
(1984) 05 AHC CK 0027
In the Allahabad High Court
Case No : Second Appeal No. 2714 of 1979

Ved Prakash Gupta

APPELLANT

Vs

Shishu Pal Singh

RESPONDENT

Date of Decision : 14-05-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 99
Contract Act, 1872 — Section 55, 56
Uttar Pradesh Ceiling on Property (Temporary Restrictions on Transfer) Act, 1972 —
Section 3, 4

Citation : AIR 1984 All 288

Hon'ble Judges : Gopi Nath, J

Bench : Single Bench

Advocate : V. Sahai and B. Dayal, for the Appellant; N.C. Ragvanshi, for the Respondent

Final Decision : Dismissed

Judgement

Gopi Nath, J.—This is a defendant's appeal arising out of a suit for specific performance of contract of sale of house no. 6/2, Race Course Colony, Bulandshahr. One Sri P.N. Taneja was the owner of the house. The plaintiff was its tenant. The plaintiff wanted to purchase the house. Before the deal could be completed the defendant offered a higher price to Sri Taneja and the house was sold to him. The defendant thus became the landlord of the plaintiff in respect of the house in suit. The defendant filed a suit No. 318 of 1968 in the court of 1st Munsif, Bulandshahr for the ejectment of the defendant. During the pendency of the suit the parties entered into a compromise under which Ved Prakash the plaintiff of suit No. 313 of 1968 and the defendant appellant in the instant appeal agreed to sell the house in question to Sri Shishu Pal Singh, the plaintiff-respondent for a sum of Rs. 15,900/- This agreement was dt. 23-7-1970 A sum of Rs. 1,000/- was paid in advance. The sale deed was to be executed by 31-12-1971. The parties, however, entered into another agreement dt. 23-3-1971 whereunder the sale-consideration was raised by Rs. 1,000/- and the

sale-deed was to be executed by 5-4-1972. On 6-4-1972 a third agreement was entered into between the parties under which the sale consideration was raised to Rs. 19,000/- and the sale-deed was to be executed by 31-3-1973. On 6-4-1972 the plaintiff-respondent paid a further sum of Rs. 5,000/- to the defendant-appellant. The balance of Rs. 13,000/- was to be paid at the time of the execution of the sale-deed. In the meantime the U. P. Ceiling on Property (Temporary Restrictions on Transfer) Ordinance No. 15 of 1972 came into force which restricted transfers of agricultural land and urban properties for a temporary period. Subsection (4) of Section 3 of the Ordinance provided for the, relaxation of the restriction. This Ordinance came into force on 11th July, 1972. The Ordinance was substituted by U. P. Act No. 36 of 1972 (The) Uttar Pradesh Ceiling on Property (Temporary Restrictions on Transfer) Act, 1972. This Act came into force on 11th Sept., 1972. Section 3 of the Act provided that during a period of three months from July 12, 1972, no person shall, save as expressly provided in Sub-sections (3) and (4), transfer any urban property or agricultural land. Sub-section (4) of Section 3 provided that the State Government may, by general or special order and for reasons to be recorded exempt any urban property or agricultural land from the provisions of this Act.....".

2. Thereafter (The) Uttar Pradesh Ceiling on Property (Temporary Restriction on Transfer) Amendment Act (U. P. Act No. 45 of 1972) extended the restriction till 31-1-1973. Under the various legislations that followed, the position ensuring as regards the present contract was that the sale deed could be executed with the permission of the competent authority nominated in that behalf. The defendant-appellant, however, did not obtain the permission in spite of the plaintiff's repeated requests in that regard, and the sale-deed was not executed as undertaken by him. The plaintiff then gave notice to the defendant which was returned by him. The plaintiff thereafter filed the suit giving rise to this appeal on the allegations that the defendant, under the agreements executed by him, was bound to execute the sale-deed of the house in question in favour of the plaintiff; that the plaintiff was and has ever been ready and willing to perform his part of the contract; that the plaintiff had actually gone to the Sub-Registrar's office with the balance amount of the sale consideration after informing the defendant but could not obtain the sale-deed in his favour due to the defendant's failure to appear before the Sub-Registrar and that plaintiff thereafter gave two notices to the defendant to fulfill his promise and to execute the sale-deed but they were returned by him, hence the suit. The plaintiff further pleaded that he was ready to pay the registration charges and the stamp duty payable on the deed till 31-3-1973 but the enhanced charges after that date, i.e. after 31-3-1973, were to be borne by the defendant.

3. The defendant-appellant admitted the execution of the agreements as alleged by the plaintiff but pleaded that the plaintiff did not possess sufficient means to purchase the property and hence he did not obtain the sale-deed in his favour, that the defendant was not affected by the various legislations imposing restriction on the transfer of urban property as the value of the property

possessed by him fell short of the value covered by those legislations; that there was no restriction on the transfer of urban property at the time the first agreement was executed, and the plaintiff could have obtained the sale-deed in his favour within the time stipulated therein but he was not ready and willing to perform his part of the contract and hence the sale-deed could not be executed in his favour; that the plaintiff obtained further extension of time under the subsequent agreements, during which time, restrictions were imposed on the transfer of urban property but the transfer could be made with the permission of the competent authority appointed in that behalf, and the plaintiff had to obtain the permission, that the failure of the plaintiff to obtain the sale-deed in his favour by 31-3-1973 results in the forfeiture of the earnest money deposited by him, and Suit No. 318 of 1960 was to stand decreed under the terms of the agreement; the fault thus lay with the plaintiff in not obtaining the sale-deed, in his favour within the stipulated time, and the suit accordingly was liable to be dismissed. The defendant denied his liability to pay the stamp duty and the registration charges.

4. The trial court decreed the suit on the findings that the agreements alleged to have been entered into between the parties were admitted to the defendants that under the last agreement the sale-deed was to be executed by 31-3-1973; that by Ordinance No. 15 of 1972 Followed by Act No. 36 of 1972 and its subsequent amendments thereafter, restriction had been imposed on the transfer of urban property which applied to the defendant but the same was relaxable, and the transfer could be made by the permission of the competent authority; that the defendant had to obtain the necessary permission for the transfer; that the defendant had not taken any step to obtain the same which he was under a duty to do; that the plaintiff-respondent had throughout been asking the defendant-appellant to obtain the necessary permission and to execute the sale-deed in his favour; that he had gone to the Sub-Registrar's office with the balance amount of the sale consideration but the defendant failed to appear there; that he was and had ever been ready and willing to perform his part of the contract; that the defendant illegally refrained from executing the sale-deed in favour of the plaintiff; and that the plaintiff in the circumstances was entitled to obtain a decree for specific performance of the contract in his favour by payment of Rs. 13,000 to the defendant towards the sale consideration of the property in suit. The Court further held that the plaintiff was liable to pay the enhanced registration charges and the stamp duty on the sale-deed and the defendant was not liable to pay the same. The judgment was dt. 14-2-1978. The decree was prepared and signed on 8-3-1978. In the decree it was, by mistake, mentioned that the liability to bear the registration charges and the stamp duty was on the defendant. The defendant got the decree corrected. The application to that effect was allowed on 22-4-1978. The defendant-appellant applied for a copy of the judgment and decree on 4-4-1978, i.e. after the expiry of a period of thirty days from the date of the judgment. True copies of the judgment and decree were ready and were delivered to the defendant on 14-4-1978. The copy of the

amended decree was applied for on 25-4-1978. It was prepared and delivered to the appellant on 27-4-1978. The appeal was filed on 3-5-1978. An objection was raised on behalf of the plaintiff-respondent that the appeal was barred by time. The defendant-appellant claimed that the time commenced to run from the date, the decree was amended on 22-4-1978 and the appeal having been filed within a period of thirty days from that date, it was within time.

5. The amendment was sought and granted in respect of the payment of registration charges and stamp duty. No amendment was either sought or granted in respect of the decree for specific performance of the contract. The appeal was filed against that decree. Although the appeal was filed beyond a period of thirty days from the date of the judgment dt. 14-2-1978, no application u/s 5 of the Limitation Act was moved for the condonation of the delay. The court below held that the appeal was barred by time as the amendment in the decree did not relate to the decree for specific performance of the contract. It related to an ancillary matter i.e. the stamp duty and the registration charges. The appeal thus did not relate to that part of the decree which had been amended. The appellant thus could not derive any benefit from the amendment of the decree for the purposes of limitation for filing the appeal. Court below further repelled the appellant's contention that the suit having been valued at Rs. 19,000 the inclusion of stamp duty and registration charges in the decree increased its value for purposes of appeal to an amount exceeding Rs. 20,000 making the decree appealable to the High Court within ninety days and the appeal thus filed after the amendment of decree could be treated as filed within time. It held that the valuation for the purposes of appeal was only Rs. 19,000 and any wrong impression in that regard did not entitle the appellant to claim that the appeal had been filed within time.

6. An oral request made to condone the delay was refused on the ground that the delay was of 140 days, and the appellant was clearly guilty of negligence and had not furnished sufficient explanation for condoning the delay. It observed that apart from other circumstances the appellant had not explained the delay from 27-4-1978 to 3-5-1978 i.e. the date when the copy of the amended decree was delivered and the date when the appeal was filed.

7. The appeal was however heard on merits as well and the court below considered the arguments advanced by the appellant. Only one point was argued before the court below. It was urged that the sale-deed could not be executed on account of the restriction imposed on the transfer of urban property and the necessary permission having not been obtained by the plaintiff-respondent from the competent authority, the defendant-appellant could not be held responsible for not executing the sale-deed. It was further submitted that the agreement had become void as it had become impossible of performance, The court below found no merit in the contentions raised and dismissed the appeal on merits. It held that it was the duty of the defendant-appellant to obtain the necessary permission from the competent authority before 31-3-1973, the date by which,

the sale-deed had to be executed, and he could not take advantage of any self-induced frustration. It observed that "the learned counsel for the appellant did not argue about the facts or oral or documentary evidence on record on the basis of which learned trial Court had held that Ved Prakash Gupta, the defendant-appellant had not performed his part of the agreement to sell, and did not deliberately execute the sale-deed."

8. Aggrieved, the defendant has come up in second appeal.

9. Learned counsel for the appellant raised the following points:

(i) That the appeal filed was within time.

(ii) That the delay in the filing of the appeal if any, deserved to be condoned.

(iii) That time was of the essence of the contract, and after the expiry of the period prescribed for the performance of the contract, it could not be enforced.

(iv) That the contract became impossible of performance on account of the restriction imposed on the transfer of urban property, The contract accordingly was frustrated.

(v) That the plaintiff was not ready and willing to perform his part of the contract and he could accordingly not obtain the specific performance of the same.

I shall deal with these points seriatim.

10. Learned counsel for the appellant submitted that the limitation for filing the appeal commenced from the date of the amended decree. The amendment took place on 22-4-1978. The copy was applied for on 25-4-1978, and the appeal was filed on 3-5-1978. The appeal was accordingly within time. Reliance was placed on *Amar Chandra Kundu v. Asad Ali Khan* ILR (1905) Cal 908 Mt. *Gopi Bibi Vs. Chanu Prasad Singh and Others*, ; *Soudamini Das Vs. Nabalak Mia Bhuiya and Others*, ; and *Krishna Chandra Singh v. Director General* 1982 All CJ 69. These cases do not support the contention of the appellant. They, on the other hand, lay down that every amendment in the decree does not give a fresh starting point of limitation for filing an appeal. Learned counsel further invited my attention to *Udayac Ghinubhai v. R.C. Bali* AIR 1977 SC 2319 to contend that in view of the observations made therein, the appeal was within time. That case dealt with a conditional decree, and was concerned with the question of exclusion of the time taken in obtaining the copy of such a decree in computing the period of limitation for filing an appeal. It was observed that a judgment which is unconditioned by the requirement of any action by a party stands on a different footing and in that event the date of the judgment will necessarily be the date of the decree. In such a case, a party cannot take advantage of any ministerial delay in preparing the decree prior to his application for a copy. The instant was not a case of conditional decree, and the date of judgment would be the date of decree, and since an appeal could be filed from the judgment and decree passed for specific performance of the contract, the case of *Udayan Chinubhai* AIR 1977

SC 2319 (Supra) has no application in the instant case.

11. The amendment in the instant case did not relate to the decree for specific performance of the contract. It related to the question of the payment of enhanced registration charges and stamp duty. The appeal did not relate to registration charges and stamp duty. It was directed against the decree for specific performance of the contract. Such an appeal could be filed even from the original decree which remained unaffected by the amendment made in the decree. The judgment itself was in favour of the defendant-appellant on the question of the payment of registration charges and stamp duty. The amendment in the decree had the effect of only making the decree consistent with the judgment as regards the payment of registration charges and stamp duty. Such an amendment did not enlarge the period of limitation or give a fresh starting point of limitation for the filing of the appeal. It is admitted that the appeal was filed beyond the period of limitation from the date of the judgment and the original decree. The appeal was accordingly clearly barred by time. See *Gajadhar Singh Vs. Basanti Lal and Others*, : *Gulab v. Janki Kuer* AIR 1920 Pat 622 (FB); *Mohammad Yasin Khan v. Mt. Hansa Bibi* AIR 1935 Oudh 461 ; *Tincowri Haldar Vs. Nanigopal Mondal and Others*, ; and *Harvilas Gajadhar Prasad Vs. Kanhaiyalal Pannalal and Others*, , *Thanuvan Appukuttan Vs. P.N. Gopala Pillai and Another*, .

12. Learned counsel then submitted that the registration charges and the stamp duty related to the claim for specific performance and an issue was raised on that point, hence he could calculate the period of limitation from the date of the amended decree. The question for consideration, however, was whether the appeal filed against the decree for specific performance was within time. No amendment was made in that part of the decree. The time for filing the appeal against it accordingly commenced from the date of the decree prior to its amendment.

13. Learned counsel then submitted that until the decree had been amended, the appeal would have laid to the High Court within 90 days of the date of the decree as the valuation of the appeal had exceeded a sum of Rs. 20,000/- by the addition of the registration charges and the stamp duty, and the limitation of 30 days became applicable only after the decree had been amended on 22-4-1978. This is how the counsel had advised the appellant in the matter. This argument pertains to the question of condonation of delay rather than the commencement of time for the filing of appeal. Since the appeal had been argued on merits in the court below as also in this Court, the question of condonation of delay need not be considered at length. The valuation of the suit was Rs. 19,000/-. The forum of appeal accordingly was not the High Court, and the limitation for the filing of the appeal was only a period of thirty days.

14. The learned counsel submitted that the delay if any in riling the appeal deserved to be condoned as it occurred on the wrong advice of the counsel. Reliance was placed on the *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, and *Rafiq and Another Vs. Munshilal and*

Another, and it was submitted that a litigant should not suffer on account of the negligence or wrong advice of a counsel. The question is only academic in the instant case. The appeal was argued on merits in the court below. The learned Judge considered the arguments on merits in detail and thereafter dismissed the appeal. In this Court also, learned counsel for the appellant advanced arguments on merits at great length and since I shall consider them, it is not necessary to consider the question of condonation of delay at length. Suffice it to say that the appellant before the court below was all the time contending that the appeal was within time. The court below observed that no application u/s 5 of the Limitation Act for condonation of delay had been moved. Only an oral prayer was made to condone the delay. The court below did not find the cause shown as sufficient and rejected the prayer. It is needless to enter into this controversy as the appeal is being considered on merits.

15. Learned counsel contended that time was of the essence of the contract and it stood discharged after 31-3-1973. Mere fixation of a period for performance of a contract does not make the stipulation as to time an essence of the contract. See *Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and Another*, . The case is apposite to the instant case and the facts are very similar. It was held in *Govind Prasad*'s case "that when a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract". This normal presumption has to be displaced by strong circumstances which should be clearly established. See also *Govind Lal Chawla Vs. C.K. Sharma and Others*, . In the instant case it was not even pleaded that time was the essence of the contract. No issue was framed on that point nor was any evidence led or argument advanced either before the trial court or before the first appellate court on this question. The normal presumption thus was not displaced when the appellant himself took no exception to it. In very similar circumstances the Supreme Court in the case of *Govind Prasad (Supra)* held that "the High Court was in error in allowing the respondent to raise this question in the absence of specific pleadings or an issue....." I do not find any sufficient reason to hold that time was the essence of the contract. The appellant laid no factual foundation for the same nor does the material on the record justify it. The submission made that the contract stood discharged by lapse of time has thus no substance.

16. Learned counsel next contended that the contract stood discharged by frustration. The sale being barred by the restriction imposed on the transfer of urban property by various legislations commencing from Ordinance No. 15 of 1972. Reliance was placed In this regard on *Nand Kishore Saraf Vs. State of Rajasthan and Another*, IN THE SUPREME COURT OF INDIA 1523) and *C. Ramaiah Vs. Mohammadunnisa Begum*, . The restriction imposed on the transfer of Urban property under the various legislations was for a temporary period. The restriction was relaxable and transfers were made permissible with the sanction of the competent authority. The vendor had to obtain the necessary permission. See *Nanak Chand Vs. Chandra Kishore Aggarwal and Others*, , *Mrs. Chandnee*

Widya Vati Madden Vs. Dr. C.L. Katial and Others, and AIR 1930 287 (Privy Council) . The respondent had been repeatedly asking the defendant-appellant to obtain the permission for transfer. The courts below held that the defendant-appellant never took any steps to obtain the necessary permission. If the necessary permission had been obtained by the defendant-appellant the sale deed could have been executed within the time specified. There was no absolute bar to a transfer during the period stipulated in the last agreement between the parties.

17. In Boothalinga Agencies Vs. V.T.C. Poriaswami Nadar, it was held that the doctrine of Frustration does not apply to a self induced frustration. The defendant-appellant having chosen not to obtain the necessary permission during the period within which he was under an obligation to perform the contract he could not invoke the doctrine of frustration in his favour. In Mugneeram Bangur and Co. Vs. Sardar Gurbachan Singh, the contract was not found to be discharged and it was held that "if the performance of the contract is rendered unlawful either for a determinate period of time or for an indeterminate period of time the contract would not stand discharged unless the ban on its performance existed on the day or during the time in which it has to be performed. I have already held that time was not of the essence of the contract and the restriction on transfer was only temporary. There was no absolute ban on the performance of the contract miring the period 1-1-1973 to 31-3-1973. The transfer could be made with the permission of the competent authority. The contract in the circumstances did not stand discharged.

18. Learned counsel for the appellant then urged that on the imposition of the restriction on the transfer of Urban property, the contract became void and hence its performance could not be obtained. This argument did not find favour in the case of Mugneeram Bangur & Co. (supra). In the instant case what was rendered void was a transfer without the permission of the competent authority. The ban was only for a temporary period and even during that period the transfer could be made with the permission of the competent authority. The agreement accordingly was capable of performance with the necessary permission. The case of Satyabrata Ghose Vs. Mugneeram Bangur and Co. and Another, on which reliance had been placed was concerned with the effect of requisitioning orders issued by the Government in respect of lands covered by agreements of sale executed in that behalf. The Supreme Court held that taking into account the nature of contracts the temporary period for which the requisition had been made and there being no time limit within which the contract had to be performed the contract was not discharged by frustration. The case of Satyabrata Ghose v. Mugneeram Bangur & Co. (supra) accordingly does not assist the appellant.

19. Learned counsel then contended that the suit was liable to be dismissed on the ground that there was no averment in the plaint that the plaintiff was and had ever been ready and willing to perform his part of the contract. Para 10 of

the plaint clearly states that the plaintiff was and has ever been ready and willing to perform his part of the contract. The trial court after considering the evidence on record recorded a clear finding that the plaintiff was and has ever been ready and willing to perform his part of the contract. No exception was taken to that finding before the lower appellate court. Further the material on record does not suggest that the plaintiff was not and had not been ready and willing to perform his part of the contract. The contention accordingly lacks force and is rejected.

20. The appeal fails and is dismissed with costs.