

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

BEFORE

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 17th OF FEBRUARY, 2023
SECOND APPEAL No. 2898 of 2022**

BETWEEN:-

**SURENDRA S/O KAMAL CHAND JAIN, AGED
ABOUT 71 YEARS, VILLAGE SAHAJPUR TEHSIL
KESALI DISTRICT SAGAR (MADHYA PRADESH)**

.....APPELLANT

(BY DR. ANUVAD SHRIVASTAVA - ADVOCATE)

AND

- 1. DR. KOMALCHAND S/O PANNALAL JAIN,
AGED ABOUT 65 YEARS, VILLAGE
TENDUKHEDA TEHSIL TENDUKHEDA
DISTRICT NARSINGHPUR (M.P)**
- 2. SMT. KANCHAN W/O KOMALCHAND JAIN,
AGED ABOUT 61 YEARS, R/O VILLAGE
TENDUKHEDA, TEHSIL TENDUKHEDA,
DISTRICT NARSINGHPUR (M.P)**
- 3. KAPIL S/O KOMALCHAND JAIN, AGED
ABOUT 28 YEARS, R/O VILLAGE
TENDUKHEDA, TEHSIL TENDUKHEDA,
DISTRICT NARSINGHPUR (M.P)**
- 4. KUSHAGRA S/O KOMALCHAND JAIN,
AGED ABOUT 24 YEARS, R/O VILLAGE
TENDUKHEDA, TEHSIL TENDUKHEDA,
DISTRICT NARSINGHPUR (M.P)**

....RESPONDENTS

This appeal coming on for admission this day, the court passed the following:

JUDGMENT

This Second Appeal under Section 100 of C.P.C. has been filed against the judgment and decree dated 30.11.2022 passed by District Judge, Devari, District Sagar in R.C.A No.25 of 2019 arising out of judgment and decree dated 24.10.2019 passed by Civil Judge Class-I, Devari, District Sagar in Civil Suit No. 55A/2012, by which the suit filed for specific performance has been dismissed.

2. The fact necessary for disposal of the present appeal in short are that the plaintiff/appellant filed a suit for specific performance of contract, thereby pleading interalia that on 24.05.2002 an agreement was executed to sell the disputed property i.e Khasra No.63/1, Khasra No.67/2, Khasra No.63/2, Khasra No. 63/3 and Khasra No. 63/4 recorded in the name of defendants. All the lands were agreed to be sold to the plaintiff @ Rs.25,000/- per acre and accordingly an agreement dated 24.05.2002 was executed and the total consideration amount was settled as Rs.4,60,500/-. On 24.05.2002 itself the plaintiff paid Rs.2,00,000/- to the defendant no.1 Komal Chand by way of advance and written agreement was executed. Thereafter on 17.06.2002 an amount of Rs.50,000/- was received by the defendants. The sale deed was to be executed by 20th May, 2003 with clear stipulation that after the registration of the sale deed, the defendants would hand over the possession of the property in dispute to the

plaintiff. On 17.06.2002, the defendant no.1 Komal Chand received Rs.50,000/-. On 15.03.2003 an amount of Rs.1,00,000/- was paid to the defendant no.1 and on 10.06.2003 an amount of Rs.1,10,000/- again was paid to the defendant no.1 and an acknowledgement of receipt of the said amount was given on the reverse side of the agreement. Thus, it was pleaded that defendant no.1 Dr. Komal Chand has received Rs.2,00,000/- + Rs.50,000/- + Rs.1,00,000/- + Rs.1,10,000/- in all Rs.4,60,000/- and only Rs.500/- were to be paid. It was further pleaded that the plaintiff is ready and willing to pay the remaining outstanding amount as well as he was ready and willing to perform his part of contract. Accordingly, plaintiff requested the defendant no.1 and 2 to execute the sale deed on various occasions but the defendants avoided the execution of sale deed on one pretext or other. Since the plaintiff and defendants belong to the same society and were having cordial relationship, therefore, the plaintiff was all the time relying on the excuses made by the defendants. It was further pleaded that in the month of May 2003, the plaintiff had requested the defendant no.1 and 2 to execute the sale deed but since some of the owners were out of station, therefore for the satisfaction of the plaintiff, the defendant no.1 and 2 handed over the vacant possession of the property to the plaintiff. Ultimately, in the month of July, 2012, the plaintiff went to defendant no.1 and requested for execution of sale deed. However, the defendant no.1 insisted that now he would execute the sale deed only in case if an enhanced consideration amount is paid. However the enhanced amount was never informed to the plaintiff. Thereafter plaintiff sent a notice on 10.07.2012 for execution of sale deed, which was duly replied by the

defendants by their reply dated 07.08.2012 and accordingly, the suit was filed for specific performance of the contract by claiming to be within the period of limitation.

3. The defendant no.1 and 2 filed their written statement. The execution of agreement was denied. It was claimed that the agreement is a forged document. It was also claimed that they never agreed to alienate property belonging to Kushagra and Kapil. The plaintiff had obtained signature of the defendant no.1 and 2 on the agreement by misrepresenting that he would pay an amount of Rs.2,00,000/- at Sahajpur but the said amount was not paid and only Rs.50,000/- was paid and the acknowledgement of the same was made on the reverse side of the agreement. It was claimed that the plaintiff was not ready and willing to perform his part of contract. The suit has been filed after 10 years and 7 months of the agreement to sale and accordingly it is barred by limitation. The acknowledgement of receipt of Rs. 1,00,000/, Rs.1,10,000/- respectively on 15.03.2003 and 10.06.2003 was also denied.

4. It was submitted that since time was essence of the contract and even according to the agreement, the last date for execution of the sale deed was 12.05.2003 and therefore the suit is barred by limitation.

5. It appears that the defendants were proceeded ex parte at the stage of evidence.

6. The trial court after framing issues, and recording evidence, dismissed the suit as barred by limitation as well as the plaintiff has failed to prove his ready and willingness. Being aggrieved by the judgment and decree passed by the trial court, the plaintiff preferred an

appeal which too was dismissed by the First appellate court.

7. Challenging the judgment and decree passed by the courts below, it is submitted by counsel for the plaintiff that in the present case part payment of consideration was accepted by the defendant no.1 on 10.06.2003. Therefore, the second limb of Article 54 of Limitation Act would come into picture and the period of limitation would start running from the day when the refusal is made known to the plaintiff. To buttress his contention the counsel for the appellant has relied upon the judgments passed by Andhra Pradesh High Court in the case of *Dutta Seethamahalakshamma (deceased by LRs) & others Vs. Yanamadala*, reported in *AIR 2003 Andhra Pradesh 430*

8. Considered the submissions made by counsel for the appellant.

9. In the case of *Dutta Seethamahalakshamma* (supra), the Andhra Pradesh High Court has held as under:-

“21. We find force in the contention of the learned counsel for the appellants. Though the conduct of the plaintiffs in filing the suit in the year 1988 seeking specific performance of the agreement dated 21-6-1970 i.e., after a period of 18 years appears to be unreasonable, it cannot be held that their right to enforce the specific performance is barred by limitation. Admittedly the defendants accepted the part payment made under Ex.A3 dated 20-1-1971. It is also not in dispute that no specific time is prescribed under Ex.A3 for payment of balance, however, the defendants pleaded that it was agreed upon between the parties that the balance be paid shortly thereafter. Thus the fact remains that no specific date is fixed for performance of contract.

22. Under Article 54 of the Schedule to the Limitation

Act, 1963, limitation of three years is prescribed for a suit for specific performance of contract. The time from which the limitation begins to run as specified under 3rd column of the schedule may be extracted hereunder. "The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

23. In the instant case, the date fixed under Ex. A2 was 31-12-1970. But admittedly, the last payment was made on 20-1-1971 i.e 1971 i.e, after the expiry of the date fixed under Ex.A2. The defendants accepted the payment made on 20-1-1971 and acknowledged the same under Ex.A3 endorsement without raising any objection. The defendants admitted the payment under Ex.A3 and the fact that under Ex.A3 no time is fixed for payment of the remaining balance is not in dispute.

24. Consequently, we are of the view that the second limb of Article 54 is attracted and the plaintiffs are entitled to file the suit within three years from the date of notice of refusal of performance. The conclusion of the learned trial Judge that since the terms under Exs.A1 and A2 are not altered the date fixed under Ex.A2 i.e., 31-12-1970 shall be taken as starting point for computing the limitation is erroneous. Hence we hold that the suit filed on 26-12-1987 is within time and the suit is not barred by limitation."

10. In the above mentioned case, it was held by the Andhra Pradesh High Court that since part payment was accepted after the date which was fixed for payment of balance amount and thereafter no new time was fixed for payment of remaining consideration amount, therefore the second limb of Article 54 of the Limitation Act came into operation. However, the facts of the present case are different from the fact of the case of *Dutta Seethamahalakshamma* (supra). In the present case the condition was that the remaining amount shall be

payable in front of the Sub Registrar and sale deed shall be executed on or before 20th May, 2003. Here the last date was fixed for the execution of the sale deed and not for the payment of the remaining consideration amount. Even assuming a part payment of consideration amount was accepted by the defendant no.1 but there is no endorsement with regard to the extension of time for execution of the sale deed. Since the sale deed was not executed by 20th May, 2003, therefore in the light of Article 54 of the Limitation Act, the period of limitation had started running.

11. Section 18 of the Limitation Act reads as under:-

“18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled

to the property or right;
(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and
(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

12. From the plain reading of this section it is clear that a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

13. The Andhar Pradesh High Court in its judgment passed in case of *Dutta Seethamahalakshamma* (supra) has not taken note of section 18 of the Limitation Act. Even assuming that a part payment of the consideration amount was paid after the date which was so fixed for execution of sale deed, still the fresh period of limitation shall be computed from the time acknowledgement was so signed. Since period of limitation had already started running as the defendant had not executed the sale deed on or before 20th May, 2003, therefore, it can be said that fresh period would start running from the day when part payment was made. Thus, by applying the provisions of section 18 of Limitation Act, it is held that the fresh period of limitation would start from 10.06.2003 i.e day on which part payment was made. Therefore even if period of limitation is calculated from 10.06.2003, the suit should have been filed by 9th June, 2006. The same was not done and the suit was filed on 07.09.2012.

14. Further more the plaintiff has not explained as to why he was keeping mum specifically when according to him after payment of Rs.1,10,000/- on 10.06.2003 only Rs.500/- was outstanding. Why a

person would wait for execution of sale deed specifically when the entire amount except Rs.500/- was already paid ? Keeping mum for 9 years after 10.06.2003 without there being any further development clearly indicates that the appellant was not ready and willing to perform his part of contract. Both the courts below have held that not only the suit is barred by limitation but even the plaintiff was not ready and willing to perform his part of contract. It is well established principle of law that the High Court in exercise of power under section 100 of C.P.C cannot interfere with the concurrent findings of fact unless and until they are shown to be perverse or based on no evidence or based on inadmissible evidence. No perversity could be pointed out by the counsel for the appellant. No other argument is advanced by the counsel for the appellant.

15. Accordingly, no substantial question of law arises in the present appeal.

16. *Ex consequenti*, the judgment and decree dated 30.11.2022 passed by District Judge, Devari, District Sagar in R.C.A No.25 of 2019 arising out of judgment and decree dated 24.10.2019 passed by Civil Judge Class-I, Devari, District Sagar in Civil Suit No. 55A/201 are hereby **affirmed**.

17. The appeal fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE