

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 18th November, 2014

+ **CS(OS) No.1961/2010 & I.A. No.12799/2010**

RAJPAL & ORS Plaintiffs

Through Ms.Suman Chaudhary, Adv.

versus

JAIPAL & ORS Defendants

Through Mr.Vishwa Bhushan Arya, Adv.
with defendant No.1 in person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The plaintiffs have filed the suit for specific performance of agreement and permanent injunction under Sections 10 and 12 of the Specific Relief Act against the defendants who are the legal heirs of late Sh.Shiv Charan, son of Sh. Umrao Singh, resident of Village Darya Pur Khurd, Delhi.

2. The defendants No.1 and 2 are the sons and defendants No.3 to 5 are the daughters of late Sh.Shiv Charan. Defendant No.6 is the widow of late Sh.Shiv Charan.

3. It is stated in the plaint that Late Sh.Shiv Charan was the recorded Bhumidhar of the agricultural land comprising in Khasra No.20/4/2 (2-6), 7 (4-12), 8 (4-13), 9 (2-12), 12 (2-0), 13 (4-16), 14/1 (2-16) and 26 (0-3) total measuring 23 Bighas 18 Biswas situated in

the revenue estate of village Darya Pur Khurd, Delhi(hereinafter referred to as the "said land"). By an agreement to sell dated 19th December, 1997 late Sh.Shiv Charan had agreed to transfer the said land in favour of the plaintiffs and one Sh.Dharmbir, son of Sh.Ram Mehar at the rate of Rs.8,00,000/- per acre. The share of the plaintiffs and Sh.Dharmbir was 1/3rd each in the said land. Late Sh.Shiv Charan had received Rs.4,00,000/- as part payment by cash out of total consideration money of Rs.39,84,000/- on the same day i.e. 19th December, 1997 and he had executed a separate receipt dated 19th December, 1997. Late Sh.Shiv Charan had handed over the physical possession of the said land to the plaintiffs after receiving the part payment from the plaintiffs on 19th December, 1997 and since then the plaintiffs are in physical cultivatory possession of the said land.

4. It is averred in the plaint that late Shiv Charan became dishonest due to increase of market price of the said land and he started avoiding the execution and registration of the sale deed in favour of the plaintiffs and their nominee on one pretext or the other. In the month of June, 2007, the plaintiffs again asked late Shiv Charan but he prolonged the matter. The plaintiff No.1 was left with no option but to file an application for stay before the SDM/RA, Najafgarh, Delhi. By order dated 7th July, 2007 in Case No.241/2007, the SDM/RA granted the status-quo order in respect of the said land. The case of the plaintiffs was dismissed by the SDM/RA vide order dated 28th April, 2010 on the ground that the Revenue Court has no jurisdiction in respect of the said agreement to sell. It was ordered

that it is the jurisdiction of the Civil Court to grant the prayer under the Specific Relief Act.

5. It is further contended by the plaintiffs that the plaintiffs are villagers and have no knowledge about the procedure, therefore, they could not approach the Civil Court to file the suit for specific performance. Late Shiv Charan had died on 5th October, 2009 and after his death, the plaintiffs approached defendants No.1 and 2 who are the sons of late Shiv Charan, to settle the dispute and execute the sale deed in favour of the plaintiffs. However, despite of promises, they also avoided to do the needful. Since the defendants No.1 and 2 were negotiating with the property dealers, the plaintiffs filed the present suit who are always ready and willing to perform their part of the agreement to make the payment of balance sale consideration to the defendants who had to complete the obligations of their father late Shiv Charan.

6. Paragraph 25 of the plaint relating to the cause of action discloses that the same has arisen in favour of the plaintiffs and against the defendants on 19th December, 1997 when the agreement to sell was executed between the plaintiffs and late Shiv Charan, father of defendants No.1 and 2. It further arose on 7th July, 2007 when the plaintiff No.1 had filed the stay application before the SDM/RA, Najafgarh, Delhi who ultimately dismissed the suit on 28th April, 2010 on the ground of jurisdiction. Therefore, the suit has been filed against the defendants after issuance of notice.

7. The defendants have filed the written statement, who have denied each and every statement made in the plaint. Their main

objection in the written statement is that the suit is hopelessly time barred under the Limitation Act. It is alleged by them that as per the specific terms of paras 4 & 5 of the said agreement, there is a specific fixed time for completion of the performance on or before 31st July, 1998 and in case there is a default within the specified time ending on 31st July, 1998, civil case for specific performance could have been filed. According to them, the suit is completely barred by time under Article 54 of the Schedule of the Indian Limitation Act, 1963 (hereinafter referred to as the "Act"). The suit should have been filed by 30th July, 2001, but the same was filed after more than 9 years. Therefore, it has become time barred.

8. The defendants have also challenged the validity of the agreement executed between the plaintiffs and Late Shiv Charan. According to them, it is a fabricated document. Various reasons are given in the written statement. It is stated in the written statement that the plaintiffs and their associates taking advantage of the mental depression/weakness of Late Shiv Charan might have taken the signatures/thumb impression on the stamp paper and the revenue stamps affixed on the stamp paper etc. He could not understand what he had done. He was not in a position to understand the seriousness of the papers. He had signed or thumb marked the same in 1997. It is specifically alleged that it is false to allege that he had handed over and delivered the physical possession of the said land at any point of time. There is a specific denial that the plaintiffs are in physical cultivatory possession of the said land.

9. The present suit was filed on 6th September, 2010. The objection of limitation was recorded by the Court in the order dated 27th July, 2012. The operative portion of the said order is reproduced hereunder:

"A preliminary objection has been raised by the defendants with regard to the maintainability of the present suit on the ground that the same is barred by limitation for the reason that the plaintiff is relying on an Agreement to Sell that was executed on 19.12.1997 in respect of which the present suit has been instituted on 20.9.2010.

In view of the aforesaid submission, the following issue is framed as a preliminary issue:

"Whether the present suit instituted by the plaintiffs is barred by limitation? OPD."

List on the date fixed for arguments on the preliminary issue."

10. On 4th April, 2014, the following order was passed:

"1. There is no appearance on behalf of the plaintiff.

2. I have heard the learned counsel for the defendants on the issue with regard to limitation. The question of limitation as framed by my learned predecessor which is a question of law needs to be decided.

3. Learned counsel for the defendant has pointed out that the cost was imposed on plaintiff and the same has not been paid.

4. Since none is present on behalf of the plaintiff and evidence has not been adduced, the suit deserves to be

dismissed for non-prosecution; however, in the interest of justice, no adverse order is passed.

5. List on 24th September, 2014."

11. When the matter is taken up today, both the parties have made their submissions on the preliminary objection raised by the defendant No.1.

12. Relevant clauses of the agreement to sell dated 19th December, 1997 are read as under:-

"4. That the period for completion of the said bargain is fixed up to 31.07.1998 from the date of execution of this Agreement.

5. That the First Party will be bound to get the No Objection Certificate and Income-Tax Clearance Certificate from the appropriate authorities concerned within the specified period at their own costs and expenses and will also be bound to inform to the Second Party through a regd. letter within one week from the date of receipt of the said certificates.

6. That in case the First Party backs out to sell the said land within the specified period in favour of the Second Party then the Second Party will be empowered to get the sale deed regd. through the Court of Law under Specific Performance Act, at the costs and expenses of the First Party.

7. That in case the Second Party backs out to purchase the said land within the specified period, then the advance money paid by him to the First Party shall stand forfeited and the said bargain shall be considered as cancelled."

13. It appears from the said clauses that if the agreement is valid between the plaintiff and Late Shiv Charan, the period for completion

of the said bargain was fixed up to 31st July, 1998 from the date of execution of the agreement. Clause 6 of the agreement stipulates that in failure to do so by Late Shiv Charan in favour of the plaintiffs, the plaintiffs would be empowered to get the sale deed registered through the Court of law under the Specific Relief Act and in case the plaintiffs would back out to purchase the said land, Late Shiv Charan could have forfeited the said advance amount given by the plaintiffs.

14. Admittedly, the present suit is filed by the plaintiffs on 6th September, 2010, i.e. after more than 12 years. In between, the plaintiffs had initiated certain proceedings in the year 2007 before the SDM/RA, Najafgarh, Delhi. The said suit was dismissed and the interim order was also vacated.

15. It is settled law that the subsequent act/communication exchanged between the parties after the expiry of period of limitation in writing or otherwise has no consequence. It is also settled law that the oral assurance or mutual understanding or exemption between the parties have no consequence if there is a written document between the parties.

16. Article 54 of the Schedule to the Act postulates that for specific performance of a contract the period of limitation is three years from the date fixed for the performance, or, if no such date is fixed, from the date the plaintiff has notice that performance is refused. Under first part of Article 54, once date for performance of the contract has been fixed by the parties, the limitation begins to run from that date and specific performance of the contract could be had within three

years from that date unless the parties by an agreement extend the fixed time.

17. As admitted by the plaintiffs, the plaintiffs had knowledge that the outer date “fixed” for performance was 31st July, 1998. Thus, the limitation started from 31st July, 1998. Under Section 9 of the Act Limitation period/time starts, it cannot stop. Section 9 of the Act reads as under:

“9. Continuous running of time.

Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.”

18. It is settled position in law that if by means of clever drafting a camouflage has been created in order to create an illusion of a cause of action, such cases should be nipped in the bud at the first hearing itself i.e. even before admitting the suit and issuing summons or any time thereafter. The judgments of the Supreme Court in the case of ***T. Arivandandam Vs. T.V. Satyapal***, (1977) 4 SCC 467 (para 5); ***The Church of Christ Charitable Trust Vs. Ponniamman Education Trust***, (2012) 8 SCC 706 (paras 10, 12 & 13); and ***Ajay Goel Vs. K.K.Bhandari***, 1999 (48) DRJ 292 (paras 2, 5-8, 15) are relevant in this regard. Therefore, this Court can suo-moto exercise its powers under Order 7 Rule 11 CPC without there being a formal application for the said purpose.

19. In the present case, the date is already fixed between the parties, the parties have clearly mentioned the time within which the

contract should be performed. The three years period therefore in the present case, has to be reckoned from the date fixed for performance i.e. 31st July, 1998. 'Fixed' in essence means having final or crystallised form or character not subject to change or fluctuation as per settled law. Thus, it is clear that time is fixed in the present case, on the plain reading. The limitation is three years period under Article 54 of the Act. Even under the second part of the said provision, when the plaintiff notices that the performance is refused then three years would be reckoned from the date when the plaintiff has noticed that the performance of the contract has been refused. Any communication issued by the plaintiff after expiry of the prescribed period of limitation has no consequence. The reference in this regard by the plaintiffs is without any substance.

20. In ***Janardhanam Prasad Vs. Ramdas*** (2007) 15 SCC 174, the Supreme Court observed as under:

“8. Applicability of the provisions of Article 54 of the Limitation Act must, therefore, be determined having regard to the aforementioned factual matrix in mind. It reads as under:

“For specific performance of a contract three years the date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused.”

9. The Court, in applying the period of limitation, would first inquire as to whether any time was fixed for performance of agreement of sale. If it is so fixed, the suit must be filed within the period of three years, failing which the same would be barred by limitation. Here, however, no time for performance was fixed. It was for the

Courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a finding in that behalf, to see whether the suit was filed within three years thereafter.”

21. The decision referred by the learned counsel for the plaintiffs in ***Gunwantbhai Mulchand Shah and Ors. Vs. Anton Elis Farel and Ors.***, AIR 2006 SC 1556, does not help the case of the plaintiffs as in that case no time was prescribed for performance and the defendant had refused to perform the contract only six months prior to the filing of the suit. The circumstances in the present case are different as the time was prescribed in the agreement itself.

22. In ***Chet Ram Vashisht Vs. Ram Chander Goel and Another*** AIR 2000 Del 96, the Court under similar circumstances of present case in Paras 10 and 14 of the judgment held as under:

"10. Article 54 of the Limitation Act prescribes three years as the period of limitation within which a suit for specific performance can be filed. The period of three years is to be calculated from the date specified in the agreement for the performance or in the absence of any such stipulation within three years from the date the performance was refused. Article 54 of the Limitation Act, Therefore, has two parts. According to the first part, the period of three years is to be calculated from the date specified in the agreement for performance. In order to appreciate the contention of the counsel appearing for the parties, it would be relevant to refer to relevant clauses of the receipt - cum - agreement to sell which Ex. PW-2/1. The first part of the receipt recites receipt of the first Installment of advance being 30% of the total value of Rs. 6660/- for the suit property which is subject to the conditions which are detailed thereafter. The said document further stipulates that the total value of the plot is due and payable by the purchaser in four installments. The

first Installment of advance equal to 30% of the total value of the plot was payable at the time of booking of plot. Second Installment of advance equal to 25% of the total value of the plot was payable on laying roads touching the above said plot whereas the third Installment equal to 25% of the total value of the plot was similarly payable on laying sewage on roads touching the above said plot and fourth and final Installment of payment of the balance amount equal to 20% of total value of the plot on installation of electric poles and water pipes on roads touching the said plot.

Clause - (B) thereof stipulates that all installments as detailed would be paid by the purchaser within fifteen days of receipt of notice from the owner asking for the payment of due instalment. Clause - (C), on the other hand, stipulates that the owner would transfer the plot in favor of the purchaser or his/her nominee if nay named by him/her on receipt of the total value of the plot and Clause - (D) stipulates that all costs of stamp fee and registration charges etc. and brokerage of 2% on total value of the plot will be borne by the purchaser.

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14. In this connection, reference may be made to the decision of the Supreme Court in the Ramzan's case (supra) wherein the Supreme Court held that the requirement of Article 54 of the Limitation Act is not that the actual day should necessarily be ascertained upon the face of the deed but that the basis of the calculation which was to make it certain should be found therein. In the facts of the said case, the Supreme Court held that under the agreement the date for the defendant to execute the sale deed was fixed although not by mentioning a certain date but by a reference to the happening of a certain event, namely, the redemption of the mortgage; and immediately after the redemption by the plaintiff, the defendant became liable to execute the sale deed which the plaintiff was entitled to enforce and the period of limitation thus started

running on that date. It was further held that the doctrine of *id certum est quod certum reddi potest* is clearly applicable to the case which is that certainty need not be ascertained at the time; for if, in the fluxion of time, a day will arrive which will make it certain, that is sufficient and in such a case the case is, Therefore, covered by the first part of Article 54 and not the Second Part.

While coming to the aforesaid conclusion the Supreme Court posed a question as to whether if the plaintiff had, immediately after the redemption, filed the suit, could it be thrown out on the ground that she was not entitled to the specific performance asked for? The Supreme Court answered the aforesaid question stating that the suit could not have been thrown out. It held that she would have been within her rights to assert that she had performed her part of the contract and was entitled to insist that her brother should complete his part. The Supreme Court also held that the aforesaid doctrine is clearly applicable to the said case which in the language of Herbert Broom is that certainty need not be ascertained at the time; for if, in the fluxion of time, a day will arrive which will make it certain, that is sufficient.

23. The controversy in regard to the limitation was considered by the Court in ***Tarlok Singh v. Vijay Kumar Sabharwal***, [1996] 3 SCR 879 wherein the Court has held that when the time has been fixed for performance of the contract by operation of Article 54 of the Act, the time begins to run from the date fixed by the parties. The Court observed thus:

“The question is: as to when the limitation began to run? In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on April 6, 1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated August 25,

1989, the suit was clearly barred by limitation. We find force in the stand of the appellants. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from April 6, 1986. Suit merely for injunction laid on December 23, 1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order VI, Rule 17, C.P.C. on September 12, 1979. It will operate only on the application being ordered. Since the amendment was ordered on August 25, 1989, the crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation. The Courts below, therefore, were not right in decreeing the suit."

24. The arguments of the plaintiffs has no force when referred part of para 25 of the plaint reads as under :

"The cause of action further arose on 7th July, 2007 when the plaintiff No.1 has filed a stay application before the Court of SDM/RA, Najaf Garh and the SDM/RA has granted status-quo order in favour of the plaintiffs qua the land in suit. The cause of action further arose on 28th April, 2010 when the SDM/RA has dismissed the suit No.241/2007 on 28th April, 2010 on the ground of jurisdictions. The cause of action further arose when the plaintiffs have served a legal notice dated 12th April, 2010 to the defendants and the same has been served upon the defendants and the defendants did not reply the said legal notice dated 12th April, 2010."

25. The averment made in the said Para is totally irrelevant and does not help the case of the plaintiffs as there was prescribed period of time stipulated in the agreement, the limitation would start running from the said date and not on the date when SDM dismissed the suit

of the plaintiffs and vacated the interim order. No liberty was granted by SDM to take appropriate civil remedy. There is even no application under Section 14 of the Act in this respect. No advantage can be derived by the plaintiffs about time spent during the said period. Even otherwise it was doubtful as to whether the suit filed by the plaintiffs before SDM was within the period of limitation. Therefore, after the period of about 12 years the suit is clearly time-barred. The trial thus is not necessary in the matter, it would waste the time of the Court and costs of the parties.

26. Supreme Court in the case of ***N.V.Srinivasa Murthy vs. Mariyamma***, (2005) 5 SCC 548 (paras 10-12, 14-18), observed that the mutation proceedings in the year 1994 did not give rise to a fresh cause of action as it was only in furtherance to the sale deed dated 5th May, 1953 and that it appeared to have been made as a camouflage to get over the bar of limitation. Therefore, the Court had dismissed the suit under Order 7 Rule 11 CPC.

27. From the above it is clear that the limitation for taking an action against the defendants by the plaintiffs, if calculated from the said date, ended on 30th July, 2001. The suit ought to have been filed on or before 30th July, 2001 but the same has been filed after more than nine years. During this period, there is no assurance or acknowledgement or extension of time or period of performance given by the defendants to the plaintiffs. Any communication/ correspondence on behalf of the plaintiffs in absence of any

subsequent acknowledgment by the defendants within the meaning of Section 18(1) of the Act is irrelevant.

28. Having gone through the pleadings and the documents placed on record, this Court is of the considered opinion that the suit is time barred. Under Section 3(1) of the Act, the suit cannot be entertained if it is time barred under the first part of Article 54 of the Act.

29. Under these circumstances, there is a force in the submission of the defendants. The suit is clearly barred by limitation. The evidence under these circumstances is not necessary in order to save cost of the parties and time of this Court. The plaint is accordingly rejected. No orders as to costs. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 18, 2014