

---

**(2013) 10 MP CK 0304**  
**In the Madhya Pradesh High Court**  
**Case No : Second Appeal No. 09 of 2013**

Smt. Kusum Gupta

APPELLANT

Vs

Dinesh Kumar Gupta and Others

RESPONDENT

---

**Date of Decision :** 23-10-2013

**Acts Referred:**

Limitation Act, 1963 — Article 54

**Citation :** (2013) 10 MP CK 0304

**Hon'ble Judges :** Rohit Arya, J

**Bench :** Single Bench

**Advocate :** Sarvesh Sharma, for the Appellant; J.P. Sharma, Panel Lawyer for respondent No. 3/State and Shri Anand Bhardwaj, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Rohit Arya, J.—This instant appeal is directed against the judgment and decree rendered in Civil Appeal No. 19A/2012 on 25.9.2012. The First Appellate Court concurred with finding of facts recorded by the trial Court on all issues ( No. 1 to 8) except the Issue No. 9. The trial Court had denied the relief of execution of sale deed and decreed payment of money in lieu thereof, whereas the first appellate Court based upon concurrent finding of facts and decreed the suit ordering execution of sale deed. In fact effect this appeal is against with concurrent finding of facts of the Court below. Facts necessary for disposal of this appeal are as under:

The suit land ad-measuring 24 x 20 Ft, the total area 480 Sq. Ft is situated in the Deedar Colony Tehsil Dabra, District Gwalior falling in land Survey No. 282/1 and 282/3 part of total Rakwa 480 hereinafter referred as the suit land. Defendant No. 1 had purchased the suit land on 30.11.1990 from Deepak Jain, Munan Lal Soni and Raghuvar Dayal Soni by registered sale deed and acquired possession thereof. It is self acquired property of defendant No. 1. The defendant No. 1 to cater the need of family required money and, therefore, with the consent of defendant No. 2 entered an agreement of sale with the plaintiff on

23.3.2008 for sale of suit land on consideration of Rs. 31,500/- in presence of witnesses and received part payment Rs. 16,000/-. It was agreed inter-alia that the defendant shall execute the sale deed in favour of plaintiff and received remaining amount after getting the land mutated in his name within one year. However, as the time period passed and defendant did not execute the sale deed, the plaintiff served a registered notice dated 4.3.2010 Ex.P/3 upon the defendant. Neither the defendant rebutted the said notice nor appeared before the Sub Registrar for execution of sale deed as requested for in the notice. Resultantly, the plaintiff filed a suit for specific performance of the agreement in question for execution of the sale deed in respect of suit land and for delivery of possession. Though in the alternative, it was prayed that advance money of Rs. 16000/- with interest be ordered to be refunded.

2. Defendant No. 1 denied the plaint averment and further alleged that the plaintiff in collusion with defendant No. 2, whose whereabouts was not known for last five to six years prepared forged agreement. Hence, the alleged agreement was null and void. Plaintiff was not entitled for any relief.

3. The trial Court to pour the parties to lead evidence. Trial Court framed as many as 9 issues.

4. The trial Court has answered Issue No. 1 to 8 as mentioned above, in affirmation in favour of the plaintiff. In other words, the trial Court has recorded finding as under:

(I) That the defendant No. 1 with the consent of defendant No. 2 had entered into agreement to sale deed dated 23.3.2008 in presence of witness for sale of suit land in favour of plaintiff and for sum of Rs. 31,500/- and received Rs. 16,000/- in advance.

(II) the trial Court has held that it was further agreed between the parties upon receipt of remaining amount of consideration i.e. Rs. 15,500/- sale deed shall be executed and registered.

(III) The plaintiff all along was ready and willing to pay Rs. 15,500/- to defendant No. 1 for the purpose of execution of sale deed.

(IV) The defendant No. 1 refused to register sale deed in respect of suit land.

(V) The trial court has categorically recorded the finding that there was no collusion of plaintiff and defendant No. 2. Accordingly issue was addressed in the negative.

(VI) the trial Court recorded finding that the agreement to sale dated 23.3.2006 neither forged nor fabricated document and the said agreement to sale was binding on defendant No. 1.

5. These findings have been returned in response to Issue No 1 to 8. However, the trial Court in its judgment dated 29.2.2012 in para No. 23 while it returned the finding on Issue No. 9 though held that the plaintiff has successfully

established his case based on evidence on record and, therefore, found him entitled for a decree as stated in paras No. 21 and 22 of its judgment, however, denied the execution of sale deed for the reasons that the name of defendant No. 1 for want of revenue document was not mutated in the revenue record. Hence, unless the name of defendant No. 1 in the revenue record is mutated in the revenue record, sale deed in favour of plaintiff could not be executed or transfer the title of suit land.

6. Being aggrieved by the aforesaid judgment and decree of the trial Court plaintiff preferred an appeal.

7. The First Appellate Court has set aside the finding of the trial Court as contained in para 23 on issue No. 9 and modified the decree ordering for execution of sale deed in favour of the plaintiff in respect of suit land. The First Appellate Court has negated the reasons or justification given by the trial Court to the effect unless the suit land was mutated in the name of defendant No. 1, the same could not be transferred by execution of sale deed. The learned First Appellate Court has held that the mutation proceedings are initiated in terms of Section 109 of the M.P. Revenue Code no sooner a person acquires title in revenue record, an application is to be filed within 30 days and such mutation is only for the purpose of recovery of land revenue. There is no law that for want of mutation sale deed of land in question cannot be executed. The First Appellate Court in para 24 of the judgment has well discussed the fact relating to readiness and willingness of the plaintiff for payment of remaining part of consideration i.e. Rs. 15,500/- every time even at the time of hearing of appeal for execution of sale deed. It is also found that he had appeared before the Registrar on 23.3.2007 but defendant No. 1 did not turn up. As a matter of fact, defendant No. 1 was failed to get the suit land mutated in his name in terms of agreement within one year from the date of agreement and was ordered execution of sale. Under the circumstances, defendant No. 1 did not discharge obligation as contained in the agreement to sale. Resultantly the First Appellate Court decreed the suit ordering execution of sale deed.

8. Being aggrieved thereby the instant second appeal preferred. On perusal of proposed substantial question of law, as a matter of fact, no question of law much less substantial question of law arises in the instant appeal from the concurrent finding of facts as regards:

(A) factum of the execution of agreement dated 23.6.2007.

(B) receipt of part consideration of Rs. 16000/- pursuant to agreement to sale with consideration Rs. 31,500/- by defendant No. 1 from plaintiff.

(C) Readiness and willingness on the part of the plaintiff to get sale deed executed in respect of suit land as recorded by the trial Court while answering the Issue No. 1 to 4 in para 14 of the judgment.

(D) Avoidance of execution of sale deed by defendant No. 1 under one or the

other pretext and not getting her name mutated in the revenue records.

(E) The plaintiff was prepared to tender the remaining amount Rs. 15,500/- for execution of sale deed but defendant refused the same.

9. However, the still the learned counsel for the appellate insisted to argue on the same issue and contended inter-alia that though the agreement is said to have been executed on 23.3.2006 but the suit was filed on 17.3.2010. Further more, it was contended that the trial Court and First Appellate Court committed error of fact while finding is returned on Issue No. 4 regarding i.e. readiness and willingness of the plaintiff. However, there is no material on record to support the submission advanced by the counsel either in the form of pleading or evidence on record. On the contrary, as rightly pointed out by learned counsel for the plaintiff that there is no averment whatsoever in the written statement that for want of readiness and willingness on the part of the plaintiff was not entitled for execution of sale deed. As a matter of fact in the written statement there was out right denial, of existence of agreement to sale.

10. In the opinion of this Court, in view of the concurrent finding of fact recorded by the Courts below on the issue of readiness and willingness on the part of the plaintiff for execution of sale deed, no interference is warranted to take contrary view. Finding so recorded are based on pleadings and evidence on record.

11. As regards second contention that the agreement of sale is said to be of 23.3.2006 but the suit was filed on 17.3.2010. First of all, there is no such pleading in written statement on this issue for non-suiting the plaintiff on purported ground of limitation. Needless to say, question of limitation is mixed question of law and fact and to seek indulgence of the Court, parties are required to plead and prove the averments in this behalf, by evidence. That was not done. Hence, no occasion arose for framing of issue on point of limitation by the trial Court. Even otherwise, as rightly pointed out by the counsel for the respondents that in terms of Article 54 of the Limitation Act the limitation is prescribed for bringing the suit is 3 years. It may be profitable to quote here Article 54 of the Limitation Act which goes as under:

Registered notice Ex P-3 served upon defendants was dated 4.3.2010 and suit filed on 17.3.2010 hence the suit filed was well within time. Hence, this contention also fails being devoid of substance.

12. The cases law cited by the learned counsel for the appellant reported in Manohar Lal @ Manohar Singh Vs. Maya, and Boramma Vs. Krishna Gowda and Others, are distinguishable on facts and have no bearing on the factual matrix of the case in hand. Accordingly, appeal fails and is hereby dismissed.