(1960) 01 CAL CK 0042

In the Calcutta High Court

Case No : T.A. No. 518 of 1956

Mrinalini Debi APPELLANT

Vs

Satyendra Nath Das RESPONDENT

Date of Decision : 04-01-1960

Acts Referred:
Limitation Act, 1963 — Article 113, 15, 9

Citation : (1961) 1 ILR (Cal) 160

Hon'ble Judges : P.N. Mookerjee, J;Niyogi, J

Bench : Division Bench

Advocate : Guruprosad Ghosh, for the Appellant;Jitendra Nath Guha, for the Respondent

Judgement

V.N. Mookerjee, J.—Two questions of importance arise in this second appeal which lias been filed by the Plaintiff in a suit for specific performance of contract, embodied in a compromise decree for sale of land and building'' or of the Defendant''s interest therein. One raises the question of construction of Section 15 of the Indian Limitation Act and the other the question of equity as reflected in the conduct of the Plaintiff who is the person seeking specific performance. Both the questions were answered in favour of the present Plaintiff by the trial court, which decreed her suit. Both of them, however, have been answered against her by the learned lower appellate court and the suit has been dismissed in appeal. Against this dismissal, the present second appeal is directed.

2. The relevant facts are practically not in dispute and they may be, briefly stated as follows:

3. The Defendant Respondent Satyendra Nath Das is a transferee of the suit property from his vendor Kanai Lal Mitra under a kobala, dated January 4, 1944. The said vendor, Kanai Lal, obtained the suit property under a previous conveyance from the present Appellant Mrinalini Debi on February 28, 1940. On the aforesaid date of his purchase, namely, February 28, 1940, Kauai Lal, in his return, agreed to reconvey the suit property to his vendor, the present Appellant

Mrinalini, on receipt of a sum of Rs. 2,500 within March 1, 1942. In the said agreement, there was also a stipulation that until the reconveyance, Mrinalini would be paying to Kanai Lal a certain amount by way of rent in respect of the disputed property. There was, however, no payment, or reconveyance within the above stipulated time and, as Mrinalini continued in possession, Satyendra in May 1944 sued her for recovery of arrears of rent stipulated to be paid as aforesaid, in S.C.C. Suit No. 17 of 1944. During the pendency of the above suit, on November 15, 1944, Mrinalini in her turn instituted Title Suit No. 152 of 1944 against Satyendra for a declaration inter alia that the transaction of February 28, 1940 was not a sale with a condition of repurchase but really a mortgage, made and evidenced by the two documents, the kobala and the agreement, referred to above and bearing the date February 28, 1940. On December 18, 1944, the parties Satyendra and Mrinalini entered into a compromise in the aforesaid pending S.C.C. Suit No. 17 of 1944 whereby Satyendra agreed to convey his interest in the suit properly to Mrinalini on receipt of a sum of Rs. 3,400 by January 18, 1945. Mrinalini''s suit, however, namely, Title Suit No. 152 of 1944, remained pending until April 6, 1950, when it was eventually dismissed. In the meantime, certain events of importance had happened and we shall presently refer to them immediately below.

4. On January 9, 1945, Mrinalini sent a lawyer''s letter to Satyendra with a draft conveyance, offering him the stipulated sum of Rs. 3,400 and as Satyendra did not reply to the same and kept wholly silent over the matter in spite of Mrinalini''s lawyer''s reminder, dated January 12, 1945, she actually deposited the said amount of Rs. 3,400 on January 17, 1945, in the aforesaid S.C.C. Suit No. 17 of 1944 with that court''s permission. Shortly before this one Nirapeksha, claiming to be a reversioner in respect of the disputed property as a brother of Mrinalini''s deceased husband to whom, according to him, the suit property actually belonged before his death, instituted a Title Suit (No. 6 of 1945) against Mrinalini and Satyendra for certain reliefs against them in respect of the said property and shortly thereafter on January 25, 1945, about a week after Mrinalini''s above deposit Nirapeksha, in his aforesaid suit, obtained a temporary injunction against both Mrinalini and Satyendra, restraining them from "giving "effect to the above compromise" and restraining Satyendra from transferring any portion of the said property until the disposal of the said suit. This injunction remained in force until January 8, 1953, when Nirapeksha eventually withdrew the aforesaid suit and on the very next day, namely, January 9, 1953, the present suit was instituted by Mrinalini.

5. The instant suit was contested by the Defendant Satyendra mainly upon two grounds, namely, (1) limitation and (2) the plaintiff''s conduct in the light and in the eye of law and equity. But there are some other defences too and the learned Munsif upon the pleadings framed the following issues for determination:

1. Has the suit been properly valued and plaint sufficiently "stamped? Has the court jurisdiction to try this "suit?

"2. Was there an agreement by the Defendant to transfer the "suit property to the Plaintiff for Rs. 3,400 as alleged?

"3. Did the Plaintiff repudiate the contract? Is she guilty "of laches? Did she violate the essential terms of the "contract? If so, is the contract still enforceable?

"4. Is the suit barred by limitation?

"5. To what relief, if any, is the Plaintiff entitled?

6. All the above issues were found by the learned Munsif substantially in favour of the Plaintiff and against the Defendant and the Plaintiff''s suit was decreed so far as the relief of specific performance was concerned and dismissed only with regard to her claim of permanent injunction which sought to restrain the Defendant from interfering with the Plaintiff''s possession of the present suit property.

7. The Defendant appealed and the Plaintiff also filed a cross-objection against the dismissal of her claim of permanent injunction as aforesaid and the learned Subordinate Judge, who heard this appeal and the cross-objection disagreed with the learned Munsif on the basic issue of limitation and the effect of the Plaintiff''s conduct on her (Plaintiff''s) rights in suit and, upon adverse findings against her on those two vital issues, he allowed the appeal and dismissed cross-objection and in effect, dismissed the Plaintiff''s suit in toto.

8. Before the learned lower appellate court, the other findings of the learned Munsif appear to have been accepted by the Defendant who was the Appellant before it and the two points which were pressed were, as stated in the judgment under appeal, as follows:

"1. Did the learned lower court exercise its discretion in a "judicial manner in decreeing specific performance in "the particular facts and circumstances of the present "case; and

"2. Was the claim barred by time on the date of the suit?

These, obviously, related to the two issues Nos. 3 and 4, set out above, and having found both of them in favour of the Defendant Appellant and against the Plaintiff-Respondent, the learned Subordinate Judge allowed his Defendant''s appeal and dismissed the Plaintiffs suit as a whole, the Plaintiff''s cross-objection obviously failing necessarily in view of the said adverse findings. It is to be noted here that the finding of the learned Subordinate Judge on either of the above two points is sufficient to maintain his decree of dismissal of the Plaintiff''s suit and the Plaintiff-Appellant, if she is to succeed in this appeal, must successfully challenge both the above findings.

9. We take up first the question of limitation. The contract in the present case, obviously, fixed a date of performance, namely, January 18, 1945. The suit for specific performance, therefore, had to be instituted in the ordinary course within three years from that date, that is. within January 18, 1948, under Article 113 of

the Indian Limitation Act to avoid the bar of time. It was, however, actually instituted on January 9, 1953, and the point is whether this long period of five years from January 18. 1948 to January 9, 1953. which intervened between the normal latest, date (January 18, J948) for the filing of the suit and the actual date of its filing (January 9, 195-T) can be excused, deducted or excluded in law and the time for its institution extended to the aforesaid date, January 9, 1953. The Plaintiff claimed such deduction or exclusion and extension of time u/s 15 of the Indian Limitation Act, but, in the course of hearing in this Court, one other aspect of the matter also came in for some discussion, namely, whether, in a case like the present, apart from Section 15 of the Act. the principle of suspension of limitation ran be of any aid or assistance to the Plaintiff. As, however, in our view Section 15 of the Indian Limitation Act applies to this case and saves the Plaintiff''s suit from being time-barred in the particular facts before us, it will not be necessary to consider in any detail the other point of suspension of limitation and we would say only a few words on it just to indicate, in brief, our views on the same.

10. On Section 15, one thing appears to be clear on the authorities, namely, whether there is an injunction or stay within the meaning of the section, depends on the construction of the particular order, which is put forward for the purpose. From this point of view, each case as pointed out by the Judicial committee in Narayan Jirangouda Patil and Anr. v. puttabai and Ors. (1944) 49 C.W.N. 6, 10 (P.C), depends on its own facts and on the particular order, which needs construction for the above purpose. The construction of the particular order is thus of primary importance and in the matter of such construction, the theory of reasonable construction has its place notwithstanding the settled rule ride ((1933) ILR 60 1 (Privy Council)), that in construing statutes of limitation, equitable considerations will be out of place. The order of injunction may have to be construed for many purposes, for example, limitation, contempt, etc., and its scope has to be determined on such construction. It is unarguable, and, indeed, it is absurd to suggest, that it should be construed and its scope determined in a particular way for purposes of limitation and in some other way for contempt, etc. The construction of the order, therefore, would not be affected by any consideration, applying in particular to the Limitation Act or its construction, and to that extent equitable considerations, if any, which may necessarily be involved in a reasonable construction of the order which, indeed, is its true construction in the facts and circumstances of a particular case, cannot (dearly be inadmissible. We do not think that the above, in any way, infringes the well known rule, to which reference has been made above, namely, that in construing statutes of limitation, equitable considerations are out of place. That is. undoubtedly, the rule in construing statutes of limitation. It is, however not necessarily, relevant, when construing a particular order of court. The true meaning of the order often depends, unless the language is clear, on. inter alia, the context and circumstances, and an equitable construction of the same may well be necessary in a particular case for determining the true meaning and scope of the order.

Such construction is not necessarily excluded by the above rule, on which, inter aha, the learned Subordinate Judge relied, for refusing to give the Plaintiff the benefit of Section 15 of the Indian Limitation Act in the present case but which states and states only that, in construing provisions of statutes of limitation, equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide and however well established that rule may be, so far as the construction of the limitation Act is concerned, it does not, in our opinion, preclude a reasonable construction of the order of injunction for determining its scope, even for purposes of limitation of the Limitation Act. The institution of the suit would indeed, be too proximate to the "giving effect "to the compromise'''' not to be comprehended within those terms and would thus come within the mischief of the injunction order and, accordingly, Section 15 would apply to such institution.

11. The view, we have taken above, is not opposed to the ruling decisions of the Privy Council, which were before us and also in THE court of appeal below, on the particular point under consideration. The case of (1894) L.R. 22 I.A. 31 (Privy Council) , related to an attachment before judgment and their Lordships or the Judicial Committee construed the attachment order as only an injunction against the creditor''s receiving the money and the debtor''s paying the same to him. That of course, on such construction, contemplated a stage much later than the institution of the suit for recovery of the debt, and indeed, the decree in such a suit would have been for the attaching creditor''s benefit as the attachment would have been by law, transferred to it (the decree) and he (the attaching creditor) could have executed the said decree as such attaching creditor. The attachment order, therefore, could not reasonably be construed to prohibit the institution of the suit. That being so, it was ineffective for purposes of 15 of the Indian Limitation Act. In Narayan Jivangouda Patil and, Anr. v, Puttabai and Anr. (1944) 49 C.W.N. 6, 10 (P.C) (supra), again, the injunction was against interference with the Plaintiff''s possession. The mere institution of a suit for possession was too remote to be considered an interference with the Plaintiff''s possession and their Lordships accordingly held that there was no injunction against such institution. That construction of the order was, in the circumstances, plainly correct and, indeed, if we may say so with respect, the only reasonable construction and so that decision also does not really affect us in the present case. It is, however, important from one point of view, namely, that it clearly Laid down that:

The question whether in a particular case, a party lias been "restrained by an injunction or order from instituting "a suit must always depend for its decision upon the "order, or the decree'', made in the case.

Before the Privy Council, an argument appears to have been made that to come within the section, the injunction order should expressly and in terms prohibit the institution of the suit. But their Lordships left that point open. We think, however, that the above contention was too broadly put and it gives an unjustifiable narrow scope to Section 15 of the Indian Limitation Act. If the order, properly construed, be found to be an order of injunction, prohibiting institution of the suit or if that be its true legal effect, we do not think that the mere absence of express words to that effect would place it outside Section 15. The necessary implication, and that presupposes that the implication is not remote, is enough, in our opinion, for purposes of the section. That is introducing no equitable consideration in the construction of the section (Section 15) of the Limitation Act, but only construing the order properly to hold that it is an order of injunction against the institution of the suit.

12. The above view of ours would be amply supported on principle at least by a number of decisions of the different High Courts, is for example, Satdeo Narain v. Radhey Kuar AIR (1920) Pat. 364, (Kolluri)'' Lakshminarayana v. (Kambhampati) Lakshmipati and Anr A.I.R, (1927) Mad. 997, Satish Mohini Debya v. Pahna Bank Ltd. (1918) 47 I.C. 907; and also Narayan Jivaji Patil and Anr. v. Gurunathgouda Khandappagouda Patil and Anr. ILR (1939) Bom. 173, which itself went up on appeal to the Privy Council in Narayan Jirangouda Patil and Anr. v. Puttaibai and Ors. (1944) 49 C.W.N. 6, 10 (P.C) (supra). The contrary view in the solitary Madras case reported in Vadlamannati Bala Tripina Svndaramma alias Sundaramma v. Abdul Khadar ILR (1932) Mad. 490, 495, 507, appears to he too strict and rigid and too narrow and technical and not in consonance with the general trend of judicial opinion on the point.

13. Bearing in mind what we have said above, let us approach the present case and construe the relevant order of injunction. That order was in these terms:

The prayer for injunction be and the same is hereby allowed and the Defendants be restrained from giving effect to the compromise in the S.C.C. Suit No. 17 of 1944 of this Court and the Defendant No. 1 from transferring any portion of the property in suit till the disposal of this suit.

14. The injunction against the present Defendant restraining him from giving effect to the compromise or from transferring the suit property is not material for our present purpose. The Plaintiff cannot certainly take advantage of that part of the injunction order for purposes of Section 15 of the Indian Limitation Act. We are concerned only with the injunction against the Plaintiff herself or in other words, the injunction, restraining her from giving effect to the compromise, embodying the contract in suit. The crucial words are "giving effect to". What do these words signify and what is their true and reasonable construction in the particular context and circumstances of this case. The words appear in the ordering portion which we have quoted above. They also appear in the body of the order which concludes with the said ordering portion. From the body of the above order, it is perfectly clear that the purpose of the injunction was to maintain the status quo and prevent frustration of the suit and multiplicity of proceedings and the learned Subordinate Judge stated therein that the Defendant No. 1 (who is the present Plaintiff) will not suffer any inconvenience at all if the injunction be granted and Defendant No. 2 (the present Defendant) will

not suffer any material loss. There will be some delay only in getting tie amount deposited by Defendant No. 1.

15. The above context and the form of the order quoted make it plain that the words "giving effect to'''' were not used merely with respect to the actual transfer or conveyance but they had a wider significance. Indeed, the only way, in which the Plaintiff could have given effect to the compromise was by tendering the money asking for the conveyance at her own cost and upon the Defendants refusal, or failure to comply with the Plaintiff''s said demand, which has admittedly happened in this case by reason of his silence to the Plaintiff''s lawyer''s letter, by bringing a suit for specific performance like the present one, which, again, would require her, at least ordinarily, to deposit the purchase money in the Court, where the suit would be instituted. In the circumstances of this case and having regard to the terms of the injunction order, in the light of our discussion aforesaid we think that, by the institution of the suit, the Plaintiff would be or would have been giving effect to the ''''compromise'''' as contemplated in the relevant injunction order (Ext. 6) as that was the only way open to her in the events which have happened to enforce the same. Clearly, again, in strict law, the Plaintiff had to deposit the money in court along with her plaint and although she might have prayed for permission to deposit it afterwards or even before the decree and the court might have granted her such permission it would not be a reasonable construction of the order to hold that, under and in spite of it, the Plaintiff could have instituted the suit without such deposit as that would obviously have involved on her part the risk-may be only a possible risk-of its immediate dismissal for non-deposit of the stipulated consideration money. That, however, was certainly not a risk which the Plaintiff should have been compelled to take and, in the circumstances, the only reasonable construction of injunction order in the present case would be that the Plaintiff would not have been entitled so long as the said injunction lasted even to institute the suit for specific performance.

16. What we have said above, is sufficient for deciding the point of limitation in favour of the Plaintiff-Appellant but we would add a few words on the principle of suspension of limitation which also has been discussed before us in the above connection. We may state at once that the principle has really no application to this case. So far as the Limitation Act is concerned, the principle of suspension of limitation has been recognised in some of the sections and Section 15 is one of them and, apart from them, in view of Section 9 of the Act, there can be, strictly speaking, no suspension of limitation so far as the Act is concerned. To some extent, however, there appears to have been a departure in some of leading judicial decisions and, at least, in case of a temporary extinction of the cause of action for the particular suit, limitation has always been held to have remained suspended for the period, during- which the cause of action did not subsist. This is illustrated by several decisions of the Judicial Committee notably, and we do not include here Frannath Roy Chowdhury v. Rookea Begum and Ors. (1859) 7 M.J.A. 323, which was a case of "good and sufficient "cause" for extension of

time under the express and specified provision of the correct law of limitation, Mussumat Ranee Sumo Moyee v. Shooshee Mokhee Burmonia and Ors. (1868) 12 M.I.A. 244; (1896) L.R. 23 I.A. 45 (Privy Council); (1888) L.R. 15 I.A. 211 (Privy Council) ; and is almost an accepted principle, applied in many cases later on, namely, Lakhan Chunder Sen v. Madhusudan Sen I.L.R,(1907) Cal. 209 : 7 C.L.J. 59 affirmed on appeal, by the Privy Council in Nrityamoni Dassi v. Lakhan Chandra Sen I.L.R, (1916) Cal. 660 (P.C.): A.I.R, and Murlidhar and Ors. v. Ram Saran Das and Ors. ILR (1946) All. 633: AIR (1947) All. 256, to mention one of the earliest and one of the latest decisions on the point. The seeming exception, however, appears to be no real exception as the suits in all the above cases were really on a new cause of action and if the distinction between suspension of limitation and suspension (temporary extinction or extinction) of cause of action be borne in mind, the apparent departure would be at once explained. This particular aspect appears to have been duly noticed and stressed in Midnapore Zemindary Co. Ltd. Vs. Naba Kumar Singh Dudhoria and Others, . and Satish. Chandra Pur kail v. Nilratan Purkait (1953) 59 C.W.N. 642, and in particular, in this latter case, which broadly speaking has explained the true position after distinguishing 17 CWN 605 (Privy Council) . We would not say more on this subject as it is now pending in reference before a Special Division Bench of this Court in the case of Midnapore Zamindari Company Ltd. v. The State of West Bengal and Ors. Unreported decision in F.A. No. 26 of 1950: (F.A. No. 20 of 50). The present case, however, cannot be brought within the four corners of any of the aforesaid decisions and the cause of action in the present cannot, in any sense, be said to have suffered extinction or suspension (temporary extinction) for any period of time. The principle of suspension of limitation, therefore, cannot aid the Appellant and she must, to overcome the bar of limitation, make out a case u/s 15 of the Indian Limitation Act. The reason for not filing the suit earlier and within the ordinary period of limitation cannot be attributed to anything else than the injunction order in Nirapeksha''s suit and, as the claim for extension of limitation or suspension of limitation for the requisite period rests upon that and that alone, Section 15, which is the specific provision for such cases, must be satisfied and no extension or suspension of limitation would be permissible apart from or de hors the said section. This, however, is not of much significance in the present case or to the Appellant as, on our finding, made above, she has made out a case u/s 15 of the Indian Limitation Act and so the point of limitation should be answered in her favour.

17. Turning now to the Plaintiff''s conduct, it will be seen that the Defendant''s contention is that, by suing for a declaration that the disputed transaction of February 28, 1940, was a mortgage and not a sale with a condition of repurchase in her suit (Title Suit No. 152 of 1944), the Plaintiff actually repudiated the Defendant''s title to the suit property and that conduct is sufficient to disentitle her to any specific performance of the contract in suit, that conduct being, in substance, repudiation of the contract itself. In a proceeding between the parties, however, namely, in First Appeal No. 13 of 1949 (vide Ext. 7(a):, this Court has

held that the contract in question was for transfer of whatever interest the Defendant had in the suit property to the Plaintiff. In her suit, it was not the Plaintiff''s case that the Defendant had no interest in the said property. But her case was that it was only a mortgagee''s interest and this Court held in the above First Appeal that the contract in suit would operate against and in respect of the said interest if that was all that the Defendant had or could claim in the said property. There was thus no repudiation of the relevant contract, though there might have been repudiation of the Plaintiff''s full title to the suit property.

18. It is urged next that the Plaintiff, by prosecuting her suit (Title Suit No. 152 of 1944), compelled the Defendant to defend it by incurring costs to his prejudice and it is only when she failed in that suit, that she came to court for specific performance of the contract, Such conduct on the Plaintiff''s part is, according to the Defendant, hardly bona fide and, as such, she should not be given the equitable relief of specific performance. We are unable to accept this argument in the facts and circumstances of this case and our reasons for the same are given below.

19. As to the nature of the original transaction, the Plaintiff may well have entertained some bona fide doubt. In such circumstances her suit (Title Suit No. 152 of 1944) cannot be said to have been mala fide. That suit, moreover, was pending when the disputed compromise was made or entered into but there was no term in the said compromise that the said suit would have to be withdrawn. The parties, therefore, virtually acquiesced in the continuance of the said suit and, accordingly, the Plaintiff''s prosecution or continuance of the same cannot be held to be against her or to constitute or operate as a bar to her present action. It was also not open to the Plaintiff to repudiate or disown the present contract, even if she had succeeded in her aforesaid suit, and the Defendant could have compelled her to perform the same specifically and to purchase his right, title and interest in the suit property, even if it was of a mere mortgage, at the stipulated sum of Rs. 3,400. Having regard, again, to the compromise and the interpretation put upon it by this Court as early as July 19, 1949, in F.A. No. 13 of 1949, referred to above, the Defendant need not have contested the Plaintiff''s earlier suit at all or, at least, from after the said decision. In the context, no question of prejudice to the Defendant by reason of the Plaintiff''s prosecution of the said earlier suit does, strictly, arise.

20. Lastly, it is argued that by an active continuance of the earlier suit from 1944 to 1950, the Plaintiff was guilty of delay, so far as her present claim of specific performance is concerned and that delay would be fatal to her claim in the present suit and it would be a sufficient ground for refusing her the relief or reliefs claimed in the present suit. Clearly, however, such delay, in the circumstances of this case, is wholly immaterial. As we have said above, the Plaintiff could not have instituted her suit earlier by reason of the injunction order in Nirapeksha''s suit and, moreover, the record discloses that, even during the pendency of her earlier suit, the Plaintiff was eager to perform this contract

(vide her lawyer''s letter dated January 9, 1945 and reminder dated January 12, 1945, and deposit of money in court on January 17, 1945).

21. In the above circumstances, the Plaintiff cannot be accused of repudiation of the contract in suit or of any inequitable conduct in relation to the same or of any delay in the matter of the bringing of her present suit and the Defendant''s arguments to the contrary must fail.

22. It thus appears that none of the grounds, mentioned by the court of appeal below for dismissing the Plaintiff''s claim for specific performance is tenable in law or on facts in the instant case before us and its judgment, so far as that point is concerned, should be reversed and that of the trial court restored.

23. Before we conclude, we may state in brief that with the refusal of the Plaintiff''s prayer for permanent injunction by the two courts below we entirely agree.

24. The appeal thus succeeds in part, the judgment and decree of the lower appellate court, in so far as it reversed the trial court''s decision, is set aside and the trial court''s judgment and decree are restored. The Plaintiff''s suit for specific performance stands decreed as was done by the trial court, but her prayer for injunction stands rejected in terms of the concurrent findings of the two courts below on that point.

25. In the circumstances of this case, the parties wall bear their own costs in this Court and also in the court of appeal below but the Plaintiff'' will get her costs of the trial court from the Defendant.

26. Let the Defendant execute the kohala in terms of the contract in suit, within a month of the arrival of the records in the trial court, failing which, the Plaintiff will be entitled to get the necessary deed executed and registered through court at her costs.

Niyogi, J.

27. I agree.

