
(2014) 02 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil First Appeal No. 429/2013

Naula and Others

APPELLANT

Vs

Raja Devi and Others

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 10, Order 2 Rule 2, Order 7 Rule 11, 96

Registration Act, 1908 — Section 23, 32, 36

Citation : (2014) 02 RAJ CK 0040

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Bihari Lal Agarwal and S.K. Budhariya, Advocates for the Appellant;
R.K. Agarwal, Sr. Advocate and Sachin Kumar, Advocates for the Respondent

Judgement

Nisha Gupta, J.—This regular first appeal under Section 96 CPC has been filed against the judgment and decree dated 24.7.2013 passed by Additional District Judge, Chomu Distt. Jaipur in Civil Suit No. 16/2013 whereby suit for specific performance and declaration filed by the plaintiffs was dismissed under O.7 R.11 CPC.

2. With the consent of learned counsel for the parties, the matter has been finally heard at admission stage itself.

3. The brief facts of the case are that appellants-plaintiffs filed a suit for specific performance and for cancellation of registered sale deed dated 6.3.2013 and injunction relating to suit property on the strength of agreement to sell dated 22.5.1960 and the contention of the appellants in the suit was that in an agreement to sell executed on 22.5.1960 no period for registry has been agreed between the parties and it was agreed between the parties that whenever plaintiffs want to get a sale deed executed, they are free to do so. The respondents have executed sale deed in favour of respondents No. 9 and 10, hence the appellant plaintiffs have filed a suit for specific performance and

cancellation of registered sale deed dated 6.3.2013. The defendants have filed application under O.7 R..11 CPC on the ground that suit is barred by limitation as well as under the provisions of O.2 R.2 CPC, the court below has accepted the application, hence this appeal.

4. The contention of the respondents before the court below was that suit is barred by O.2 R.2 CPC as earlier a suit was filed by plaintiff appellants before the revenue court and hence this second suit is barred by provisions of O.2 R.2 CPC. The contention of the present appellants is that before the revenue court, the suit has been filed only for cancellation of mutation and revenue court cannot entertain the suit for specific performance as well as cancellation of sale deed, apart from this, parties are not same before the revenue court and cause of action before the civil court are different and sale deed has been executed in 2013 whereas earlier suit before the revenue court was filed in the year 2006 when no cause of action as alleged in the present suit has arisen to the appellants. As regards limitation, the contention of the present appellants is that as per Article 54 of the Limitation Act, the limitation for suit for specific performance starts when the plaintiff has notice that performance is refused and here in the present case when sale deed dated 6.3.2013 has been executed in favour of respondents No. 9 and 10 then only limitation under Section 54 come to run and court below has erred in dismissing the suit summarily.

Per contra, the contention of the respondents is that admittedly, agreement to sell is of 1960, for 53 years, the appellants have done nothing to execute the sale deed and reference has also been made as regards to provisions of Section 23, 32 and 36 of the Registration Act. His further contention is that in revenue suit it has been specifically stated that entries in the revenue record has been entered in the name of respondent Bansi in 1984 and in 2006, the respondents have threatened the present appellants that they will further sold the land and threatened them for eviction of the land which gives a cause of action for the suit for specific performance. The pleadings in the revenue suit specifically states that present appellants were apprehending that defendants would not execute the sale deed. In 1984 and when entries have been made in revenue record again in 2006, when threat have been given, cause of action has arisen to the present appellants. Cause of action is not a single act but it is bundle of facts and as per Article 54 of the Limitation Act, the cause of action of the present suit starts from the date of execution of sale deed i.e. 22.5.1960 and sale deed dated 6.3.2013 is only a consequential relief and could not reckon the limitation and court below has not erred in dismissing the suit.

5. Heard the learned counsel for the parties and perused the judgment and decree under appeal as well as the copy of plaint, application under O.7 R..11 CPC, alleged sale deed and plaint presented before the SDM.

6. As regards O.2 R.2 CPC, the appellants have rightly submitted that in the present suit, the relief claimed is for specific performance of the contract as well as cancellation of registered sale deed which cannot be claimed and granted by

the revenue court and his further contention is that cause of action for suit for specific performance and suit for permanent injunction are different and reliance has been placed on Kuruvakotapaty Chinna Linganna Vs. Karimaddela Sivalingam and Alla Brahmananda Reddy, . Further reliance has been placed on R. Radhakrishnan and R. Kailashkumar Vs. G. Ekambaram, Arun alias Jayapal and E. Kaviarasu, where it has been held that if earlier suit has not been dismissed, then provisions of O.2 R.2 would not be applicable. Here in the present case also earlier suit is also pending.

7. As regards objections in connection with the Registration Act, the contention of the appellants is that admittedly, document is not registered and in view of the law laid down in Durgadan Vs. Devidan, , the document amounts to only contract for sell. Further reliance has been placed on Birla Cement Works and Another Vs. State of Rajasthan and Others, ; State of Maharashtra and another Vs. M/s. National Construction Company, Bombay and another, and Nathu Singh & ors. v. Praful Chandra & Anr., 2002 WLC (Raj.) UC 3 where provisions of O.2 R.2 CPC has been explained. There is no dispute about this legal proposition, hence in view of the fact that present suit is for specific performance and cancellation of sale deed which reliefs cannot be given by the revenue court, the plaintiffs' suit does not fall under the mischief of O.2 R.2 CPC.

8. As regards the limitation, the contention of the appellants is that on 6.3.2013 when property has been sold to another person, the cause of action has arisen in favour of appellants and the suit is within limitation by virtue of Section 54 as the plaintiffs have notice that performance is refused and reliance has been placed on Swami Sunderdas v. Baba Madho Das, 1994 DNJ (Raj) 162 and Hari Ram and Another Vs. Shri Goyenka Welfare Trust, where on the facts of the case it was found that the suit is not barred by limitation. Here in the present case, the contention of the appellants is that they get the notice of refusal only on execution of sale deed dated 6.3.2013 and for deciding the application under O.7 R..11 CPC, averment in the plaint could only be looked into and reliance has been placed on Babulal & ors. v. Board of Revenue & ors., 2011 (2) RTT 1203. There is no dispute about this legal proposition that for deciding the application under O.7 R..11 CPC, the averments in the plaint could only be seen in the suit itself, the appellants have pleaded the pendency of other suit before the revenue court, hence the plaint of revenue suit is also the part of pleading and agreement to sell dated 22.5.1996 has also been referred in the plaint which also made a part of the suit.

9. In view of the matter, it is admitted fact of the plaintiffs appellants that agreement to sell has been executed on 22.5.1960. The contention of the appellants that as no time was fixed for registration in the agreement, the limitation starts on 6.3.2013 when registered sale deed has been executed in favour of respondents but this cannot be taken to be true as it has been specifically stated by the appellants in revenue suit that on 17.1.1984, the land has been mutated in the name of respondent No. 4 which speaks itself that

respondents has refused for execution of the sale deed. However in Para 13 of the revenue suit it has been pleaded that the appellants are having apprehension that they would be dispossessed from the property or the property would be alienated and it has also been specifically pleaded that on 27.5.2006 the respondents had threatened the appellants to leave the possession otherwise they would sale the property to someone else or evict them forcibly. These facts constitute the cause of action that plaintiffs were knowing well that respondents have refused the performance and respondents has relied upon Church of Christ Chartiable Trust & Educational Charitable society represented by its The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponnamman Educational Trust represented by its Chairperson/ Managing Trustee, wherein it has been held that cause of action is limited not only to infringement of right to file suit but includes all material facts on which it is founded and cause of action must include some acts done by the defendant in absence of which no cause of action can possibly occurred.

10. In the light of above, here in the present case, cause of action for specific performance of the contract has arisen in 1960 when agreement to sell has been executed and for the purpose of beginning of limitation does arise when land has been mutated in the name of another and present appellants have been threatened to dispossess. Reliance has also been placed on N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LR's. and Others, wherein it has been held as under:

"The averments in paragraph 12 of the plaint concerning the mutation proceedings before the revenue authorities did not furnish any fresh cause of action for the suit and they appear to have been made as a camouflage to get over the bar of limitation. The dispute of mutation in the revenue court between the parties arose only on the basis of registered sale deed dated 5.5.1953. The orders passed by Tehsildar/Assistant Commissioner did not furnish any independent or fresh cause of action to seek declaration of the sale deed of 5.5.53 to be merely a loan transaction. The foundation of suit does not seem to be the adverse orders passed by revenue courts or authorities in mutation proceedings. The foundation of suit is clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of reconveyance of the property on return of borrowed amount.

After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5.5.1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts.

The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any "cause of action". In our view, the trial court was right in coming to the conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as

discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of Specific Relief Act as also under Order 2 Rule 2 of the Code of Civil Procedure."

Further reliance has been placed on Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, where scope and significance of O.7 R.11 CPC has been discussed and it has been held as under:

"The idea underlying Order 7 Rule 11A is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the Courts would interpret the provisions in such a manner so as to save expenses, achieve expedition, avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant. (See Azhar Hussain Vs. Rajiv Gandhi, ."

Yet again in Samar Singh v. Kedar Nath (1987 Suppl. SCC 224) it has been held:

"In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent."

Further reliance has been placed on T. Arivandandam Vs. T.V. Satyapal and Another, where role of the courts has been stated by the Apex Court as under:--

"5.The learned Munsif must remember that if on a meaningful - for formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them....."

11. In view of the above, in the present case, limitation has started on 22.5.1960 when the agreement to sell has been executed and the composite reading of the

plaint itself goes to show that plaintiffs were within the knowledge that performance is refused as number of acts has been done by the defendants in 1984 again in 2006 and again in 2013 and in view of the law laid down by the Supreme Court, the suit is hopelessly time barred and court below has rightly held so.

12. There is no infirmity in the findings of court below and rightly, the suit has been dismissed under O.7 R..11 CPC.

The appeal is liable to be dismissed and accordingly, the same is dismissed.