

(2019) 02 CHH CK 0066
In the Chhattisgarh High Court
Case No : First Appeal No. 133 Of 2003

Yashoda Bai Rajak And Ors	Vs	APPELLANT
Saraswati Gupta And Ors		RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:

Citation : (2019) 02 CHH CK 0066

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Rishi Rahul Soni

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred against judgment and decree dated 25.02.2003 passed by First Additional District Judge, Bilaspur (CG) in a Civil Suit

No.8A/2001 wherein the said Court dismissed the suit filed by the appellants for specific performance of contract dated 18.9.1996.

2. The appellants preferred civil suit for specific performance of contract for sale of land bearing Survey No.22/4 area 0.30 acre situated at village

Darrighat, Distt. Bilaspur. As per the pleading the land was owned by one Shyam Manohar Gupta who was the ancestor of the respondents and

husband of appellant No.1 namely Jhaman Rajak entered into agreement with Shyam Manohar Gupta for sale of said land for a sale consideration of

Rs.90,000/- and written agreement was signed by the parties on 18.9.1996. An amount of Rs.75,000/- was paid in different dates to Shyam Manohar

Gupta by Jhaman Rajak. A date for executing the sale deed was fixed to be four months from the date of agreement. But said Shyam Manohar Gupta

did not execute the sale deed. Shyam Manohar Gupta and Jhaman Rajak died before the execution of the sale deed and as per the averments of the

plaint the agreement was admitted to be executed by the respondents in March 2001. The trial Court dismissed the suit on the ground that the suit filed

on 25.6.2001 is time barred and therefore, no relief can be granted in favour of the appellants.

3. Learned counsel for the appellants submits as under:

(i) The trial Court failed to appreciate that time was not the essence of the contract, therefore, suit preferred within three years from the date of first

express refusal by the respondents shall be counted for the purpose of limitation and in that way the suit was within limitation.

(ii) As Shyam Manohar Gupta failed to execute the sale deed and get the measurement done within the period of four months, therefore, finding on

the issue of limitation is absolutely perverse.

(iii) Period of limitation as provided under Article 54 of the Limitation Act, has not been properly calculated, therefore, decree for execution of the sale

deed should be passed or advance amount be returned to the appellants.

4. In the present case, date of agreement is 18.9.1996 as per Ex-P/1 which is agreed document. In the said agreement it is mentioned that the sale

deed was to be executed within four months of the written agreement or prior to that date if parties agree for some other date but that date should be

prior to four months. Therefore, it is clear from the agreement that date fixed for the purpose of contract was four months since 18.9.1996 i.e.

18.01.1997. No notice was given by the appellants to the respondents within four months. The appellants never served any written notice to the

respondents for execution of the sale deed.

5. Learned counsel for the appellants submits that as per the statement of Rajesh Rajak (AW-1) assurance was given in the year 2001 for the

registration but the fact remains that the agreement was executed on 18.9.1996 and specific performance of contract could have been enforced from

three years of the agreement i.e. upto 18.9.1999 or upto 18.01.2001. Therefore, any conversation between the parties after 18.01.2001 has no

consequence because non filing of the suit before 18.01.2001 had already expired its limitation and therefore, this argument is not available to the

present appellants. Learned counsel for the appellants submits that there was

negotiation for compromise and Shyam Manohar Gupta was ill in the year 1997 and he died on 25.4.1997, therefore, suit filed in June 2001 is within limitation. This argument is also without substance because when the limitation is passed on 18.01.2001 the negotiation could not revive the limitation. The negotiation or illness of Shyam Manohar Gupta could not revive limitation.

6. Again the suit is time barred on 18.01.2001, therefore, no decree can be passed for return of advance amount to the appellants.

7. On overall assessment of the evidence and factual and legal aspects of the matter, the trial Court recorded a finding that no relief can be granted in

favour of the appellants. The finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking the

jurisdiction of the appeal. Accordingly, the appeal is liable to be dismissed and the decree is passed in favour of the respondent and against the

appellant as under:

Â (1)Â Â Â Â The appeal is dismissed with cost.

Â (2)Â Â Â Â The parties to bear cost of litigation of their own.

Â (3)Â Â Â Â Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.

Â (4)Â Â Â Â A decree be drawn up accordingly.