

(2007) 08 MP CK 0005

In the Madhya Pradesh High Court

Case No : First Appeal No. 142 of 2005

Van Vibhag Karmchari Griha Nirman Sahakari Sanstha
Maryadit, Indore

APPELLANT

Vs

Rameshchandra Hardiya and Others

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1963 — Section 14

Citation : (2008) 1 MPLJ 119

Hon'ble Judges : S.K. Seth, J; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : G.M. Chaphekar, with Dilip Kshirsagar, for the Appellant; M.L. Agrawal, with Mukesh Tare and B.L. Pavecha, with Akshat Pahadia, A.M. Mathur, with Atul Gupta, for the Respondent

Judgement

S.K. Kulshrestha, J.

This appeal is directed against the order dated 23rd August, 2004, passed by the XIX Additional District Judge, Indore, in Civil Suit No. 6-A/2003, by which the application of the Appellant u/s 14 of the Limitation Act, has been dismissed.

The case has a chequered history. On 20-3-1974, an agreement was entered into by the Appellant and the Respondent No. 1 for sale of land, admeasuring 2.039 hectares (5 acres) in village Chitawad, for consideration at the rate of Rs. 2,00,000/-, per hectare. In pursuance of the said agreement, payment was made by the Appellant- Society in instalments commencing from 22-3-1982 to 28-8-1984 and, thus, a total amount of Rs. 3,20,000/- was paid. However, on 3-2-1991, a publication in the Newspaper appeared to the effect that the said land was being sold to a third party. It was in this context that a suit was filed on 11-2-1991 for declaration of title and injunction before the Civil Judge, Class II, Indore. The case was pursued upto 16-12-2002, but on realisation that suit for declaration of title and injunction simpliciter was not maintainable in respect of

the breach of the contract requiring specific performance, an application under Order 6 Rule 17 of the Code of Civil Procedure, was filed on 16-12-2002. This application was allowed by the learned Civil Judge, by order dated 10-3-2003 and since the learned Civil Judge ceased to have jurisdiction on account of the amendment of the plaint, he directed return of the plaint for being presented to the Court having jurisdiction.

The Respondents resisted the proposed amendment and after the amendment was accepted, a review application was filed against the same, but it was dismissed by order dated 23-6-2003. Accordingly, the plaint was returned and it was presented to the Court having jurisdiction on 25-6-2003 along with an application u/s 14 of the Limitation Act, seeking exclusion of the period from 11-2-1991 to 23-6-2003. Since the said claim was based on account of the proceedings of the Court of Civil Judge, Class II, and no evidence was required to be adduced, the Court tried the said issue as a preliminary issue and dismissed the suit on the ground of limitation. It is against this order that the present appeal has been filed.

Learned Counsel for the Appellant submits that once the order was passed on 10-3-2003 allowing the amendment, it was incumbent upon the Respondents (Defendants) to challenge that order and the Defendants having not done so, it was not permissible to them to object to the time being excluded from 11-2-1991 to the date of the return of the plaint for presentation to the proper Court. Learned Counsel for the Respondents, however, submits that the only remedy that was available against the order dated 10-3-2003 was to seek review and since application for review was also rejected by the learned Civil Judge, no further remedy was available and they were not precluded from raising this objection before the learned Addl. District Judge.

Learned Counsel for the Respondent has invited attention to the decision of the Supreme Court in K. Raheja Constructions Ltd. Vs. Alliance Ministries and others, to the effect that where a suit is filed for relief of permanent injunction restraining the Respondents from alienating, encumbering, selling, disposing of, or in any way dealing with the property, subsequent amendment of plaint for seeking relief of specific performance of contract could not be allowed as the Plaintiffs had divesting themselves of the relief for specific performance which could not have been added after a lapse of seven years, being barred by limitation. Attention has been drawn to the following passage from the said report:-

The Petitioners having expressly admitted that the Respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years elapsed from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the ground set out, would defeat the valuable right of limitation accrued to the Respondent.

It is trite that against the breach of the contract it was necessary for the person aggrieved to seek specific performance and since the present Appellant had instituted a suit only for declaration of title and perpetual injunction, the Appellant ought not to have been allowed to make an amendment under Order 6 Rule 17, to incorporate the relief of specific performance. In a similar case, in Tarlok Singh Vs. Vijay Kumar Sabharwal, , it was held that even in the case of such amendment, the limitation will commence from the date of the suit and not from the date the amendment was permitted. Since the suit was filed after three years, it was clearly barred by limitation. We may refer to the following passage containing the law laid down by the Apex Court:-

We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from April 6, 1986. Suit merely for injunction laid on December 23, 1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order 6, Rule 17, CPC on September 12, 1979. It will operate only on the application being ordered. Since the amendment was ordered on August 25, 1989 the crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation.

From the above narration of facts, based on record, it is manifest that the suit was filed by the present Appellant on 11-2-1991 and it was only after several years that the amendment was sought by application dated 16-12-2002, to incorporate the relief of specific performance, which was allowed on 10-3-2003. Since relief of specific performance can be claimed only within a period of three years from the date of the cause of action, in any case, the amendment to seek the relief of specific performance was not within limitation. Under these circumstances, we are of the considered view that the trial Court did not commit any illegality in not allowing the application of the Appellant, u/s 14 of the Limitation Act, and treating the suit as barred by limitation.

However, we may now advert to the other facets of the case. In T.L. Muddukrishanan and another Vs. Smt. Lalitha Ramchandra Rao, , it was held that an amendment under Or. 6, R. 17 of the CPC Code, after the expiry of the period, to seek specific performance of the contract, would be barred by limitation, but on concession of the counsel to refund the amount together with interest, the Court directed that the entire amount, with interest, as stipulated in the contract, be paid to the Plaintiff within six months from the date of the order. Mr. M. L. Agrawal, learned sr. counsel, in view of the fact that the Appellant has paid Rs. 3,20,000/-, has proposed to refund the said amount together with compound interest. Instead of getting into the question of calculation, he has agreed to pay a sum of Rs. 30,00,000/- (Rs. Thirty Lacs only) to the Appellant towards refund of the amount paid by the Appellant as also the interest thereon.

We, therefore, direct Respondents No. 2, 3 and 4, namely; Rameshchandra S/o

Manakchandji Mangal; Rajesh Kumar S/o Rameshchandra Mangal and Kusumlata Garg W/o Dineshchandra Garg, to deposit the amount of Rs. 30,00,000/- (Rs. Thirty Lacs only) in the Court of the 19th Additional District Judge, Indore, within (three) months from today, under intimation to the Appellant - Society. The Society, through its authorised Office bearer or representative shall be entitled to withdraw this amount, after its deposit. If the amount aforesaid is not deposited within 3 months, the amount shall carry interest at the rate of eighteen per cent per annum. The appeal is thus disposed of with aforesaid direction to the Respondents to deposit the amount to be paid to the Appellant. There shall be no order as to the costs.

Order accordingly.