he was appropriating the usufructs from

the land as he was in possession thereof.

Thus, even though the time for performance was not fixed in the agreement for sale, on receipt of the notice, the respondent had notice that the performance was being refused, if he failed to fulfil his obligation under the contract within 15 days of receipt of the notice.

The suit was, therefore, in terms of the requirement of Article 54 of the Limitation Act, should have been filed within a period of three years from the date of expiry of fifteen days from the date of receipt of the said notice.

In this view of the matter we are of the opinion that the impugned judgment of the High Court cannot be sustained, which is set aside accordingly. The appeal is allowed and the decree of the appellate court is restored. No costs.

JUDIS