

(2008) 05 PAT CK 0070
In the Patna High Court
Case No : C.R. No. 140 of 2006

Rajendra Singh and Others

APPELLANT

Vs

Naini Gopal Mahajan and Others

RESPONDENT

Date of Decision : 22-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 6
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2008) 3 PLJR 183

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Sidheshwari Prasad Singh and Binod Kumar, for the Appellant; L.N. Das, S. Das, R.K.P. Singh, Bal Bhushan Choudhary for Opp. Party Nos. 1 and 2, for the Respondent

Judgement

S.N. Hussain, J.—This civil revision has been filed by the plaintiffs-petitioners challenging order dated 24.11.2005 by which the learned Subordinate Judge, 2, Hilsa (Nalanda) allowed petition dated 18.11.2002 filed by defendants no. 2 and 3 series-opposite parties and dismissed Title Suit No. 54 of 1998 on the preliminary issues of limitation and res judicata. The aforesaid suit was filed on 26.6.1998 (Annexure-6) by the plaintiffs-petitioners against the defendants-opposite parties for specific performance of agreement dated 25.2.1984 executed by defendant no. 1 in favour of plaintiffs for sale of 4.43 acres of land for Rs. 98,000.00, out of which Rs. 65,000 was paid as advance by the plaintiffs to the said defendant. The suit was contested by the defendants who filed their respective written statements.

2. Thereafter, defendants no, 2 and 3 series filed a petition dated 18.11.2002 (Annexure-A) in the court below for dismissing the suit on the preliminary issues of limitation and res judicata as well as valuation and court fees. The plaintiff filed a rejoinder to the said petition on 10.12.2002 (Annexure-B). With respect to the same matter, defendant no. 1 also filed a petition under the provision of Order XIV Order XIV Rule 2 of the CPC in the court below on 24.6.2003 claiming

that the suit be dismissed on the aforesaid preliminary issues. However, by the impugned order dated 24.11.2005, the learned court below allowed the petitions of the defendants and dismissed the suit on the aforesaid preliminary issues.

3. The plaintiffs had filed the aforesaid Title Suit bearing T.S. No. 54 of 1998 for enforcing the agreement for sale dated 25.2.1984 said to have been executed by defendant no. 1 in favour of the plaintiff. In the said agreement, a specific date 20.2.1987 was fixed for the purpose of the aforesaid contract. There is no case of the plaintiff that the said defendant at any time before or after the expiry of the said fixed date refused performance of the said contract and hence, the period of limitation expired three years thereafter on 20.2.1990 as per the specific provision of Article 54 of the Limitation Act, 1963 (Hereinafter referred to as the "Act" for the sake of brevity.)

4. Even according to the claim of the plaintiffs, specifically stated in paragraph 18 of their plaint, the executant, namely defendant no. 1, (opposite party no. 1), in his reply dated July, 1990, extended the last date fixed in the agreement for sale, but how much time was extended was nowhere mentioned in the plaint. It may be stated in this connection that although mention was made in the plaint regarding reply notice of defendant no. 1 but the said reply notice had never been produced by the plaintiffs. In any view of the matter, Section 18 of the Act specifically provides that executant may enlarge the time before the period of limitation expires and not after that. In the instant case, the period of limitation expired on 20.2.1990, whereas according to the plaintiffs' claim extension was granted by the executant much thereafter in July, 1990. In the said circumstances, even on the basis of their pleading, the plaintiffs cannot be allowed to take benefit of the extension of time as claimed by them.

5. The plaintiffs had filed the instant suit (T.S. No. 54 of 1998) on 26.6.1998 alongwith a petition u/s 5 of the Act for condoning the delay in the filing of the suit more than 8 years after the expiry of the period of limitation. From a perusal of Section 5 of the Act, it is apparent that the said provision is for extension of time prescribed in law only in the matter of appeals and applications and not in the matter of delay in the filing of the suit resulting in legal bar. In this regard, reference may be made to a decision of this court in case of Tilkeshwar Singh alias Tilkeshwar Prasad Singh Vs. State of Bihar and Others . Accordingly, the said petition filed by the plaintiffs alongwith the plaint for condoning the delay was not maintainable in the eye of law.

6. In this regard, it may be stated that earlier Title Suit No. 07 of 1990 was filed by opposite party no. 2 for specific performance of contract dated 15.2.1986 executed earlier by opposite party no. 1 in which the date for performance of the said agreement was fixed on 15.3.1990. In the said suit it was claimed that the petitioners in the meantime had kidnapped opposite party no. 1 and got fabricated ante dated agreement for sale dated 25.2.1984 with respect to the same land in their favour. In the said suit, the petitioners filed intervention petition and were impleaded by order dated 26.9.1991 and they filed their

counter claim. Against the addition of petitioners in that suit, opposite party no. 2 filed CR. No. 02 of 1992 which was allowed by this court on 11.12.1996 (annexure-3), whereafter a civil review was filed by the petitioners which was also dismissed with an observation that the petitioners which was also dismissed with an observation that the petitioners may move the Hon''ble Apex Court against the order passed in civil revision, but no such case was filed in the Supreme Court. In the said circumstances, it is quite apparent that the petitioners were throughout aware of the entire facts and circumstances, but in spite of that they did not choose to file a suit for specific performance of contract against opposite party no. 1 during the relevant period.

7. Section 9 of the Act specifically provides that where once time has begun to run, no subsequent disability or inability to institute a suit stops it. In the instant case, the time had begun to run, even according to the plaintiffs' case, from 20.2.1987 which was the date fixed for performance of the agreement dated 25.2.1984, but till the expiry of the period of limitation as per Article 54 of the Act on 20.2.1990 no disability or inability to institute a suit could be shown and the filing of the other suit, civil revision etc. is clearly after the said period. However, in any view of the matter, according to the aforesaid provisions of law, nothing can stop the time which had begun to run from 20.2.1987.

8. It is quite apparent that bar of limitation in the filing of a suit is enshrined in Section 3 of the Act which specifically provides that a suit filed after the prescribed period shall be dismissed, even if limitation is not settled as a defence. Sections 4 to 24 of the Act does not make any provision for condoning the delay in the filing of the suit. In the said circumstances, if the suit is barred by law of limitation, the court has no option, but to dismiss the same considering the specific provision of law. Furthermore, Order VII Rule 6 of the CPC prescribes that where a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground on which the exemption from such law is claimed, but as discussed above from a reading of the plaint it transpires that the plaintiff had failed to show any valid ground upon which any exemption from the specific provision of the Act could be allowed.

9. The plaintiffs-petitioners have raised another point that the suit was filed on 26.6.1998 and on 29.8.1998 the deficit court fee was filed by the plaintiff and the suit was admitted and hence, it would be legally presumed that the delay had been condoned by the learned court below on the said date and defendants were not justified in raising the plea of limitation subsequently and hence, the learned court below should have rejected the said claim of the defendants. The point raised by the petitioners is not a correct proposition of law as if the trial court admits a suit without properly appreciating the implication of the bar to the suit by the law of limitation, the matter can very well be considered by the trial court subsequently Furthermore, if the suit is time barred with respect to the relief claimed therein there is no occasion for going into the details of other issues which would unnecessarily delay the proceeding and a duty is cast upon the

court under the provision of Section 3 of the Act to decide the question of limitation first and hence, it was incumbent upon the learned court below to decide that issue as a preliminary issue. Reference may be made to decision of this court in case of Md. Ekram @ Md. Ekramul Haque and Others Vs. Sk. Jhaksha and Others, . Hence, this plea of the petitioners also fails.

10. From the aforesaid facts and circumstances, it is quite apparent that the suit was clearly barred by the law of limitation and the learned court below has correctly dismissed the same on the aforesaid preliminary issue. In the said circumstances, this court does not find any necessity to enter into the question of res judicata and courts fee etc. as the said issue of limitation was sufficient for passing the impugned order. Accordingly, this court does not find any illegality or jurisdictional error in the impugned order of the learned court below and hence, this civil revision is dismissed.