(2019) 07 UK CK 0069

In the Uttarakhand High Court

Case No : First Appeal No. 70 Of 2014

Dwijendra Tripathi APPELLANT

Vs

Simranpreet Singh & Others RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Transfer Of Property Act, 1882 — Section 3
Indian Registration Act, 1908 — Section 30(2), 51, 55
Code Of Civil Procedure, 1908 — Order 7 Rule 11
Limitation Act, 1963 — Article 54

Citation : (2019) 07 UK CK 0069

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Rajendra Dobhal, Sonia Chawla, Amar Shukla

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. The peculiarity of situation, which has emerged in the instant first appeal is altogether alien to the normal civil proceedings, which arises in a Suit for specific performance being Suit No. 157 of 2013 'Shri Dwijendra Tripathi vs. Simran Preet Singh & Others'. There are few undisputed facts between the parties, which are that the property in question as describe at the foot of plaint which was agreed to be sold was as quoted hereunder:

"Schedule of the Land in Suit

All that land bearing Khasra no. 68 (New Khasra No.746) measuring 0.45 acre or 0.1821 Hect. or 1821 sq. meter (approx) situated at Mauja Ajabpur Kalan, Pargana Central Doon, Dist Dehradun, bounded and butted as follows:

East : Dhaba of Shri Mohan Singh.

West : Property of Shri Mohan Singh.

North : Property of VSNL

Sourth : Road."

2. It was subject matter of an agreement for sale dated 6.10.2006 which was agreed to be sold by the predecessor of the respondent by execution of the agreement for sale in favour of the present appellant, as per the covenants of the agreement for sale, the basic interpretation for the purposes of resolving the dispute would be centering around the interpretation to the following clause of the agreement, which reads as under:

"Remaining balance payment of Rs. 12 lakhs (Rupees twelve lakhs only) shall be paid on or before 10th January, 2007 at the time of execution of the sale deed."

3. This particular clause is being interpreted in a different fashion by the parties to the First Appeal by the appellant. The interpretation is given by the plaintiff/ appellant in the manner, so as to save himself from the implications, which may flow from Article 54 of the Limitation Act, whereas, on the other hand, the defendant/respondent has tried to read this particular clause in a fashion that in view of the dates specified in the clause quoted above, the limitations of Article 54, will come into play and the Suit which was instituted by the plaintiff, appellant herein, on 15.04.2013 for specific performance of the agreement for sale dated 06.10.2006 executed by the defendant in favour of plaintiff, would be barred by the provisions contained under Article 54 of the Limitation Act.

4. The argument as extended by the learned Senior Counsel Mr. Rajendra Dobhal, while interpreting that the said clause is to the effect that the said clause contemplates the cut-off date of 10.01.2007, as to be a date fixed for the purposes of making payment of the balance sale consideration and it is only after the payment as agreed as a consequence of the payment of the balance sale consideration that the right to execute the sale deed would mature and what he wants to argue is that the date of 10.01.2007, which has been mentioned in the aforesaid clause of agreement for sale, was only for the purposes of payment of balance sale consideration and it ought not to be treated as to be the cut-off date for the purposes of executing the sale deed, whereas, the argument of Mr. Amar Shukla on the contrary is to the effect that if the said clause is read in its totality and in that way the cut-off date of 10.01.2007, since it is followed by a consequential act, i.e. of execution of the sale deed as a consequence of the payment of the balance sale consideration, the said date would be taken as to be the last cut-off date for the purposes of getting the sale deed executed, hence, as per his argument Article 54 of Limitation Act will come into play.

5. In order to answer the aforesaid question, what would be important at this stage and which was not finding place in any of the conditions of the agreement for sale was that it was the property in question, which was agreed to be sold by the predecessor of the respondent herein was under litigation, because the same was acquired by the U.P. Awas Vikas Parishad and the litigation in relation to it was pending consideration before this Court by way of Writ Petition No. 1075 of

2006 and Writ Petition No. 1861 of 2007, which was ultimately decided by the Division Bench in favour of the predecessor of the present respondent by the judgment dated 28.08.2006.

6. The factum of the pendency of the writ petition is a fact, which cannot be disputed by the respondent. Apparently, as per the documents, which has been brought on record before the Court below, it also remains an undisputed fact that as against the judgment rendered by the Division Bench on 28.08.2006 in relation to the land in question the Awas Vikas Parishad has drawn the proceedings before the Hon'ble Apex Court by way of an SLP No. 228-229/2010, before the Hon'ble Apex Court and the Hon'ble Apex Court ultimately by virtue of the judgment dated 15.01.2010 had dismissed the SLP preferred by the Awas Vikas Parishad. Meaning thereby, the right and title of the respondent over the land it matured only after the judgment was finally rendered by this Court and thereafter by the Apex Court on 15.01.2010, which was much after the alleged cut-off date provided in the agreement for sale dated 06.10.2007 as argued by defendant/respondent. If let us presume that if the said litigation did not constitute as to be the part of the agreement for sale dated 5.10.2006 that would lead to an inference that as per the revenue entries, which was made and existing in the revenue records, even despite of having executed an agreement for sale on 06.10.2006, the predecessor of the defendant/respondent would not have matured his right to sell the property for the reason that by that time his own title was under cloud and he was not recorded in the revenue records as the owner of the property, which was agreed to be sold on 06.10.2006 because the property stood acquired by U.P. Awas Viaks Parishad under Section 55 of the Act of 1965 and on its acquisition the title of the property stood vested as an effect of the notification with Awas Viaks Parishad.

7. Further more, because the right of the respondent itself as regards his title was crystallized only on 15.01.2010, as a consequence of the Hon'ble Apex Court's judgment dated 15.01.2010 it is not in dispute that in pursuance to the said judgment for the first time the predecessor of the respondent had been recorded in the revenue records for the first time only on 03.07.2010. In that eventuality, the right to execute the sale deed in pursuance to the agreement for sale dated 06.10.2006 could have matured in favour of the predecessor of the present respondent only for the first time after their name was recorded in the revenue records after the culmination of the litigation by the Hon'ble Apex Court vide its judgment dated 15.01.2010 and as a consequence of recording of his name in the revenue records only on 3.07.2010. Meaning thereby, prior to 03.07.2010 there was no saleable right vested with the predecessor of the respondent, because his own title over the disputed land was a subject matter of litigation before the Hon'ble Apex Court.

8. In that view of matter it had been argued by the plaintiff/appellant that, the suit in question which was filed by the plaintiff/appellant on 15.04.2013, was well within the provisions contained under Article 54 of the Limitation Act from the

view point that as per the pleading which has been raised in the plaint and in particular the pleading of paragraph 12 and 13 the petitioner had after referring to the proceedings of the Hon'ble High Court, as well as that of the Apex Court, had requested the respondent to execute the sale deed on 04.03.2011. Thereafter on account of the denial to execute the sale deed, it has been pleaded in paragraph-13 that the plaintiff/appellant had issued notices on 05.03.2011 to the respondent requesting him for getting the sale deed executed in pursuance to the agreement for sale dated 06.10.2006. Paragraph 12 and 13 of the pleading is quoted hereunder:

"12. That on 04.03.2011 the plaintiff had again met the defendants and requested the defendants to get the sale deed of the land in suit executed in his favour, but the defendants refused to execute the sale deed of the land in suit in favour of the plaintiff.

13. That on 05.03.2011 a notice was served by the plaintiff through Shri T.S. Bindra, Advocate upon the defendants whereby the defendants were called upon to fix a date for execution of sale deed, so that the plaintiff can purchase the stamp papers and gets the sale deed executed and registered in his favour. In the said notice it was also informed that in case the defendants failed to perform their part of the contract, the plaintiff shall be forced to initiate the legal proceedings, including the institution of the Suit for Specific Performance of Agreement of Sale against the defendants at there cost, risk and responsibility."

9. When the same was not considered and the sale deed was not executed the plaintiff/appellant had instituted the present Suit for specific performance on 15.04.2013, i.e. well before the expiry of three years of period as contemplated under Article 54 of the Limitation Act from the date when the right of the defendant had matured for executing the sale deed. Even otherwise also, if the said time period is taken into consideration for the institution of the Suit, it would fall to be well within Article 54 of the Limitation Act from the date when the refusal was made, which has been pleaded in the plaint and from the date of issuance of notice of 05.03.2011 and subsequent institution of the Suit for specific performance only when defendant/respondent did not execute the sale deed after notice dated 5.03.2011.

10. The argument of learned counsel for the respondent is from the view point that once the agreement for sale dated 06.01.2006 itself contains a cut-off for the purposes of execution of the sale deed then at the most the sale deed could have been sought to be executed by issuance of a notice prior to the expiry of the said date or if there is a denial thereafter the plaintiff could have instituted a Suit within three years from 10.01.2007 or within three years from date of refusal to execute the sale deed.

11. As already observed above that the interpretation to this clause, in order to give it a logical conclusion, merely a reference of a cut-off date in the agreement would not be relevant for the purpose of execution of sale deed in pursuance to

an agreement for sale, because the reference of the cut-off date has to be considered in the light of the fact as to vesting of the title with the seller has perfected so as to when it has matured for the purpose to enable him to execute the sale deed in pursuance to the agreement for sale dated 06.10.2006, in that view of the matter and considering the fact that when the Suit was instituted the learned Trial Court before venturing into the merits of the matter of the Suit on merits had decided the suit and its tenability in view of the application No. 24ga, which has been preferred by the respondent under Order 7 Rule 11, which was objected by the plaintiff by filing an objection paper No. 33ga. The learned Trial Court while recording a finding that there was a bar of Article 54 of the Limitation Act of 1963 has simplicitor applying its mind from the view point that he has treated the cut-off, as referred in an agreement for sale dated 10.01.2007, as to be the period, which would be taken into consideration for the purposes of applying Article 54 of the Limitation Act. The learned Trial Court has not taken into consideration the fact pertaining to the recording of the name of the respondent in the revenue records, which admittedly as per the finding in the judgment impugned dated 09.07.2014 though the learned Trial Court has referred that the predecessor of the respondent was recorded for the first time only on 03.07.2010, but still the learned Trial Court had failed to interpret it as to whether that recording of name in revenue records has to be taken as to be the cut-off the purposes of execution of the agreement for sale because its only thereafter that the saleable right has itself matured only after the predecessor of the defendant was recorded in the revenue records for the first time because any sale deed if it was executed prior to 03.07.2010 it would have a sale deed without vesting of title with the seller:

12. Even this controversy has to be considered from the view point that as per the provisions contained under Section 3 of Transfer of Property Act as contained in its explanation to the fact that as per the amendment provisions the responsibility of purchasing a right property free from all encumbrances and from the actual owner, is the responsibility which is now required to be discharged by the purchaser. Because if ultimately its found the property was purchased from a seller who was not having any title then its responsibility has to borne by the purchaser, which is the appellant here in the present case. Meaning thereby, as per explanation I to Section 3 of the Transfer of Property Act, which is quoted hereunder, which here in the case salable right with the respondent only matured when they were recorded in the revenue records for the first time on 03.07.2010:

"["a person is said to have notice" of a fact when he actually knows that fact, or when but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.]

Explanation I.-Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:] Provided that-

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.-Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.-A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material: Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

13. Even otherwise also, the Trial Court has not taken into consideration the fact of the specific pleading, which has been raised by the plaintiff in the Suit pertaining to the request made by him on 4.03.2011 to get the sale deed executed and an ultimate issuance of notices through his advocate for getting the sale deed executed. If at all logically the limitation from the view point of the plaintiff/appellant could be taken into consideration, which would started running from the date when after the receipt of the notice the predecessor of the respondent had not executed the sale deed and then consequently filing of the Suit would be treated to be well within time in accordance with the notice dated 05.03.2011 when deed was not executed even thereafter the request.

14. For the reasons assigned above, this Court is not in agreement with the argument of defendant/respondent as extended by the learned counsel for the respondent that the cut-off as contemplated in the agreement for sale would create a bar for the purposes of institution of the Suit for specific performance because logically this Court is of the view that even if that time period is taken as to be the upper limit within the period for getting the sale deed executed since there was no right executed with the respondent at that point of time the said period cannot be treated as to be the upper time limit for the purposes of attracting Article 54 of the Limitation Act.

15. In view of the above, the First Appeal is allowed. The impugned judgment dated 09.07.2014 is quashed. Learned Trial Court is directed to decide the suit on its own merit as expeditiously as possible but preferably not later than a period of one year from the date of presentation of certified copy of this judgment.

16. However, there would be no order as to cost.

