

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.192 of 2013

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Ashok Kumar Jha S/O Late Chandra Shekhar Jha Resident Of Village-
Baruar, Pargana- Alapur, Police Station- Andhratharhi, District- Madhubani
At Present Bela Dullah, Ward No. 3, P.S- L.N.M.U. Campus, District-
Darbhanga.

..... Plaintiff Appellant

.... Appellant

Versus

1. Mostt. Domni Devi W/O Late Kapileshwar Mandal Resident Of
Mohalla- Lakshmi Sagar, Police Station- L.N.M.U. Campus, District-
Darbhanga.

2. Bijay Mandal S/O Late Kapileshwar Mandal Resident Of Mohalla-
Lakshmi Sagar, Police Station- L.N.M.U. Campus, District- Darbhanga.

..... Defendants Respondents

3. Sudheshwar Jha S/O Late Satyadeo Jha Resident Of Village- Baruar,
Pargana- Alapur, Police Station- Andhratharhi, District- Madhubani At
Present Bela Dullah Wardno. 3,P.S- L.N.M.U. Campus, District=-
Darbhanga.

..... Plaintiff Appellant

.... Respondents

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

7 15-12-2015 Heard Mr. Baidyanath Thakur, learned Counsel for the
appellant.

2. The plaintiff is the appellant in this appeal against the
judgment and decree of affirmance.

3. The plaintiff filed the suit for specific performance of
contract against the defendants praying for execution of the sale
deed for the suit land in his favour.

4. Both the courts below have come to the finding that the
specific date for performance of the contract was mentioned as
30.3.1997 in the deed itself, but the suit has been filed in the year
2009 and, therefore, it was barred by limitation as provided under

Article 54 of the Limitation Act. The plaint was rejected under Order 7 Rule 11(d) by the trial court and thereafter the appeal by the plaintiff has also been dismissed by the impugned judgment and decree.

5. Mr. Thakur, learned Counsel appearing for the appellant submits that both the courts below have erred in law while mentioning that the time was essence of the contract. It has also been canvassed that on the date of execution of the agreement for sale the defendants had no title in the suit property but subsequently after grant of probate in his favour they acquired the title and therefore by virtue of Section 43 of the T. P. Act the plaintiff is entitled to sue the defendants for specific performance of contract. No other submission has been made on behalf of the appellant.

6. After perusal of the impugned judgments of both the courts below and considering the submission, it is manifest that the suit was filed in the year 2009 for specific performance of contract for sale, and the date for performance was stipulated in the agreement for sale to be 30.3.1997. From the averments made in the plaint, as noticed by the appellate court below, it does not appear that there was any further stipulation in the agreement for extending the date for performance. Mr. Thakur has clearly accepted that there is no such pleading on behalf of the appellant in the plaint that the agreed date could have been extended unilaterally. The submission that the time was not the essence of contract has admittedly been not pleaded by the plaintiff nor there is pleading that the parties agreed to extend the date of performance. The courts below have taken into notice that the date of the performance of the contract by executing the sale deed has been mentioned in the agreement for sale itself as

30.3.1997 and therefore it has been rightly held by the courts below that in the facts and circumstances of the case the suit filed in the year 2009 is barred by limitation and accordingly the plaint has been rejected.

7. Learned Counsel for the appellant has also sought to rely on Section 43 of the T. P. Act, but it appears that such a plea has neither been raised in the courts below nor there is any averment in that regard in the plaint.

8. Ex consequenti, this Court does not find any substantial question of law arising in this appeal for consideration, which is, accordingly, dismissed.

(V. Nath, J.)

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