

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

CIVIL REVISION No. 25 of 2023

BETWEEN:-

1. SHANKHESHWAR DEVELOPERS THROUGH PARTNERS ANKIT S/O SHARAD SHRIVASTAVA ADD. 1 402 THE MARK SAKET CHOURAHA DISTRICT INDORE (MADHYA PRADESH)
2. SHANKHESHWAR DEVELOPERS THROUGH PARTNERS AMAN S/O KAMALJEET SINGH SEHGAL 402, THE MARK, SAKET CHOURAHA INDORE (MADHYA PRADESH)
3. ANKIT S/O SHRI SHARAD SHRIVASTAVA, AGED ABOUT 38 YEARS, OCCUPATION: BUSINESS 1002, A-BLOCK, BCM PLANET, NIPANIA INDORE (MADHYA PRADESH)
4. AMAN S/O SHRI KAMALJEET SINGH SEHGAL, AGED ABOUT 38 YEARS, OCCUPATION: BUSINESS MZ-6 RAFFEL TOWER, 8/2 OLD PALASIA INDORE (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI VISHAL BAHETI - ADVOCATE)

AND

KIRHSNA KALOTA S/O SHRI RAMESHWARJI KALOTA, AGED ABOUT 54 YEARS, OCCUPATION: AGRICULTURE BADA BANGARDA TEHSIL AND DISTRICT INDORE (MADHYA PRADESH)

.....RESPONDENT

(NONE)

.....
Reserved on : 25.08.2023

Pronounced on : 27.09.2023
.....

This petition having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

1. This Revision under Section 115 of the CPC has been preferred by the defendants/applicants being aggrieved by the order dated 14.12.2022 passed in RCSA No.698-A/2018 by the 22nd District Judge, Indore whereby their application under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground of the same being barred by time has been rejected.
2. The plaintiff has instituted an action for declaration that the sale deed dated 23.12.2015 executed with respect to the suit land is illegal, null and void and not binding upon him and for permanent injunction restraining the defendants from interfering with his possession over the suit land in any manner. Upon service of summons upon them the defendants filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint submitting that the sale deed was executed on 17.11.2014 whereas the claim has been instituted on 03.07.2018 which is barred by time in view of Article 58 and 59 of the Schedule to the Limitation Act which provides for a period of limitation of three years

for seeking cancellation of an instrument. The plaintiff contested the application by filing his reply to the same. The application has been rejected by the trial Court by observing that from the averments as made by plaintiff in the plaint the suit cannot be said to be apparently barred by time.

3. Learned counsel for the defendants has submitted that the sale deed was executed on 17.11.2014 and was registered on 23.12.2015 whereas the suit has been instituted on 03.07.2018 i.e. beyond a period of three years therefrom which is hence barred by time by virtue of Article 58 and 59 to Schedule to the Limitation Act. As per Section 3 of the Registration Act, knowledge of sale deed would be deemed to have been acquired by plaintiff on the date of its execution itself and since plaintiff is an executant to the sale deed and has admitted its execution the period of limitation would commence from 17.11.2014. The trial Court hence ought to have rejected the plaint as barred by time. Reliance has been placed by him on the decision of the Supreme Court in **Dahiben V/s. Arvind Bhai Kalyanji Bhanusali (Gajra) dead through LRs and others** reported in AIR 2020 SC 3310 and of this Court in **Sudhir Das V/s. United Church of D Canada India, Dhar beneficiary and Others, Civil Revision No.41/2019** decided on **18.06.2019**.

4. I have heard learned counsel for the applicants and have perused the record.

5. As per Article 59 of Schedule to the Limitation Act, 1963, the period of limitation for instituting a suit to cancel or set aside an instrument or decree is 3 years which begins to run when the facts entitling the plaintiff to have the instrument or decree cancelled first become known to him.

6(i) In the present case the plaintiff has pleaded that an oral agreement had been entered into between him and the defendants for sale of the suit land for a total consideration of Rs.4,14,04,000/- upon payment of earnest money of Rs.25,00,000/- For the balance sale consideration, postdated cheques had been handed over to the plaintiff and remaining part of the same was to be paid at the time of execution of the sale deed. The plaintiff relied upon the defendants taking advantage of which, on 17.11.2014, defendants 1 and 2 came to his house along with certain persons and asked him to execute an agreement to sale upon which he signed. The plaintiff asked defendants 1 and 2 for a copy of the agreement who stated that the same shall be made over to him after its registration. They assured the plaintiff that the sale deed shall be executed only after payment of the entire sale consideration.

(ii) Later on, the postdated cheques given by defendants to plaintiff were dishonored upon which he approached the defendants, who assured him that they will pay the full amount prior to execution of the sale deed. Since no further amount was paid, the plaintiff contacted his

counsel on 20.06.2018, who made efforts for obtaining a copy of the agreement to sale from the office of the Registrar. It is then that for the first time he acquired knowledge that instead of an agreement to sale, a sale deed has been got executed by defendants from him by practicing fraud. He then made an application for supply of the certified copy of the sale deed which was delivered to him on 29.05.2018 and has thereafter instituted the suit.

7. When the averments of the plaint are read as a whole it reveals that plaintiff's allegation is that he had never executed any sale deed and had instead put his signatures upon an agreement to sale and the sale deed was to be executed later on after payment of the remaining sale consideration to him. When the cheques were dishonored and defendants failed to give him any proper response, he made inquiries and acquired knowledge of execution of the sale deed on 29.05.2018 only. It is hence apparent that it is on that day that the facts which entitled him to institute an action for setting aside the sale deed became known to him. Thereafter he has instituted the suit on 03.07.2018 which is within time. It is not the plea of plaintiff that he had executed the sale deed or that he had knowledge of its execution since the beginning. It is not a case where the facts entitling the plaintiff to seek cancellation of the sale deed had become known to him at the inception. His specific plea is that he never had any such knowledge till 03-07-2018.

8. In the judgments relied upon by the learned counsel for the

defendants, on the date of execution of the sale deed, the executant was fully aware that he was executing a sale deed and had then executed the same. Thereafter the sale deed was sought to be avoided on subsequent events. It was not the case that at the time of execution of the sale deed, the executant was not aware of such execution and the same had been got executed by practicing fraud or concealment of fact. It is in that context that it was held that since the executant of the sale deed was aware of its execution since the inception, the facts entitling him to seek its cancellation had become known to him then itself. The judgments hence relied upon by the learned counsel for the applicants do not help him in any manner.

9. As per explanation 1 to Section 3 of the Transfer of Property Act, where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property shall be deemed to have notice of such instrument as from the date of registration. The said explanation is applicable only to the person who acquires such property under the registered instrument. The same does not apply to the person who transfers such property under the instrument. In the present case the plaintiff is the person who has transferred the property and it is the defendants who have acquired such property. Thus, the contention as regards the plaintiff having knowledge of the sale deed from the date of its registration itself is not acceptable.

10. Moreover as per proviso to the aforesaid explanation the instrument has to be registered and its registration completed in the manner prescribed by the Indian Registration Act and the same has to be duly entered or filed in the books kept under Section 51 of the Act and the particulars regarding the transaction to which the instrument relates have to be correctly entered in the indexes kept under Section 55 of the Act. In the present case, presently there is no material available on record from the plaint and the documents filed along with it that the aforesaid contingencies have been complied with in respect of the disputed sale deed.

11. Thus, in view of the aforesaid, I do not find any error having been committed by the trial Court in rejecting the application under Order 7 Rule 11 of the CPC filed by the defendants. The trial Court has itself observed that the claim is prima facie within time and the issue of limitation shall be reconsidered at the time of decision of the suit on merits. Hence, I do not find any reason to interfere with the impugned order passed by the trial Court. The Revision being devoid of merits is hereby dismissed.

(PRANAY VERMA)
JUDGE