

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.140/2015**

VIJAY PRAKASH VERMA Appellant

Through: Mr. Manu Nayar, Adv.

Versus

SURINDER SINGH & ORS Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the Judgment dated 24.12.2014 passed in RCA No.63/2014 titled Sh.Vijay Prakash Verma v. Sh.Surinder Singh by virtue of which the order dated 25.11.2014 rejecting the plaint of the appellant under Order 7 Rule 11(d) of the CPC has been upheld.
2. Before dealing with the contention of the learned counsel for the appellant, it would be pertinent to give the brief background of the case.
3. The appellant filed a suit for specific performance, declaration, cancellation and permanent injunction.

4. The case which was set up by the appellant in the plaint was that he had purchased a two room set on the first floor of the property No.2089, Katra Gokul Shah, Kucha Aqil Khan, Bazaar Sita Ram, Delhi - 110006 vide agreement dated 27.07.1984 and 07.05.1990 from one Smt.Prakash Kaur (since deceased) whose legal heirs have been impleaded as respondent Nos.2 to 6. It was alleged that the property was purchased for a total consideration of Rs.1,25,000/- which was paid on 22.10.1984, 27.07.1984, 08.05.1985 and 07.05.1990 for a sum of Rs.75,000/-, Rs.10,000/-, RS.15,000/- and Rs.25,000/- respectively.

5. It has been stated that the appellants were put in possession of the property on the basis of the said agreement. It is also the case of appellant that he gave a notice to the legal heirs requiring them to get the sale deed registered but the legal heirs did not come forward to perfect the title. It has been further stated that respondent No.13 filed a suit for eviction under Section 14(1) (e) of the Delhi Rent Control Act claiming himself to be the purchaser of the suit property.

6. The following reliefs were sought by the appellant in the prayer clause:

“i) A decree of declaration to declare the plaintiff as owner of the suit property and that the sale dated 28.02.2000 executed in favour of defendant no.13 is illegal.

ii) A decree of specific performance in favour of plaintiff and against the defendant in respect of agreement to sell dated 27.07.1984 and 07.05.1990 entered into in respect of suit property.

iii) A decree of permanent injunction to restrain the defendant no.13 from dispossessing the plaintiff from suit property and from selling, alienating or creating any third party interest therein.”

7. The learned trial court in the order dated 25.11.2014 has recorded that so far as the first relief of declaration is concerned, that was withdrawn by the appellant on 30.09.2014. So far as the second relief of specific performance of the agreement to sell dated 27.07.1984 and 07.05.1990 is concerned, the same has to be read in continuation and as an extension of the agreement dated 27.07.1984 when the suit property is purported to have been sold by Smt.Prakash Kaur since deceased to the appellant for a sum of Rs.1,25,000/-. It was noticed by the learned trial court since the property was sold by the aforesaid two agreements by Smt.Prakash Kaur to the appellant and the entire sale consideration was purportedly paid by the appellant to the vendor as well as the vendee was

put into possession, therefore, nothing further remained to be done except that the document of sale deed was required to be got registered. It has been further observed in the impugned order that as the document in question which the appellant is calling to be an agreement to sell was in fact a sale deed, therefore, the said document ought to have been registered within the permissible time of four months from the date of signing of the agreements and since this was not done, therefore, the document could not have been read in evidence by virtue of Section 17 read with Section 49 of the Indian Registration Act. The learned trial court also observed that the suit for specific performance was required to be filed within a period of three years from a specific date which was set out in the agreement or from the date of its performance and since it was not specifically stated in the agreements in question what was the date of performance, therefore, the agreement had to be enforced by filing a suit for specific performance within a reasonable period of time. The trial court further observed that even after it is assumed that the period of limitation had commenced on 07.05.1992 i.e. two years from the last agreement dated 07.05.1990, even then the period of three years would expire on 07.05.1995 while as the suit has been filed on 05.07.2007 and

the period of limitation having expired on 07.05.1995 on the face of it makes the suit as barred by time under Order 7 Rule 11(d) CPC.

8. It was also observed that so far as the relief of permanent injunction is concerned, the appellant himself is admittedly in possession of the suit property and he has not been threatened of any dispossession and if done so, the appellant could use Section 53A of the Transfer of Property Act to protect his possession by using the document in question as a sword on the basis of this reasoning. The learned trial court on the basis of the plaint itself has observed that the suit was barred by law and accordingly rejected the plaint.

9. The appellant feeling aggrieved, preferred an appeal against the said order dated 25.11.2014 vide RCA No.63/2014 in which also he was unsuccessful. The learned ADJ dismissed the appeal as being devoid of any merit and upheld the order passed by the learned Trial Judge rejecting the plaint. The learned counsel for the appellant has contended that the rejection of the plaint by the learned Trial Judge and upholding of the same by the first appellate court has not taken cognizance of all the points raised by the appellant and decided the case on all the issues which were involved in the matter.

10. It has been stated by him that in the first instance, the appellant never withdrew his relief of declaration with respect to cancellation of sale deed as is recorded in the order of the trial court was withdrawn by the appellant before the trial court and, therefore, the court ought to have decided as to whether the sale deed purported to have been executed by respondent Nos.2 to 6 in favour of respondent No.13 was a legal document. He has further contended that the suit has been erroneously rejected by the trial court which order has been upheld by the first appellate court holding that the suit ought to have been filed within a period of three years starting from 07.05.1992 while as no specific date was fixed by the agreement within which title of the appellant was to be perfected. It has been contended by him that Schedule I to the Limitation Act, 1963 specifically lays down a period of three years from the date specified in the agreement or alternatively a period of three years from the date when a party has a knowledge about the refusal on the part of the vendor to perfect the title of the appellant/plaintiff. It has been contended by him that the appellant gave a notice to the legal heirs on 23.07.2007 and immediately thereafter filed a suit as the legal heirs did not come forward to perfect the title of the appellant. It has also been contended

that the learned trial court has fallen into a serious error by not dealing with the issues raised in the suit.

11. In support of his submissions, the learned counsel for the appellant has relied upon the following judgments: i) Shrimant Shamrao Suryavanshi and Anr. v. Pralhad Bhairoba Suryavanshi (Dead.) by LRs and Ors; (2002) 3 SCC 676; ii) Mahadeva and Ors.v. Tanabai; (2004) 5 SCC 88. These judgments have been relied upon for the reason that Section 53A of the Transfer of Property Act permits a vendee to defend his position against the vendor who is purported to have sold the property to the vendee.

12. I have gone through these authorities and there is absolutely no dispute about the proposition of law laid down in these three cases.

13. It is well settled by now that Section 53A clearly lays down that in case in pursuance to part performance of an agreement to sell, possession has been delivered to the vendee, he is entitled to defend his possession qua that vendor only and not against the world at large. As a consequence of this, the courts have observed that Section 53A can be used as a shield but not as a sword.

14. In the instant case, the question of applicability of Section 53A does not arise at all. This is on account of the fact that the appellant was not the defendant in the trial court. On the contrary, it was the appellant who had filed a suit for declaration, specific performance and permanent injunction. The declaration which was sought was that the legal heirs of his father had purportedly sold the property to respondent No.13 (defendant No.13) which was sought to be got cancelled. This relief of declaration was given up and the specific performance was pressed which relief was denied to him on account of being barred by limitation. Therefore, I fail to understand as to how the learned counsel for the appellant is helped by Section 53A of the Transfer of Property Act when he himself has gone to the court. Accordingly, these judgments are not applicable to the facts of the present case.

15. The second line of judgments which have been relied upon by the learned counsel for the appellant are as follows: Ahmadasahab Abdul Mulla (dead) by Proposed LR's v. Bibijan and Ors: (2008) 5 SCC 361, Ranganayakamma and Anr. v. K.S.Prakash (dead) by LR's and Ors; (2008) 15 SCC 673 and Ahmadasahab Abdul Milla (dead) by proposed LR's v. Bibijan and Ors.; 2009 (3) Supreme 116 where the apex court has

observed what is the meaning of the word date which is mentioned in Article 54 of the Limitation Act. Article 54 of the Limitation Act lays down that a suit for specific performance is to be filed within a period of three years from the date which is fixed for completion of transaction and in case no date is fixed, then from the date when the petitioner had knowledge about the refusal to perform his part of the contract by the respondent. In the present case, admittedly no time was specified in the agreement dated 27.07.1984 and 07.05.1990 within which the transaction was to be completed, therefore, the judgments which have been relied by the learned counsel for the appellant are not applicable because no date was specified in the contract for completion of transactions. As a matter of fact, the trial court has given a finding that it was not an agreement to sell but it was a sale deed because nothing further remained to be done as possession had been taken by the appellant and the entire sale consideration had been given to the predecessor in interest of the respondent Nos.2 to 6 namely Smt.Prakash Kaur (since deceased) and only thing required to be done was to get the document registered with the Sub Registrar of the area within a period of four months as stipulated under the Indian Registration Act. Therefore, these judgments are not

applicable. The learned trial court has rightly observed that since time for performance of the agreement was fixed, the appellant was required to approach the court within a reasonable period of time after asking deceased respondent Smt.Prakash Kaur to perfect her title although according to the Court, there was no act required to be done by her except registration. The court has reckoned the period of limitation of two years after the last agreement i.e. 07.05.1990 and has observed that the suit ought to have been filed within a period of three years which would have expired in 1995 while as the said suit was filed in the year 2007 and, therefore, the court rightly observed that the suit was hopelessly bared by time and accordingly rejected the plaint. This rejection has been upheld by the first appellate court also and thus there is a concurrent finding of the two courts below. The learned counsel for the appellant has not been able to show the applicability of judgments on the question of limitation or what all questions of law are involved in the matter. Therefore, this argument of the learned counsel for the appellant also does not have any merit.

16. The last judgment which has been relied upon by the appellant is Shrimant Shamrao Suryavanshi and Anr. v. Pralhad Bhairoba Suryavanshi (Dead) by Lrs and Ors; (2002) 3 SCC 676.

17. I fail to understand as to how and in what context, the judgment has been relied upon. The judgment deals with the question of limitation in the context of family settlement and it only lays down that fraud or misrepresentation would render a deed voidable and, therefore, the deed is required to be set aside. In the instant case, it seems perhaps the contention of the learned counsel for the appellant was that the sale deed which was entered into by the successor of Smt.Prakash Kaur who are respondent Nos.2 to 6 was actuated by fraud and, therefore, the cancellation of the same was sought. However, the learned trial court has recorded in the order that the relief of declaration was given up by the appellant. Therefore, there is no question of going into the validity of the transaction purported to have been executed between the successors of Smt.Prakash Kaur and respondent No.13. No other point has been urged by the learned counsel for the appellant.

18. In view of the aforesaid facts and circumstances, I am of the considered opinion that the appellant has not been able to show that any

question of law much less a substantial question of law is involved in the matter which may warrant issuance of a notice.

19. Accordingly, the appeal is dismissed.

V.K. SHALI, J

APRIL 17, 2015/dm