

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.32 of 2015

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1. Smt. Sona Devi. Wife of Sri Ramnath Mehta. Resident of Mohalla - Makhania Kuan (Babu Tola), P.O.- Bankipore, P.S.- Pirbahore, District - Patna.

.... Petitioner/s

Versus

1. Shyama Nand Singh. Son of Late Ramdeo Singh. Resident of village - Teghara, P.S.- Simari Bakhtiyarpur, District - Saharsa at present resident at Mohalla - Gola Road, Jhakhari Mahadeo Danapur, P.S.- Danapur, District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Srivastava
Mr. Prem Kumar Verma
For the Respondent/s : Mr. Sunil Kumar

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR

SRIVASTAVA

ORAL JUDGMENT

Date: 03-08-2017

Heard learned counsel for the petitioner as well as learned counsel for the opposite party.

2. This Civil Revision has been preferred against the order dated 02.03.2015 passed by the learned Sub-Judge IVth Danapur, Patna in Title suit no. 295 of 2012 by which and whereunder he rejected the petition filed on behalf of the petitioner under Order VII Rule 11 and section 151 of the Civil Procedure Code.

3. The opposite party brought Title suit no. 295 of 2012 for specific performance of the contract on the ground that the petitioner had executed an agreement for sale on 12.06.2000 and took part of consideration amount on 13.06.2000 and on other various



dates, lastly on 15.09.2000 but she did not execute absolute sale deed though possession of the aforesaid land had already been given to the opposite party.

4. Petitioner appeared in the aforesaid suit and filed petition under order VII Rule 11 and section 151 of the Civil Procedure Code praying therein for rejection of the plaint on the ground that averments made in the plaint do not disclose the cause of action and the suit is time barred . The learned Sub-Judge Danapur, Patna rejected the aforesaid petition by passing the impugned order against which the present revision petition has been filed.

5. Learned counsel appearing for the petitioner submits that it is an admitted case of the opposite party that the agreement for sale was executed on 12.06.2000 and the entire consideration amount was to be paid and the aforesaid averments made in agreement goes to show that the sale deed was to be executed by 30.11.2008 but admittedly, latest by 30.11.2000, no suit was filed within the period of limitation and, the present suit was filed in the year 2012 on the ground, that by taking part of consideration amount on 15.09.2009, the petitioner revived the agreement. He further submitted that section 54 of the Limitation Act prescribed three years limitation for filing the suit for specific performance and according to the aforesaid section, if in the agreement the date has been fixed for performance of the



contract, then the period of limitation runs from the date of execution of the document and, if no period for performance of the contract has been fixed, then, in that circumstance, period of limitation shall start from the date of refusal of the performance of the contract. He further submits that in the present case, admittedly, the time for performance of the contract was fixed and, therefore, the suit of the opposite party was obviously time barred but learned court below did not pay any heed towards the aforesaid fact. He further submits that even if it is assumed that the petitioner acknowledged the aforesaid agreement on 15.09.2009, then also, on the basis of so called acknowledgement, the agreement for sale dated 12.06.2000 could not be revived. To fortify the aforesaid contentions, he referred section 18 of the Limitation Act which says that where, before expiration of the prescribed period of limitation for a suit or application in respect of any property or right, an acknowledgement 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 acknowledgement was so signed'.

6. He further submits that in the present case, allegedly, petitioner acknowledged the agreement on 15.09.2009 that is much after the expiry of period of limitation and, therefore, the aforesaid



acknowledgment could not revive the previous agreement. In support of his contention, he relied upon a decision rendered in the case of G. Veera Brahman v/s Smt. Gopalapuram Sammakka & Anr. reported in **AIR 2009 Andhra Pradesh 27** wherein it has been held that even if the balance amount is taken after prescribed period of limitation, then also, it would not be amount to acknowledgement of the agreement.

7. He also relied upon the decision rendered **in the case of Sampuran Singh v/s Niranjana Kaur reported in AIR 1999 SC 1047** wherein it has been held that if acknowledgement is made after expiry of period of limitation, the said acknowledgement shall not revive the agreement in the light of section 18 of the Limitation Act.

8. Learned counsel for the petitioner further submits that all the above stated facts are admitted facts and has specifically been pleaded in the plaint but the court below committed error in passing the impugned order.

9. On the other hand, learned counsel appearing for the opposite party refuted the above stated submission arguing that admittedly, the agreement for sale was executed on 12.06.2000 and after that on different occasions, the petitioner received part consideration amount and lastly, she received Rs. 40,000/- on 15.09.2009 acknowledging the existence of the aforesaid agreement. He further submits that opposite party has, specifically, pleaded in the



plaint that he several times requested the petitioner to execute absolute sale deed but she evaded execution of absolute sale deed and lastly, on 5.08.2012, she flatly refused to execute the absolute sale deed and, thereafter, the present suit was filed.

10. It is an admitted position that agreement for sale in question was executed on 12.06.2000 and it is stated in the plaint that acknowledgement of the aforesaid agreement for sale was made on 15.09.2000. From perusal of the agreement dated 12.06.2000, it would appear that the opposite party had to pay remaining balance amount by 30.11.2000 but admittedly, the remaining balance consideration amount of the aforesaid agreement for sale was not paid by 30.11.2000. The aforesaid terms of agreement goes to show that the absolute sale deed was to be executed by 30.11.2000 and the time was essence of the contract. It is not in dispute that the limitation for filing suit for specific performance is only three years from the date of execution of agreement, if the time is essence of the contract,. In the present case, the agreement for sale was executed on 12.06.2000 and the sale deed was to be executed by 30.11.2000 but, admittedly, the suit was filed in the year 2012 that is much after the prescribed period of limitation.

11. No doubt, the agreement for sale in question contains acknowledgement of taking of Rs. 40,000/- on 15.09.2009 but even



then the aforesaid acknowledgement could not revive the aforesaid agreement for sale nor extended the period of limitation for filing suit on the basis of aforesaid agreement for sale because the said acknowledgement was made after expiry of period of limitation and, therefore, in my view, the learned court below committed error in rejecting the petition of the petitioner, particularly, in the circumstance, when all the aforesaid facts have been pleaded in the plaint itself.

12. Therefore, on the basis of aforesaid discussions, this revision petition is allowed and the impugned order dated 02.03.2015 passed by the learned Sub-Judge-IV, Danapur, Patna in Title suit no. 295 of 2012 is, hereby, set aside and the learned Sub-Judge, Danapur, Patna is directed to pass afresh order on the petition of the petitioner taking into account the observations given by this Court.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NAFR
Uploading Date	21.08.2017
Transmission Date	21.08.2017

