

(1992) 02 MAD CK 0015
In the Madras High Court

Sriramulu Naidu and Others

APPELLANT

Vs

Yusuf Sahib and Others

RESPONDENT

Date of Decision : 25-02-1992

Acts Referred:

Citation : (1992) 2 MLJ 625

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—The defendants against whom the suit has been decreed for specific performance of an agreement to sell are the appellants.

2. The plaintiffs' case is that they are the heirs of one Abdul Razaak. He owned the suit properties and on 1.9.1958 he sold the same for a sum of

Rs. 2,000 to the two defendants who are father and son. They on the same day i.e., on 1.9.1958 executed an agreement to re-convey the

property to Abdul Razaak after 1.9.1975. Abdul Razaak died. His heirs-plaintiffs, on 19.6.1979 issued a notice to the defendants calling upon

them to execute a sale deed but they sent a reply raising false contentions. The plaintiffs have been always ready and willing to perform their part of

the contract, but the defendants evaded. Therefore the suit.

3. The defendants in their written statement denied that they executed any agreement to reconvey the property to Abdul Razaak. They further

contended that the suit is barred by limitation.

4. The trial court on consideration of the evidence believed the case of the plaintiffs that the defendants executed Ex.A-1 agreement to reconvey. It

also held that the plaintiffs were ready and willing to perform their part of the contract. It further held that the suit is not barred by limitation as

contended by the defendants. On these findings the trial court decreed the suit as prayed for.

5. Now the defendants appeal and the appellate court concurred with the findings of the trial court and dismissed the appeal.

6. Now in the second appeal Mr. K. Chandramouli, learned Counsel for the appellants/defendants contends that the findings of the courts below

that Ex.A-1 was executed by the defendants and it is true and valid is erroneous. He further contends that clearly the suit is barred by limitation,

but the courts below wrongly held to the contrary.

7. As regards the first point raised by the learned Counsel a reading of the judgments shows that the trial court has considered elaborately the

evidence let in in this regard and then it has come to the conclusion that Ex.A-1 agreement to reconvey must be true. This finding has been

concurred with by the appellate court. Thus both the courts below have given a concurrent finding and that finding is a finding of fact and that

cannot be interfered with in the second appeal. The learned Counsel would however submit that the first appellate court has simply stated the

finding of the appellate court and there is absolutely no application of its mind. I do not agree. The first appellate court has stated that on

comparison of the admitted signatures of the defendants in other documents with the signatures in Ex. A-1 clearly above that the signatures in Ex.A-

1 must be that of the defendants. It has further stated that the person who has written Ex.B-1 only has written Ex.A-1 also. Therefore, there is no

substance in the submission of the learned Counsel for the appellants defendants that there was no application of mind by the appellate court on the

point in question. Hence there is no merit in the first submission raised by the learned Counsel.

8. As to the point of limitation, the reconveyance agreement Ex.A-1 is dated 1.9.1958. A reading of the agreement shows that the property was

sold by Abdul Razaak for a sum of Rs. 2,000. This property was under mortgage to one Alamelu Ammal for a sum of Rs. 1,400. The agreement

reads that the defendants should redeem the mortgage by payment of the said sum of Rs. 1,400 and take possession of the land and from that date

they would enjoy the same till 1.9.1975, and thereafter if Abdul Razaak would pay the defendants Rs. 2,000 and bring a draft sale deed they

would without hesitation come before the Registrar and execute a sale deed. Therefore it was agreed that the defendants shall be in possession and enjoyment of the property till 1.9.1975 and thereafter on payment of Rs. 2,000 to them they would execute a sale deed.

9. It is not in dispute that the relevant Article that applies to this case in the Limitation Act is Article 54, according to which the period of limitation for suit for specific performance of contract in three years and it begins from the date fixed for the performance or, if no such date is fixed, when the plaintiff had notice that performance is refused. According to Mr. Chandramouli, learned Counsel for the appellants-defendants, in this case the date is fixed for performance and therefore the limitation shall be computed from that date. But according to the Courts below no date is fixed and therefore the time will begin to run only from the date when the plaintiff has notice that performance is refused, and the plaintiff has notice of refusal of performance only on 27.6.1979 when the defendants sent a reply to the notice of the plaintiffs repudiating the plaintiffs claim.

10. Now a reading of the agreement would show that no specific date has been fixed for performance. Mr. Chandramouli would however contend that no specific date by calendar need be fixed, and it would be sufficient if a definite date can be arrived at as the date of performance of the agreement with reference to the other particulars in the agreement and on the events that are to take place as per the agreement. In this connection the learned Counsel cited a number of decisions. I agree with this submission.

11. The learned Counsel then proceeds that as per the agreement the defendants agreed to execute a sale deed after 1.9.1975 and they are bound by that and therefore 2.9.1975 must be taken to be the date of performance of the agreement. I find it difficult to agree. When the defendants agree to execute a sale deed after 1.9.1975 it cannot be taken to mean by any stretch of reasoning that 2.9.1975 must be held to be the date fixed for Performance of it within the meaning of Article 54. No particular date as any outer date for performance by the defendants is stated. It is simply stated to the effect that subsequent to 1.9.1975 the defendants should execute the sale deed. The right of the plaintiffs-purchasers for reconveyance arises only after 1.9.1975.

12. Now take the case of an agreement of a particular date wherein the seller

agrees to sell his property but no date is fixed, In such a case plainly

the second part of column.3 in Article 54 only applies, i.e. the time for limitation runs only from the date of notice that performance is refused.

When the defendants in this case have stated in the agreement that they would reconvey after 1.9.1975, the right of the plaintiff-purchasers arises

after that date i.e. from 2.9.1975 and no other date having been fixed for performance, here too, the second part of Col.3 only would apply.

13. Mr.Chandramouli would in support of his contention, rely as Ramzan Vs. Hussaini, . In that case the defendant-seller under the contract

agreed to execute a deed of sale on the day the purchaser redeemed a mortgage to which the property was subjected to. It is held that the

Limitation had started to run from the date when the mortgage was redeemed and the case was covered by the first part of coln.3 of Article 54

and not the second part. There is no difficulty to say that in that case a definite date was fixed i.e., the date of redemption of the mortgage. Hence

that decision will not be of any help to the appellants-defendants.

14. The learned Counsel relied on the decision of the Madras High Court in R. Muniswami Gounder (died) and Another Vs. B.M. Shamanna

Gouda and Others, , in which case the relevant portion of the suit agreement reads as follows:

As regards the balance of Rs. 2,400 since a suit has been pending concerning the same property, I shall receive it before the Sub-Registrar upon

executing a sale deed the moment the suit is disposed of.

It was held that the parties contemplated a date which may be ascertained with relevance to an event certain to happen and therefore part 15 of

coln.3 of Article 54 would apply. This decision also, I do not think, will be of assistance to the appellants-defendants.

15. Yet another decision cited by Mr. Chandramouli is by a single Judge of Mysore High Court in Utchegowda v. H.M. Basaviah AIR 1954 Mys.

29. In that case according to the agreement the sale had to be executed after the "Saguvali chit" was given to the defendant. The defendant got the

Saguvali chit and got possession of the property more than three years prior to the date on which the suit was filed. It was held that the suit was

barred by time and the first part of Article 113 would apply. Here clearly the parties for specific performance agreed to the happening of a certain

event, and rightly that event having happened it was held that suit filed beyond three years from the period was barred by limitation.

16. In a decision of Patna High Court in Jiut Ram and Others Vs. Jagarnath Ram and Another, , cited by Mr. V. Srinivasan, learned Counsel

appearing for the respondents-plaintiffs, as per the terms of a moshdanama deed executed on 30.7.1929 the executant agreed to reconvey

property to the plaintiffs on payment of a certain sum after expiry of 12 years but within 18 years from the date of execution. The suit was filed on

30.7.1947 for specific performance. The trial court held that the suit was premature meaning that the suit had been filed one day before 18 years.

The High Court held that;

The word "within" used in the document showed that on refusal to accept the money by the executant after the expiry of 12 years but within 6

years from the expiry thereof, the claimants, the plaintiffs in the suit for specific performance, had the right to pay off and on refusal to accept the

payment the cause of action accorded to the plaintiffs.

From the above discussions of the matter it appears to me that in the present case the limitation runs from the date when the plaintiff has notice that

performance is refused. Hence the findings of the trial court on the point of limitation is correct.

17. In the result, I find no merit in the second appeal. Accordingly it is dismissed with costs.