

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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 17th OF APRIL, 2025

FIRST APPEAL NO.510/2002

SHARAD SHARMA

VS.

**NEW KRISHI NAGAR GRIHA NIRMAN SAHKARI SANSTHA MARYADIT,
BHOPAL AND OTHERS**

Appearance:

**Appellant by Shri Ravish Agrawal – Senior Advocate with Smt
Sanjana Sahni – Advocate.**

Respondent No.12 by Shri Ankit Saxena - Advocate.

None for other respondents.

Reserved on: 02.04.2025

Pronounced on: 17.04.2025

JUDGMENT

The matter is languishing to see its fate since 2002. Earlier, Advocate Shri R.D. Hoondikar and Shri Himanshu Rai filed Vakalatnama on behalf of respondent No.1, but did not appear on behalf of respondent No.1. Moreso, notices were also issued and served on the legal heirs of respondents No.4, 5 and 6. Notably, this Court on 28.01.2024 had made it clear that the appeal would be heard on the next date because the contesting respondent was represented through counsel. Again, on 28.03.2025, the matter was fixed for hearing in motion stage

for 02.04.2025 under caption 'top of the list' and such order was passed only because the counsel for the contesting respondent did not appear when the cases of final-hearing were taken-up and therefore this appeal was listed in motion stage for bringing this old matter to its logical end. Unfortunately, Shri Hoondikar breathed his last but still Shri Himanshu Rai, Advocate should have appeared but he did not. Therefore, this appeal was heard on 02.04.2025. Albeit, Shri Ankit Saxena, Advocate appeared for respondent No.12, but he supported the submissions made on behalf of the appellant.

2. By the instant appeal filed under Section 96 of the Civil Procedure Code, the appellant-defendant is challenging the validity of the judgment and decree dated 25.07.2002 passed in Civil Suit i.e. RCS No.8-A/2001 by learned 11th Additional District Judge, Bhopal.

3. Shri Ravish Agrawal, learned Senior Advocate submitted that though the issue with regard to limitation was framed, but the court without considering the facts of the case properly had decided the issue saying that the suit was within the limitation whereas as per the existing factual position, the same is apparently barred by time. He has submitted that from the averments made in the plaint i.e. from paragraphs-10, 11 and 14, it can be clearly seen that the cause of action pleaded in the plaint starts from 1988 and even otherwise according to him if the date of filing of suit i.e. 23.04.1991, considered to be the date of cause of action, the amendment application which had been moved on 25.08.1995 to change the nature of suit and claiming decree for specific performance of contract, then also it was apparently barred by time because as per Article 54 of Limitation Act, the suit for specific performance of contract can be moved within the limitation of three years from the date of cause of action but it was beyond the said period.

Ergo, the issue decided by the court below with regard question of limitation and finding given is perverse whereas the suit could have been dismissed only on the ground of limitation. The second limb of challenge was that initially the suit was filed by the plaintiff for declaration and permanent injunction saying that the plaintiff had not violated any of the terms of the agreement dated 09.07.1988 and as such, the defendants should be restrained from interfering in the peaceful possession of the plaintiff and they should also be restrained from creating any third party interest over the suit property. He has further submitted that initially the present appellant was not made a party in the suit, but later on, by way of amendment, a decree for specific performance of contract was claimed. The court not only allowed the application, but returned the plaint for its presentation before the appropriate court because after allowing the amendment, the particular Civil Court did not have pecuniary jurisdiction to try the said suit. He has further submitted that application of amendment could not have been allowed by the Civil Court because allowing the application would amount to entertaining the suit which is beyond the pecuniary jurisdiction of the Court. He has also submitted that the plaint was returned and it was presented before the competent Court having pecuniary jurisdiction, the same suit cannot be treated to be in continuation of the earlier suit, but it would be a fresh suit. The limitation of specific performance of contract has to be treated with the cause of action mentioned in the fresh plaint. He has submitted that present appellant was not party in the original civil suit which had been filed initially before the Civil Judge for declaration and permanent injunction, but was made the party after filing a fresh suit of specific performance of contract. According to him, the court below considered

the said suit to be continuation of the suit but not considered the fact regarding cause of action properly so as to bring the suit within the limitation. He has submitted that the application for amendment should not have been allowed by the Court but after receiving the application, it was obligatory for the Court to return the plaint for placing it before the competent Court of pecuniary jurisdiction. He has submitted that under such a circumstance, the impugned judgment and decree passed by the court below is not sustainable in the eyes of law and deserves to be dismissed. He has placed reliance upon a decision of Supreme Court reported in **(2020) 12 SCC 667 (EXL Careers and Another Vs. Frankfinn Aviation Services Private Limited)**.

4. Shri Ankit Saxena, learned counsel appearing on behalf of respondent No.12 has supported the submissions advanced on behalf of the appellant.

5. On the anvil of multifarious submissions made on behalf of the appellant, I find it apposite to frame certain questions and by answering those questions it will navigate this Court in reaching to a definite conclusion, as under:-

- (i) Whether the court of Civil Judge before whom the original civil suit was filed for declaration and injunction was competent enough to allow the application of amendment? If yes, then what would be its impact over the suit?
- (ii) Whether, the Additional District Judge before whom the plaint was represented, was right in treating the same to be continuation of original suit?
- (iii) Whether, the court was right in excluding the time taken by the court in trying the original suit by giving benefit of

Section 14 of the Limitation Act to hold that the suit was well within limitation?

6. To answer the above questions, it is imperative to engraft the factual matrix of the case, in a nutshell, as under:-

6.1 A suit was filed on 23.04.1991 by Cooperative Society and that civil suit was registered as C.S.No.44-A/1991 in the court of IV/XI Civil Judge, Class-II, Bhopal. The suit was filed for declaration that the plaintiff has not violated any terms of agreement and also for permanent injunction restraining the defendants from interfering with possession and creating any third party right. As per the averments made in the plaint, an agreement was executed on 09.07.1988 by Shayama Bai to sell the land in favour of the plaintiff-Society. The suit land was comprised in khasra No.8 and 9 admeasuring 1.62 and 9.08 acres out of which 8.08 acres (except 1 acre of Samadhi place) situated at Village Chuna Bhatti, Tehsil Huzur, District Bhopal. The plaintiff-Society paid Rs.50,000/- in advance vide cheque No.12029 and the possession of the suit land was handed over to the Society.

6.2 Another agreement dated 05.08.1988 executed between the parties containing condition that if unfortunately Shayama Bai dies then other defendants would execute the sale-deed in pursuance to the agreement. Shayama Bai died on 14.10.1988 and thereafter defendant-Sitaram received Rs.5,000/- from the plaintiff on 10.05.1989 and issued receipt to that extent in favour of the plaintiff.

6.3 The plaintiff repeatedly asked the defendants to get the sale-deed executed, but they somehow evaded it even after granting the ceiling permission. According to the plaintiff, the defendants were deliberately avoiding the execution of sale-deed whereas the plaintiff was ready to pay the remaining consideration of sale. On 03.04.1991 the

defendants approached the plaintiff asking for the enhancement of the sale amount, otherwise they would sell the land to some other person. As such, the suit was filed showing cause of action in paragraph 14 of the plaint arose on 09.07.1988, 05.08.1988 and also on 16.04.1991, 18.04.1991 and 22.04.1991 when the defendants tried to sell the land to another person and also tried to dispossess the plaintiff and as such cause of action arose. Originally the suit was filed on 23.04.1991 with a cause of action on 03.04.1991 and also on 09.07.1988 and 05.08.1988. In the said civil suit, a written-statement was filed on 11.01.1993 wherein the averments made in the plaint were denied and it was stated the defendants have never denied for execution of sale-deed. If remaining amount of sale consideration had been paid, the sale-deed would have been executed. It was also denied that the land was being sold to somebody else and also denied any attempt of dispossession of the plaintiff.

6.4 An application for amendment was made by the plaintiff on 25.08.1995 before the trial Court in response to the objection raised by the defendants that the plaintiff should have instituted a suit for specific performance of contract in place of declaration. By way of amendment, the plaintiff sought amendment seeking a decree of specific performance of contract against defendants No.2, 3 and 6 saying that they should be directed to execute the sale-deed in respect of the land bearing khasra No.8 and 9 area 9.70 acre and if they fail to do so, a direction be issued to get the sale-deed executed through the court. Further, it was claimed that a decree of permanent injunction be passed restraining the defendants from disturbing the possession of the plaintiff over the suit land and further sought declaration that sale-deed executed by defendant-Sitaram and defendant-Sunil in favour of defendant-Sharad

on 13.10.1995 be declared void. The cause of action was shown on 03.04.1991 as has been pleaded in paragraph 11 of the plaint. The averments made in paragraph 11 are material for answering the questions raised in this appeal and therefore the purpose of convenience, it is being reproduced hereinbelow:-

यह कि दिनांक 03-04-91 की प्रतिवादीगण वादी से आकर मिले और कहा कि वह उक्त भूमि के विक्रय- मूल्य राशि को बढ़ावें अन्यथा वह किसी अन्य की उक्त भूमि को बँच देंगे ।

Further in paragraph 14 of the plaint, cause of action has been shown, which is also reproduced hereinunder:-

यहकि वाद कारण दिनांक ०९-०७-८८ , ०५-०८-८८ को अनुबंध पत्र दिनांक २४-०८-८६ स्वीकृति पत्र का प्रतिवादीगण ने निष्पादन किया तथा दिनांक १०-०५-८९ की जब प्रतिवादी ने 5000/- रुपये वादी से प्राप्त किये तथा दिनांक ०३-०४-९१ को जब प्रतिवादीगण ने भूमि के विक्रय मूल्य को बढ़ाने की बात कही तब १६-०४-९१, १८-०४-९१ व २२-०४-९१ को जबकि किसी अन्य को विक्रय करने का व वादी की कब्जे की भूमि से बेदखल करने का प्रयास किया उत्पन्न हुआ है तथा वाद कारण बराबर जारी है ।

यहकि वादी की प्रतिवादीगण के विरुद्ध विशिष्ट अनुपालन हेतु अन्त में वादी कारण दिनांक २६-०८-९४ को उत्पन्न हुआ जब प्रतिवादीगण क्र.१ एवं ४ से ९ ने अलग अलग होकर वादी के पक्ष में विक्रय-पत्र का पंजीयन कराया तथा प्रतिवादी क्र.२ व ३ और ६ ने दिनांक २६-८-९४ को समझाने के पश्चात भी अवशेष भूमि का विक्रय-पत्र का पंजीयन कराने से मना कर दिया ।

वाद कारण माननीय न्यायालय के क्षेत्राधिकार में उत्पन्न हुआ है माननीय न्यायालय वाद श्रवण करने में सक्षम है।

7. From the record, it is gathered that the application of amendment dated 25.08.1995 was allowed by the court on 20.10.1995. On 04.11.1995, plaintiff preferred an application under Order VII Rule 10A(2). On 09.11.1995, plaint was returned to be presented before the court having pecuniary jurisdiction. On 15.11.1995, 12th Additional District Judge renumbered the suit as C.S.No.17-A/1995. On 20.11.1995

an application under Order I Rule 10 of CPC for making defendant No.10, the present appellant party was moved. The said application was allowed on 20.01.1997. A written-statement was filed by defendant No.10 denying the averments of the plaint. On 25.07.2002, the suit was decreed. As per Shri Agrawal, the application for amendment could not have been allowed by the civil court because by way of amendment, the nature of the suit was being changed, in place of declaration it was converted into a suit for specific performance of contract and as per the valuation made. It was apparent that the civil court did not have pecuniary jurisdiction. As per his submission, the application of amendment was illegally allowed and the plaintiff was returned the plaint by the court and the plaint was presented before the Additional District Judge having pecuniary jurisdiction to entertain the suit for specific performance of contract. The plaint has been accepted by the court treating the same to be a continuation of earlier civil suit initially filed for declaration and permanent injunction, whereas, it was a fresh suit because after return of the plaint, if it is presented before the appropriate court having pecuniary jurisdiction, the same should be treated to be a fresh civil suit. As per Shri Agrawal, the illegality has been committed because the suit was not maintainable and it could have been dismissed by the Additional District Judge as it was barred by time. It was not a fresh suit filed by the plaintiff and it was a suit treated to be in continuation of earlier suit.

8. At this juncture, it is profitable to go-through the legal position already set at rest. In case of **Amar Chand Inami v. Union of India, (1973) 1 SCC 115 = AIR 1973 SC 313**, the Supreme Court has also referred the judgment reported in **Ramdutt Ramkissen Dass v.**

E.D. Sassoon & Co. AIR 1929 Privy Council 103 and has observed as under:-

“8. It was contended for the appellant that even if the Karnal Court was not the proper Court in which the suit should have been filed, the plaintiff was entitled to the benefit of s. 4 of the Act. Section 4 of the Act provides that where the period of limitation prescribed for any suit expires on a day when the Court is closed, the suit may be instituted on the day the Court re-opens. But, if the Karnal Court was not the proper Court in which the suit should have been filed, the plaintiff would not be entitled to the benefit of Section 4. The decision of the Privy Council in *Maqbul Ahmad and Others v. Pratap Narain Singh and Others*; 62 Ind App 80 = (AIR 1935 PC 85) is an authority for this proposition. In that case the Privy Council said: “.... the language of Section 4 is such that it seems to their Lordships to be impossible to apply it to a case like the present. What it provides is that, where the period of limitation prescribed expires on a day when the Court is closed, the application may be made on the day when the Court reopens. In 'their Lordships' view that means the proper Court in which the application ought to have been made.....”

If the plaintiff had filed the suit in the trial Court on March 2, 1959, then, certainly the suit would have been within time under s. 4, as that was the proper Court in which the suit should have been filed. As the Karnal Court had no jurisdiction to entertain the plaint, it was not the proper Court. The fact that the plaintiff would be entitled to take advantage of the provisions of Section 14 of (1) 62 I. A. 80. L499 Sup.C.I./73 the Act would not, in any way, affect the question whether the suit was filed within the time as provided in Section 4 in the Karnal Court. Section 14 of the Act only provided for the exclusion of the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it Even if the plaintiff was entitled to

get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat, the suit would not be within time as the filing of the suit in the Kamal Court was beyond the period of limitation. It was, however, argued by counsel for the appellant that the suit instituted in the Trial Court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Kamal Court must be deemed to have been filed in the trial Court. We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was Presented in that Court, the suit can be deemed to be instituted 'in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in *Hirachand Succaram Gandhi and others v. G.I.P. Rly. Co.* AIR 1928 Bom 421, *Bimla Prasad Mukherji v. Lal Moni Devi* AIR 1926 Cal 355, and *Ram Kishun v. Ashirbad* ILR 29 Pat 699 = (AIR 1950 Pat 478)(3). Therefore, the presentation of the plaint in the Karnal Court on March 2, 1959, cannot be deemed to be a presentation of it on that day in the trial Court.”

(emphasis supplied)

Further, in the case of **EXL. Careers** (supra), also relied upon on behalf of the appellant, the Supreme Court while dealing with the similar situation has observed as under:-

“15. *Modern Construction* (2014) 1 SCC 648, referred to the consistent position in law by reference to *Ramdutt Ramkissen Dass vs. E.D. Sassoon & Co., Amar Chand Inani vs. The Union of India, Hanamanthappa vs. Chandrashekharappa*, (1997) 9 SCC 688, *Harshad Chimanlal Modi (II)* (supra) and after also noticing *Joginder Tuli* (supra), arrived at the conclusion as follows:

“17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has

no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court.

However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.”

Joginder Tuli was also noticed in Harshad Chimanlal Modi (II) (supra) but distinguished on its own facts.”

(emphasis supplied)

In the case of **Ramdutt Ramkissen Dass** (supra) with regard to Section 14 of Limitation Act, the Privy Council has observed under:-

“Where a suit has been instituted in a Court which is found to have no jurisdiction and it is found necessary to raise a second suit in a Court of proper jurisdiction, the second suit cannot be regarded as a continuation of the first, even though the subject matter and the parties to the suits were identical.”

In view of the above observations, it is clear that after returning the plaint, if it is presented before another court having pecuniary jurisdiction to try the suit, the said plaint shall be treated to be a fresh plaint and the trial has to be conducted denovo. It is worth-noting that when the application for amendment was moved and apparently in the said application, relief claimed by the plaintiff could not have been tried by the said court, the application of amendment could not have been allowed by the court. Rather, the proper course was

– the trial Court i.e. the court which entertained the suit for declaration and permanent injunction should have directed the plaintiff to present the plaint before the appropriate court having pecuniary jurisdiction to try the same. Therefore, the trial Court has committed illegality in allowing the application for amendment instead of returning the plaint to the plaintiff directing him to present it before the appropriate court. Further, the court of Additional District Judge has committed wrong treating the suit to be in continuation of earlier suit and decided it accordingly. Thus, in my opinion not only in allowing the application of amendment, the court below committed illegality, but the Court of ADJ which tried the suit for specific performance of contract has also ignored this material aspect and instead of conducting the suit *denovo*, tried it as if it was continuation of earlier suit.

9. The court below has also committed an illegality in deciding the issue with regard to the limitation saying that the suit was well within limitation and according to the court, cause of action arose on 26.08.1994 when other co-owners except defendants No.2, 3 and 6 have executed a registered sale-deed in favour of the plaintiff. The court has also observed that earlier suit was filed on 03.04.1991 and the time consumed therein has to be excluded as per Section 14 of Limitation Act and present suit since filed on 15.11.1995 and from the date of cause of action, which according to court arose on 26.08.1994, the subsequent suit filed on 15.11.1995 is well within limitation. Although, this observation of the court is absolutely illegal and contrary to law because the cause of action in plaint itself has been shown in paragraphs 11 and 14, as quoted above, and suit filed on 15.11.1995 for specific performance of contract and as per the cause of action treating it to have arisen on 13.04.1991, the application of amendment was allowed on

20.10.1995. Even though the said amendment was barred by time as per Article 54 of the Limitation Act, which provides limitation for three years for filing a suit for specific performance of contract from the date of cause of action. Moreover, in the plaint itself, in paragraph 11, the plaintiff has shown cause of action of somewhere in the year 1988 and as such bringing the suit for specific performance of contract by way of amendment, moved on 25.08.1995, was also barred by time. However, it is already observed by this Court that the plaint presented before the court on 15.11.1995 cannot be treated to be a suit in continuation to earlier one, but that had to be tried *denovo* and the plaint should have been treated to be a fresh plaint. The court below has wrongly observed that the benefit of Section 14 of the Limitation Act can be extended in favour of the plaintiff excluding the period of filing the suit for declaration and permanent injunction. In my opinion, the suit initially filed was defective and the benefit of Section 14 cannot be granted because the said suit was not filed in good faith and it was a suit of different nature and therefore the plaintiff's claim in view of the pleadings made in the plaint was apparently barred by time and therefore the suit should have been dismissed on the ground of limitation. In the light of view taken by the Privy Council in case of **Ramdutt Ramkissen Dass** (*supra*), the court of Civil Judge tried the suit had no jurisdiction and therefore the benefit of Section 14 cannot be granted and time consumed earlier cannot be excluded.

Ergo, the finding given by the court below treating the suit to be within time is contrary to law and not sustainable, thus, the same is set aside. The Supreme Court in the case of **K. Raheja Constructions Ltd. and another v. Alliance Ministries and others**, AIR 1995 SC 1768 = (1995) Supp(3) SCC 17 has clearly observed that the

application under Order VI Rule 17 of CPC filed beyond the limitation of Article 54 of Limitation Act which provides limitation of three years, defeated the valuable right of the defendant and said amendment was not permissible. The observation of the Supreme Court is reproduced as under:-

“4. It is seen that the permission for alienation is not a condition precedent to file the suit for specific performance. The decree of specific performance will always be subject to the condition to the grant of the permission by the competent authority. 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 to elapse 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 grounds set out, would defeat the valuable right of limitation accruing to the respondent.”

10. In view of the above discourse and in answer to the questions framed by this Court, I find that initially the suit for declaration and permanent injunction filed in the year 1991 subsequently amended by way of amendment by filing an application under Order VI Rule 17 of CPC, although said application was allowed by the court having no jurisdiction to entertain the same and returned the plaint, which was presented before the court of ADJ, who tried the suit in continuation of earlier suit instead of trying the same denovo treating the plaint as fresh plaint and granted the benefit of Section 14 of the Limitation Act to the plaintiff, is contrary to law. In view of the averments made in the plaint showing the cause of action arose on 03.04.1991 or prior to that the suit for specific performance of contract was apparently barred by time and as such the issue with regard to

limitation has wrongly been decided by the court below, therefore, the said finding that the suit was within time is not sustainable, is hereby set aside.

11. Futile would be the exercise to advert to other issues as in the opinion of this Court, the suit itself was apparently barred by time and beyond limitation and it ought to have been dismissed.

12. Accordingly, the appeal is allowed. The impugned judgment and decree dated 25.07.2002 is set aside. The suit filed by the respondent-plaintiff is dismissed on the ground that the same was beyond limitation.

13. No order as to costs.

(SANJAY DWIVEDI)
JUDGE