
(2023) 10 CAL CK 0047

In the Calcutta High Court

Case No : S.A. No. 123 Of 2019, CAN 1 Of 2012, CAN 6 Of 2023

Raman Srivastav

APPELLANT

Vs

Sk. Wahider Rahaman & Ors.

RESPONDENT

Date of Decision : 11-10-2023

Acts Referred:

Limitation Act, 1963 — Article 54

Registration Act, 1908 — Section 13, 17

Citation : (2023) 10 CAL CK 0047

Hon'ble Judges : Siddhartha Roy Chowdhury, J

Bench : Single Bench

Advocate : Ayan Banerjee, Abhishek Verma, Ritobrata Singha, Prasenjit Biswas

Final Decision : Allowed

Judgement

Siddhartha Roy Chowdhury, J

1. Challenge in this appeal is to the judgement and decree passed by learned Additional District Judge, 5th Court, Barasat, North 24 Parganas in Title Appeal No. 36 of 2008 affirming thereby the judgement and decree passed by learned 1st Court, Civil Judge (Senior Division) Barasat in Title Suit No. 94 of 2001.

2. Briefly stated, respondent no. 1, Sk. Wahider Rahaman filed a suit for specific performance of contract with consequential relief against respondent no. 2 and 3 Sri Manoj Kumar Shaw and Sri Kailash Nath Shaw. In the said proceeding nine persons were added as defendant nos. 3 to 11 at the behest of the plaintiff.

3. It is contended that suit property was joint property of the original defendants. They agreed to sell the suit property in favour of the plaintiffs at a consideration of Rs. 75,000/-. The agreement for sale was executed on 15th February, 1993 and it was duly registered.

4. The defendants executed power of attorney in favour of the plaintiffs thereby appointed the plaintiffs as lawful attorney to take appropriate step to get the suit

property vacated after evicting the tenants or occupants. On the strength of such general power of attorney the defendants filed two separate title suits being Title Suit No. 416 of 1993 and Title Suit No. 22 of 1997 before the learned 4th Court, Civil Judge (Junior Division) Sealdah, against Nilangshu Banerjee and others and against Shyamlal Agarwal. Those two suits were decreed on 3rd July, 1997 and 17th September, 1998 respectively.

5. Thereafter, the plaintiffs requested the defendants to execute the deed of conveyance upon receipt of balance consideration money amounting to Rs. 53,900/- but it was not adhered to. Hence the suit, which was contested by the defendants by filing a written statement. Learned Trial Court after considering the evidence on record was pleased to pass the decree.

6. Aggrieved by such order, the defendant no. 11 Raman Srivastav preferred an appeal being Title Appeal No. 36 of 2008 contending, inter alia, that during pendency of the suit though at the behest of the plaintiff defendant no. 3 to 11 were impleaded in the said suit, but no notice was served upon the defendant no. 11. Therefore, he could not contest the suit.

7. Learned First Appellate Court, however, did not accept the plea of the appellant (defendant no. 11) that notice was no notice was served upon him, the suit as framed is barred by limitation and as such the agreement cannot be specifically enforced. More so the proposed vendors do not have title to transfer the property.

8. Learned First Appellate Court refused to accept the appeal; aggrieved thereby the defendant no. 11 as preferred the second appeal which was admitted on 3 rd January, 2017 on the following substantial question of law :-

1. Whether the learned courts below were justified in passing a decree for specific performance of contract in favour of the plaintiffs/respondents against his vendor viz., Manoj Kumar Shaw and Kailash Nath Shaw when the title in the suit property of the predecessor of the defendant nos. 1 and 2 could not be established in Title Suit No. 39 of 2002 wherein it was held that the transaction which was held between the predecessor-in-interest of the defendant nos. 1 and 2 with the admitted original owners Madhabi Banerjee and others was not an out an out sale, but is a product of loan transaction and thereby the sale deed which was executed by those Banerjees in favour of the predecessor-in-interest of the defendant nos. 1 and 2 was set aside?

2. Whether the findings of both the learned courts below that in the absence of any registered deed, right, title and interest of the predecessor-in-interest of the defendant nos. 1 and 2 could not be re-conveyed to the admitted owners viz., Banerjees in view of Section 17 of the Registration Act is perverse or not as the sale transaction between Banerjees and the predecessor-in-interest of the defendant nos. 1 and 2 was held to be ineffective and inoperative and not an out and out sale by competent court of jurisdiction and in view of such declaration given by the court of competent jurisdiction, execution of a deed of re-

conveyance is not necessary for perfecting the title of the original owners viz., the Banerjees?

While considering the Memorandum of appeal in the backdrop of the factual matrix of the lis, though learned Counsels representing the parties advanced their argument on the issue of limitation. Since no formal question of law was framed, considering it expedient this Court framed following substantial question of law touching the point of limitation.

3. Whether the findings of both the learned courts below that the suit for Specific Performance of Contract was well within the period of limitation, under article 54 of the Limitation Act, is perverse?

9. Impeaching the impugned judgement Mr. Ayan Banerjee, learned Counsel for the appellant/defendant no. 11 submits that the proposed vendor to the agreement had no title to transfer. The original owners of the property mortgaged the property to secure loan; they never sold and transferred the property in question. The respondent no. 2 and 3 Manoj Kumar Shaw and Kailash Nath Shaw did not disclose the said fact while entering into agreement.

10. It is further contended that Shyamlal Agarwal and Hanuman Prasad Agarwal filed a suit being Title Suit No. 39 of 2002 against Paresh Nath Shaw, Kailash Nath Shaw, Madhabi Banerjee, Nilangshu Banerjee and Shyamali Mukherjee for declaration and injunction. The said suit was disposed of by a compromise decree. In the said decree the parties agreed and acknowledged that the sale deed dated 3rd April, 1987 executed by proforma defendant no. 4 to 6 i.e. Madhabi Banerjee, Nilangshu Banerjee and Shyamali Mukherjee in favour of the defendant no. 2 and 3 Manoj Kumar Shaw and Kailash Nath Shaw was "an ostensible sale deed, mortgaged by conditional sale and the parties further agreed that the loan has been duly repaid and nothing is due from the defendant no. 4 to 6 in respect of aforesaid loan transaction evidenced by sale deed dated 3rd

11. It is further contended by Mr. Banerjee that this compromise decree was passed on 12th November, 2003 and on the strength of this decree it can safely be said that the defendant no. 2 and 3, the proposed vendors do not have any right title interest to convey in favour of the proposed purchasers. Therefore, in view of Section 17 of the Specific Relief Act, the agreement in question cannot be specifically enforced.

12. According to Mr. Banerjee, the suit as framed is not maintainable inasmuch as it is barred by limitation. In the agreement it was stipulated that two years from the date of agreement after subjective satisfaction of the parties to the agreement about the right title interest of the proposed vendors in respect of the property proposed to be transferred, the deed shall have to be executed.

13. Drawing my attention to Article 54 of the Limitation Act, Mr. Banerjee submits that the date fixed for the performance should be the reckoning date

from which the period of limitation shall start. Therefore, the parties to the agreement had the obligation to take necessary steps for subjective satisfaction as to the nature of the property whether it was free from encumbrances and title of the proposed vendors to transfer ought to have been completed within two years. But after elapse agreed time schedule suit was filed.

14. Refuting such contention Mr. Prasenjit Biswas, learned Counsel for the respondents submits that the compromise decree is collusive one and cannot be taken into consideration. The plaintiff/respondent was not a party to that proceeding. Therefore, same cannot be binding on him.

15. It is further contended that though the period of limitation according to agreement should run after two years from the date of agreement, but the suits were decreed five years after its institution. Since the plaintiffs had no control over the time that was consumed for the purpose of disposal of the suit, it is not expected that he would be made to suffer loss for no contribution on his own part.

16. From the attending facts of the case it transpires that by virtue of the compromise decree in T.S. No. 39 of 2002, Exhibit-6 the defendants/respondents Manoj Kumar Shaw and Kailash Nath Shaw cannot be said to have any title in respect of the property in suit.

17. Section 17 of the Specific Relief Act says :-

"Section 17 in The Specific Relief Act, 1963

17. Contract to sell or let property by one who has no title, not specifically enforceable.—

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale

or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property."

18. Since by the dint of compromise decree the property mortgaged, was released or redeemed in favour of the original owners who mortgaged the property. The agreement in question cannot be specifically enforced under the law against the persons who do not have title.

19. The limitation for filing a suit for specific performance, in terms of Article 54

of the Schedule-I to the Limitation Act, 1963 is three years, "from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that the performance is refused."

20. Hon'ble Supreme Court in MADINA BEGUM V. SHIV MURTI PRASAD PANDEY reported in (2016) 15 SCC 322 held:-

"17. The interpretation of the first part of Article 54 of Schedule 1 of the Act is no longer res integra. Article 54 reads as follows:

"Description of suit

Period of limitation

Time from which period begins to run

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."

18. In Ahmadsahab Abdul Mulla (2) v. Bibijan [Ahmadsahab Abdul Mulla (2) v. Bibijan, (2009) 5 SCC 462 : (2009) 2 SCC (Civ) 555] the following question was considered by a three-Judge Bench of this Court : (SCC p. 464, para 2)

"2. ... whether the use of the expression "date" used in Article 54 of the Schedule to the Limitation Act, 1963 (in short "the Act") is suggestive of a specific date in the calendar?"

19. While answering this question on a reference made to the three-Judge Bench, this Court considered the meaning of the word "date" and "fixed" appearing in Article 54. Upon such consideration, this Court held that the expression "date fixed for the performance" is a crystallised notion. When a date is fixed it means there is a definite date fixed for doing a particular act. Therefore, there is no question of finding out the intention from other circumstances. It was reiterated that the expression "date" is definitely suggestive of a specified date in the calendar. Paras 11 and 12 of the Report in this regard are of importance and they read as follows : (Ahmadsahab Abdul case [Ahmadsahab Abdul Mulla (2) v. Bibijan, (2009) 5 SCC 462 : (2009) 2 SCC (Civ) 555] , SCC p. 466)

"11. The inevitable conclusion is that the expression "date fixed for the performance" is a crystallised notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates.

So, there is no question of finding out an intention from other circumstances.

12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression "date" used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."

21. In view of Article 54 of the Limitation Act the parties elected to get the transaction completed within two years from the date of agreement, after being satisfied about the right title interest of the proposed vendors and about the status of the property, being free from all encumbrances. The agreement was executed on 15th February, 1993 and two years from the date of the agreement would be 14th February, 1995 as calendar date.

22. Therefore, simple arithmetic calculation shows that the suit ought to have been filed sometime in the first part of month of February, 1998 whereas the suit was filed in the year 2001. Therefore, the suit filed before the learned Trial Court appears to be barred of limitation.

23. These points were not considered by the learned First Appellate Court while passing the judgement impugned. In my humble opinion, the judgement and decree passed by learned First Appellate Court cannot be sustained for the reason as aforesaid.

24. However, the proposed purchaser cannot be left without remedy in view of Section 13 of the Specific Relief Act that says :-

13. Rights of purchaser or lessee against person with no title or imperfect title.—
(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely—

(a) * * *

(b) * * *

(c) * * *

(d) where the vendor or lessor sues for specific performance of contract and the suit is dismissed.

25. In RAMAN VS. R. NATARAJAN reported in (2022) 10 SCC 143, Hon'ble Supreme Court held:-

"Therefore, the High Court committed a grave error in law in granting a decree for specific performance. Hence the appeal is allowed, the impugned judgment [R. Natarajan v. Raman, 2018 SCC OnLine Mad 13812] of the High Court is set aside and the relief of specific performance claimed by the respondent is rejected. However, there will be a decree directing the appellants to pay to the

respondent, the amount of Rs. 1,44,400 paid by the respondent, with interest @ 9% p.a. from the date of filing of the suit, till the date of repayment. The parties shall bear their respective costs throughout.”

26. The appeal merits acceptance. Thus, the appeal is allowed on contest against respondent no. 1 and dismissed as against rest of the respondents but without cost. The judgement and decree passed by learned First Appellate Court is set aside. Applications pending, if any, stand disposed of.

27. In this case there shall also be a decree directing the defendant Respondent no. 2 and 3 to pay a sum of Rs. 21,100/- to the Plaintiff together with interest @ 9% per annum within four weeks from date, failing which the plaintiff shall be at liberty to put the decree into execution.

28. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court immediately.

29. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.