
(2007) 06 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 33627 of 1997

V. Pedda Subba Raju (Died) Per L.R.

APPELLANT

Vs

The Co-operative Tribunal and Others

RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:

Limitation Act, 1963 — Article 54

Citation : (2007) 5 ALD 752

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V.L.N.G.K. Murthy, for the Appellant; D.V. Seetharama Murthy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner challenges the order dated 18-10-1997 passed by the Co-operative Tribunal, Hyderabad, in CTA No. 129 of 1996. The facts, that gave rise to the filing of this writ petition, may briefly be stated as under:

The 4th respondent filed A.R.C. No. 3 of 1991 before the Co-operative Sub-Registrar-cum-Arbitrator, the 2nd respondent, against the 3rd respondent-Cooperative Housing Society (for short "the Society") and the writ petitioner, in relation to allotment of a plot of land. It was pleaded that he paid a sum of Rs. 3,760/- up to the year 1980, under various heads, such as share amount, admission fee, and earnest money, and another sum of Rs. 8,538/-, on 03-09-1980 as advance of sale consideration for the plot, that may be allotted to him. He further pleaded that the Society had issued proceedings allotting plot No. 27, out of the land in Sy. Nos. 67, 68 and 68/2, at Tirumalgiri, Secunderabad, admeasuring 333 sq. yards for a total sale consideration of Rs. 12,038/-. The extent of plot is said to have been reduced later on, to 296 sq. yards. He has also furnished the details of payments, said to have been made by him, at subsequent stages.

2. It is the case of the 4th respondent that he was employed in the State Bank of India, in the State of Karnataka, and as such, could not take necessary steps, to get the sale deed executed in his favour, immediately. He stated that he came to know about the transfer of plot No. 27, in favour of the writ petitioner, a non-member, and accordingly prayed for the relief of declaration that the sale deed, in favour of the petitioner is illegal, and for a decree of specific performance against the Society, directing transfer of the plot No. 27 in his favour. Other ancillary reliefs were also prayed for.

3. At a later stage, the petitioner filed an application to amend the petition, and for deleting the para 11 thereof. The application was dismissed by the 2nd respondent, on 24-09-1991. Thereupon, he filed C.T.A. No. 3 of 1991.

4. On account of uncertainty of constitution of the Tribunal, u/s 76, the matter landed before this Court, in the form of W.P. No. 454 of 1994. The writ petition was allowed, permitting amendment of the petition in certain aspects. At the instance of the petitioner, the 2nd respondent framed a preliminary issue in the ARC, touching on the question of limitation, as directed by this Court, in its order in W.P. No. 454 of 1994. The 2nd respondent upheld the plea raised by the petitioner on the question of limitation, and through order, dated 24-01-1996, it dismissed the ARC itself. Aggrieved thereby, the 4th respondent filed CTA No. 129 of 1996 before the Cooperative Tribunal. The CTA was allowed and the Tribunal directed the 2nd respondent, to dispose of the ARC on merits.

5. Hence, the writ petition.

6. The petitioner contends that there is a clear admission on the part of the 4th respondent as to his knowledge about the transfer of the plot in favour of the petitioner, and in that view of the matter, the ARC is barred by limitation. The writ petition is mainly opposed by the 4th respondent. He filed a counter affidavit, controverting the contentions advanced on behalf of the petitioner.

7. Sri V.L.N.G.K. Murthy, learned Counsel for the petitioner submits that the ARC filed by the 4th respondent is comparable to a suit, and that the principles of limitation, contained in the Limitation Act, apply to these proceedings also. He submits that by transferring plot No. 27, in favour of the writ petitioner, the Society clearly manifested its intention to decline the transfer of the plot in favour of the 4th respondent. Learned Counsel points out that the 4th respondent did have the knowledge of these developments, as was pleaded by him, in para 11 of the petition, and the deletion of that paragraph by way of amendment, cannot wipe away the legal consequences, that flow from the knowledge of the refusal. By placing reliance upon certain precedents, learned Counsel submits that refusal is an important element, under Article 54 of Schedule to the Limitation Act, vis-vis the specific performance of an agreement of sale, and claim is clearly barred by limitation. He contends that the Tribunal did not approach the matter from the correct perspective.

8. Sri D.V. Seetharama Murthy, learned Counsel for the 4th respondent submits

that when the specific case of the 3rd respondent-society is that there was no allotment in favour of his client at all, the question of there being a refusal, express or implied, to perform its obligation, does not arise. He contends that since the plea of limitation, if accepted, would wipe away the accrued rights to an individual; the finding thereon must be clear, specific, and strictly in accordance with the relevant provisions. He points out that even assuming that para 11 of the petition was not deleted by way of amendment, it cannot have any bearing upon the plea of limitation, since what is material is, the date of refusal, and not the knowledge about the sale of the plot, in favour of a third party.

9. An ARC, comparable to a suit for specific performance and other ancillary reliefs, filed by the 4th respondent, before the 2nd respondent was rejected, while answering a preliminary issue. The 2nd respondent proceeded to discuss the question of limitation as a preliminary issue, as though such a course is directed by this Court, while disposing of W.P. No. 454 of 1994.

10. The circumstances that led to the filing of the ARC, and the manner in which the application filed by the 4th respondent for amendment of the petition; have already been narrated.

11. In the petition, as originally filed, the 4th respondent prayed for the following reliefs:

- i) To declare the act of registering the plot No. 27 (originally allotted to the petitioner) to the 2nd respondent as illegal.
- ii) To annul the registration and declare it as void.
- iii) To direct the 1st respondent, the vendor, society to register the plot No. 27 in favour of the petitioner.
- iv) To grant an injunction restraining the 2nd respondent not to construct any building and alienate the vacant site in plot No. 27 of the said society to others.

12. In the course of narration, he made a reference to his knowledge about the sale of plot No. 27 in favour of the petitioner. Obviously, on being advised that in a suit for specific performance of an agreement of sale, it is not necessary to seek the relief of cancellation or annulment of a sale, in favour of a third party, he filed an application to amend the petition. When the application was rejected by the 2nd respondent, he approached this Court by filing W.P. No. 454 of 1994. The second limb of the original prayer viz., to annul the registration, and declare it as void; was permitted to be deleted.

13. Similarly para 11 of the petition was omitted. During the course of discussion, this Court observed as under:

...Further Mr. Rama Raju apprehends that by allowing the amendment petition, it will be deemed that the initiation of arbitration proceedings are within limitation automatically. To allay the fears of Mr. Rama Raju, I make it clear that if the 4th respondent (petitioner herein) raised the plea of limitation in the counter affidavit

or in the written statement, the same shall be tried as a contentious issue and a decision will be given on that issue....

14. After this Court passed the order, referred to above, the petitioner filed a written statement, raising inter alia, the plea of limitation. The 2nd respondent, however, took up the issue, relating to limitation alone, as a preliminary issue, and dismissed the ARC by answering the same against the 4th respondent. No other issue was framed, much less answered. It hardly needs any emphasis that it is only an issue, which presents a pure question of law, that can be framed as preliminary issue, and be decided.

15. Order 14 of C.P.C. is clear on this aspect. It is equally settled that the limitation is a mixed question of fact and law, and recording of evidence is necessary for deciding the questions of this nature. An important aspect of the matter is, that, this Court did not direct the 2nd respondent to treat the question of limitation as the only point of controversy, or as a preliminary issue. The direction that it must be treated as a "contentious issue", appears to have been misread by the 2nd respondent. The result is that, a petition, which is comparable to a suit for specific performance, was decided without delving into the merits.

16. Now it needs to be seen as to whether the finding recorded by the 2nd respondent on the question of limitation, which in turn was reversed by the Tribunal; is correct. There is no dispute that petitions filed u/s 61 of that Act are equivalent to suits, and the law of limitation applies to them.

17. For all practical purposes, the petition filed by the 4th respondent is a suit for specific performance of contract. The relief of declaration, that the sale deed executed by the Society, in favour of the writ petitioner, is null and void, it is almost superfluous. The reason is that, in a suit for specific performance of an agreement of sale, it is not necessary to seek a declaration, as regards, or annulment of, a transaction, which has taken place, subsequent to the agreement. The plaintiff in such a suit would not be bound by the subsequent transactions, and the inclusion of the beneficiaries thereof, as parties to the suit, is only to ensure that a complete and perfect transfer takes place, in the event of a suit for specific performance being granted. Therefore, the question of limitation must be examined only with reference to the relief of specific performance, and not any other subsidiary or secondary relief.

18. It is obvious that Article 54 of the Limitation Act gets attracted to the present case. It reads as under:

	Description of suit	Period of Limitation	Time from which period begins to run
--	---------------------	----------------------	--------------------------------------

	For specific	Three years	The date fixed for the performance, performance of a or if no such date is fixed, when the contract plaintiff has notice that performance is refused.
--	--------------	-------------	---

17. The starting point for limitation under this Article is the date, if any, agreed to by the parties for performance of the agreement, or the notice of refusal by the promisor. In the first place, limitation starts from the date, if any, fixed by the parties for performance of the contract. In the absence of such a date, it would run from the date on which the plaintiff had the notice of refusal on the part of the defendant, to perform the contract.

18. Admittedly, no date was agreed to, by the 4th respondent and the 2nd respondent. In fact, the Society is said to have feigned ignorance about the allotment in favour of the 4th respondent, and of any obligation, on its part, in this regard.

19. The second limb of the Article has two facets: the first is that there must be refusal, or disinclination on the part of the defendant to discharge his obligation, and the second is the notice thereof, to the plaintiff. The mere fact that the defendant entertained the idea of refusing to abide by the terms of contract, or to rescind from it; does not entail in starting of limitation.

20. Such an idea must be made manifest, and thereafter, it must be noticed by the plaintiff. In certain cases, these two may take place at one and the same time, and in other cases, there may be intervention of time. Another aspect to be taken note of, is, that an occasion to refuse to do something by an individual would arise, only when he otherwise recognizes, acknowledges or acquiesces in any obligation towards another. If he never felt the obligation or duty towards others, there would not be any occasion for him to refuse to abide by the same. Therefore, before refusal, on the part of an individual is discerned, it must be examined, whether such an individual recognized, acknowledged or acquiesced in any duty towards others. If, from the conduct or acts and omissions of an individual, it can be shown that he never reeled under the impression that he owes an obligation towards others, such person cannot be heard to say, that he refused to discharge an obligation and to take a plea, based on such illusive refusal.

21. The refusal on the part of a defendant, wherever exists, can be express or can be gathered from surrounding circumstances. In *Manick Lal Seal and Another Vs. K.P. Chowdhury*, the Calcutta High Court held that the notice of refusal need not be the direct perception of the plaintiff, and it can be inferred from the facts and circumstances of the case. The sale of item of property, in favour of a person, other than the one, to whom it is agreed to be sold, was treated as a refusal on the part of the defendant, in the context of law of limitation.

22. See *Shrikrishna Keshav Kulkarni and Others Vs. Balaji Ganesh Kulkarni and Others*, and *Manjural Haque v. Mewajan Bibi* 1956 Calcutta 350. To the same effect is the judgment of the then Sourashtra High Court in *Purshottam v. Kunverji Devji* AIR 1954 Sou 104.

23. In the instant case, the 4th respondent claimed the relief of specific performance of the contract against the society.

24. He pleaded that he was allotted plot No. 27 by the society and that almost the entire consideration was paid therefor. The 4th respondent examined himself as PW-1 and filed as many as 26 documents, marked as Exs. P-1 to P-26. The burden to prove that the Society had entertained the idea of refusing to perform its part of the contract, or that the 4th respondent had the knowledge of such a refusal, is squarely upon the Society.

25. The record does not disclose that the Society recognized its obligation towards the 4th respondent, but refused to discharge. When this basic fact is conspicuous by its absence, the question of the 4th respondent having knowledge of refusal does not arise.

26. The matter deserves to be examined from another angle. In case the 4th respondent is able to prove that there was a valid allotment in his favour, by the Society, grant of the consequential relief to him, need not necessarily entail in cancellation of the sale deed executed in favour of the writ petitioner. The relief of specific performance claimed by a member of a Housing Society stands slightly on a different footing, from the one, which is claimed against a private individual. The relief that may be granted to such member need not be in relation to any specific plot. Instances are not lacking, where the aggrieved member, though allotted a plot at an initial stage, is ultimately conveyed a different one, depending on the availability, or is compensated in other forms. These are all matters, which need to be examined in detail, with reference to the pleadings of the parties, the evidence, that may be adduced by them and the relevant provision of law. The proceedings instituted u/s 61 of the Act, are some-what wider in scope, and the strict Rules, governing the grant or denial of the relief under the Specific Relief Act, need to be relaxed, in such a way, that they do not stand in the way of granting a just and proper relief, which the facts of the case may warrant.

27. The Tribunal had examined the issue and the controversy from the proper perspective and had directed the Deputy Commissioner to examine the matter on merits. This Court does not find any basis to interfere with the same. The writ petition is accordingly dismissed. There shall be no order as to costs.