

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

+ **RSA No.276/2015**

% **19th July, 2016**

SH. SURINDER PAL SINGH Appellant

Through: Mr. G.D. Chopra, Advocate.

versus

SH. VED PRAKASH DECEASED THROUGH HIS LRS. Respondents

Through: Mr. S.C. Rana, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the concurrent Judgments of the courts below; of the Trial Court dated 20.10.2012 and the First Appellate Court dated 2.3.2015; by which the suit for specific performance has been dismissed as barred by limitation before even issues were framed and evidence was led by the parties.

2. The following substantial question of law arises:-

“Whether the courts below have committed a gross illegality and complete perversity in dismissing the suit for specific performance as time barred at the initial stage of pleadings although the plaint does not show refusal before 3.11.2010 (suit filed on 19.11.2010) and on the contrary plaint

shows extension of the date fixed by the agreement to sell of 15.7.2002 by making of payments by the plaintiff to the defendant on 2.8.2002 and 10.8.2002?”

3. The only issue before this Court is that whether on the admitted facts as stated in the plaint the suit is to be taken to be barred by limitation as held by the courts below. For this purpose it would be necessary to extensively refer to the relevant paras of the plaint and which relevant paras of the plaint are paras 1 to 4, 6 and 7 and these paras read as under:-

“1. That the plaintiff has entered into an agreement with the defendant to purchase a property bearing No.B-1155, Shastri Nagar, Delhi-110052 situated on 3rd floor admeasuring 236 Sq. ft and with boundary mentioned as below:-

East- Open balcony at that time

West- Other Property (Gurdwara)

North- Property of V.P. Gupta (Seller)

South- Property of J.S. Kukreja

for a sum of Rs.1,65,000/- on 18/5/2002. As per agreement the plaintiff has to pay a sum of Rs.1,65,000/- by 15/7/2002. The plaintiff has paid entire amount to the defendant on different dates as Rs.50,000/- on 18/5/2002, Rs.90,000/ on 14/7/2002.

2. That when the plaintiff reached to the house of defendant on 15/7/2002 along with remaining amount he replied that he is not in well state of health and said “don’t worry I will Register these documents on some other day” this agreement was a mere formality. It was faith between the plaintiff and defendant which is more important.

3. That the plaintiff had a good relation with defendant at that time, plaintiff did not press for the issue as he was not in a well state of health on that day.

4. Later the plaintiff again contacted the defendant on 2/08/02 along with remaining payment of Rs.25,000/- and again requested him to register the said property in the name of plaintiff, but he still not ready to execute the documents in the name of plaintiff. On the contrary he requested before plaintiff that he need money for his treatment and requested to give remaining payment after which he will complete documents in a day or two on listening this the plaintiff gave a sum of Rs.10,000/- to the defendant for which he has also issued one receipt. The plaintiff again pay a sum of Rs.15,000/- on 10/08/02 cash for which defendant never issued any receipt in favour of the plaintiff.

6. That the plaintiff is in possession of this property from 1998 onwards, so the relation between the plaintiff and the defendant was so good that plaintiff always take it easy or in good faith always accept excuses of defendant. That finally the defendant straightway denies the execution of documents of property in question in the name of our client. That now, the health condition of defendant is deteriorating day by day. So the plaintiff is now seriously wants this registration should be done in his favour.

7. That when the defendant clearly denies to execute the documents in favour of plaintiff he had to serve a legal notice calling upon the defendant to execute the sale deed posted through registered AD on 03-11-2010 which was duly served to the defendant but instead of correcting his mistake defendant shows his malafide intentions by sending a legal notice from his Advocate dated 03-11-2010 in which he is claiming that the plaintiff is unauthorizedly residing in the premises of defendant.”
(underlining added)

4. A reading of this aforesaid paras shows that plaintiff agreed to purchase the suit property bearing no.B-1155, Shastri Nagar, Delhi-110052 from the defendant (now represented by his legal heirs being the respondents) by an Agreement to Sell dated 18.5.2002. The sale consideration was Rs.1,65,000/- of which the appellant/plaintiff paid a sum of Rs.1,40,000/- by 14.7.2002 as stated in para 1 of the plaint. The date fixed as per the agreement for execution of the documents being the power of attorney in the name of the appellant/plaintiff was fixed as 15.7.2002. As per the plaint, the appellant/plaintiff when reached the house of the defendant on 15.7.2002 the defendant stated (as is averred in para 2 of the plaint) that defendant is not well and plaintiff need not to worry because the documents will be executed on some other day and agreement was a formality. These averments surely do not amount to refusal to perform the agreement by the defendant for the limitation to commence from 15.7.2002. It may be noted that

para 3 of the plaint clarifies the issue that plaintiff did not press the issue against the defendant who was not well.

5. Para 4 of the plaint shows that the plaintiff again contacted the defendant on 2.8.2002 with the remaining amount of Rs.25,000/- but the defendant was not ready to execute the documents. This para also states that defendant in fact stated that he needed money for his treatment and asked the plaintiff to give the remaining amount as a result of which the appellant/plaintiff gave the remaining balance payment being a sum of Rs.10,000/- on 2.8.2002 and Rs.15,000/- on 10.8.2002. Thus the entire consideration under the agreement to sell stood paid.

6. Paras 6 and 7 of the plaint thereafter state that since the defendant is not well plaintiff wants to ensure that he gets the documents in his favour of the suit property and therefore Legal Notice was issued on refusal by the defendant on 3.11.2010. The subject suit therefore was filed within three years from 3.11.2010 which is said to be the date of refusal, the suit being filed on 19.11.2010.

7. Counsel for the respondent very vehemently argued that para 4 of the plaint is very clear that defendant has refused to execute the documents on 2.8.2002, however, I refuse to read para 4 of the plaint as if that averments are of refusal of the defendant to perform the agreement because stating that defendant is not ready to execute the documents is different from defendant refusing to execute

the documents. In any case, the first line of para 4 of the plaint is clarified by the subsequent lines which show that the agreement was continued by the parties inasmuch as plaintiff paid a sum of Rs.10,000/- and Rs.15,000/- on 2.8.2002 and 10.8.2002 respectively and thus paid the entire sale price to the defendant/respondent/proposed seller. The mere fact that defendant has disputed the receipt of the amounts which have been given by the plaintiff as stated in para 4 of the plaint will not mean that the suit can be dismissed at the preliminary stage without leading of evidence because whether or not the amount has been paid by the plaintiff to the defendant as stated in para 4 is a disputed question of fact on which issue will have to be framed and evidence will be led by the parties. If the plaintiff is successful in showing that he made payments and thus parties thereafter agreed to extend the time of performance from the date fixed of 15.7.2002, then, the plaintiff can be successful subject to proving other issues in his favour, however at the initial stage being the stage of pleadings, it cannot be held that the suit is barred by limitation because a specific date being 15.7.2002 is fixed by the agreement as the last date moreso because the last date of 15.7.2002 as per the contents of para 4 of the plaint shows that the said date has been extended. It is not unknown that a date fixed by the agreement can be extended as per the mutual agreement between the parties, and once that is so, limitation of three years under Article 54 of the Limitation Act, 1963 will not commence from the date fixed as stated in the agreement but from the date of refusal by the defendant/proposed seller to perform the agreement to sell.

8. In my opinion, contents of paras 1 to 6 of the plaint do not in any manner aver any categorical refusal by the defendant to execute the documents in favour of the plaintiff pursuant to the Agreement to Sell dated 18.5.2002 before 3.11.2010, and on the contrary these paras of the plaint only show reluctance of the defendant on account of his ill health or some other pretext, and which position is not equal to refusal to perform the agreement to sell for the purpose of limitation. This is all the more so because if contents of para 4 of the plaint are proved by the plaintiff, then, the time of performance would only get extended beyond 15.7.2002 as the defendant is said to have accepted payments on 2.8.2002 and 10.8.2002 from the plaintiff.

9. In view of the above discussions, it is held that the judgments of the courts below suffer from complete illegality and perversity because in the plaint it is not found that there is a categorical date of refusal by the defendant before 3.11.2010 and from which date limitation can only be said to arise with the fact that limitation in the facts of the present case would be a mixed question of law and fact in view of the averments made in para 4 of the plaint showing receipt of amounts by the defendant after the date fixed by the agreement of 15.7.2002. Courts below have fallen into a completely gross illegality and perversity in holding that the limitation of three years commenced from 15.7.2002 being the date fixed by the agreement for performance because if appellant/plaintiff proves payments of 2.8.2002 and 10.8.2002, then it would be proved that the date fixed by

the agreement of 15.7.2002 was extended beyond that date and which aspects are a matter of trial and cannot be decided at the stage of pleadings without evidence being led by the parties.

10. Appeal is therefore allowed. The suit is remanded as per Order XLI Rule 23 CPC to the trial court for disposal in accordance with law after framing of issues. Let the parties appear before the District & Sessions Judge (North), Tis Hazari Courts, Delhi on 22nd August, 2016 and the District & Sessions Judge will mark the suit for disposal to a competent court in accordance with law.

JULY 19, 2016
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VALMIKI J. MEHTA, J