IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 122 of 2014

==========

1. Pravin Singh @ Pravin Kumar @ Pravin Kumar Singh S/o Late Narvadeshwar Singh

2. Ashok Singh @ Ashok Kumar S/o Late Arvind Kumar Singh

3. Gopal Singh @ Gopal Kumar S/o Late Arvind Kumar Singh

4. Murari Singh @ Murari Kumar S/o Late Arvind Kumar Singh

All Resident of Village Marachi Tola, Sonyama, P.S. Hathidah (Marachi), District Patna.

Defendants.... .... Petitioners

Versus

Madan Mohan Singh S/o Late Siya Singh Resident of Village Barahiya Bahapdr, P.S. Hathidah (Panchmahla O.P.), District Patna at presently residing at Barahiya Kothi, People Co-operative Colony (R.M.S. Colony), Malahi Pakri, Kankarbagh, Patna.

Plaintiff.... .... Opposite Party

==========

Appearance :
For the Petitioners : Mr. Onkar Nath, Adv.
For the Opposite Party : Mr. Navin Kumar, Adv.
Mr. Brajnandan Singh, Adv.

==========

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date: 03-05-2017

1. This civil revision petition has been preferred for setting aside the order dated 18.07.2014 passed by learned Sub Judge-6th Patna in connection with Title Suit No 249 of 2013 by which and whereunder learned Sub Judge-6th Patna rejected the petition filed by defendants-petitioners under Order 7 Rule 11 (d) of C.P.C.

WEB COPY

2. The brief fact, which lies to file this civil revision petition, is that the plaintiff-opposite party filed Title Suit No 249 of 2013 against the defendants-petitioners seeking relief for a decree for specific performance of contract of sale on the basis of an agreement of sale dated 04.04.1974 said to be executed by Late Naravadeshwar Singh in favour of plaintiff-opposite party for consideration amount of Rs. 14000/- in respect of suit property and alternative relief was also sought for decree of Rs. 35,000/- as damage and cost of Rs. 12,000/- and also for issuance of temporary injunction against them.

3. The case of plaintiff-opposite party was that one Late Naravadeshwar Singh, the ancestor of defendants-petitioners executed a deed of agreement of sale dated 04.04.1974 in favour of plaintiff-opposite party in respect of suit property on receipt of Rs. 12,000/- by way of advance and delivered possession of the suit property to the plaintiff-opposite party in part performance of the contract. The total consideration amount was Rs. 14,000/-. The aforesaid Naravadeshwar Singh was in urgent need of money to construct his house as well as to meet the necessity for treatment of his younger son, who was suffering from Polio but whenever the plaintiff-opposite party requested the aforesaid Naravadeshwar Singh to execute and register the sale deed, he evaded the request

WEB COPY

of plaintiff-opposite party on the pretext of treatment of his son. The plaintiff-opposite party was always ready and willing to perform his part of the contract but absolute sale deed could not be executed because of avoiding attitude of Late Naravadeshwar Singh. The plaintiff-opposite party sent legal notice to defendants-petitioners requesting them to execute the absolute sale deed but they did not take any interest and thereafter, the plaintiff-opposite party filed the present suit. The cause of action finally arose when on 10.04.2013, the defendants-petitioners finally refused to execute the absolute sale deed.

4. The defendants-petitioners appeared in the above stated suit and filed a petition under Order 7 Rule 11 (d) of the C.P.C. praying therein to reject the plaint under the above stated provision as the suit filed by the plaintiff-opposite party was barred by law of limitation. The learned court below, having considered the submission of the parties as well as pleadings of the plaint, rejected the aforesaid petition passing impugned order which is under challenge before this Court.

5. Learned counsel appearing for the defendants-petitioners challenged the impugned order arguing that according to case of the plaintiff-opposite party, the so-called agreement of sale was executed on 04.04.1974 but the Title Suit No 249 of 2013

WEB COPY

was filed after 39 years of execution of the aforesaid so-called agreement of sale i.e. too after death of Naravadeshwar Singh and, therefore, the aforesaid suit was hit by Section 54 of the Limitation Act, 1963 which says that if the time is fixed for performance of agreement of sale, the suit is required to be filed within three years. He submitted that in the present case, there was specific provision in so-called agreement of sale that the plaintiff-opposite party shall absolute sale deed get executed within three months or after treatment of his son and, therefore, there was fix time for execution of absolute sale deed and there was also a term of the agreement that if the plaintiff-opposite party fails to get the absolute sale deed executed within the above stated fixed period, the consideration amount paid in advance shall be forfeited. He further submitted that there was fix time for execution of absolute sale deed but admittedly, the plaintiff-opposite party failed to get the sale deed executed within the period of three months from the date of execution of agreement of sale and the aforesaid fact is apparent from the pleadings of the plaint. He further submitted that plaintiff-opposite party filed Title Suit No 249 of 2013 with wrong pleadings and the pleading of the plaint is not corroborated by the agreement of sale because in agreement of sale, it has, specifically, been mentioned that after treatment of son of plaintiff-opposite

WEB COPY

party, the plaintiff-opposite party shall get the absolute sale deed executed whereas in plaint, it has been mentioned that son of defendants-petitioners was suffering from Polio and moreover, in the entire plaint, there is nothing to show as to when the treatment of son of plaintiff-opposite party was completed and, therefore, on account of the aforesaid ambiguity, the plaint filed on behalf of the plaintiff-opposite party is liable to be rejected.

6. Learned counsel appearing for the defendants-petitioners relied upon the decision of **Ahmadsahab Abdul Mulla v. Bibijan and others** reported in (2009) 5 SCC 462**,** the decision of **Church of Christ Charitable Trust and Educational Charitable Society Represented by its Chairman v. Ponniamman Educational Trust Represented by its Chairperson/ Managing Trustee** reported in (2012) 8 SCC 706 and decision of **Fatehji and Company & Anr. vs. L.M. Nagpal & Ors.** reported in 2015(3) PLJR (SC) 207.

7. On the other hand, learned counsel appearing for the plaintiff-opposite party refuted the above stated submissions arguing that plaint under Order 7 Rule 11 can only be rejected on the basis of averments made in the plaint and neither the averments made in the written statement nor in petition filed under Order 7 Rule 11 of the C.P.C. could be considered for rejection of the

WEB COPY

plaint. He further submitted that terms of agreement of sale dated 04.04.1974 goes to show that no fix period was given in the aforesaid deed for execution of absolute sale deed because according to term of aforesaid deed, the absolute sale deed ought to have been executed within three months from the date of execution of aforesaid agreement of sale or after treatment of son of executant of the aforesaid agreement of sale and, therefore, it is obvious that second part of term of aforesaid agreement of sale did not fix any time for execution of absolute sale deed and, therefore, it cannot be said that sale deed was to be executed within a fix period of time. He further submitted that moreover, above stated controversy could only be decided after taking evidence in the suit and the plaint of the plaintiff-opposite party cannot be rejected at its threshold.

8. In support of his contention, learned counsel appearing for plaintiff-opposite party relied upon the decision of **Anwari Bibi vs. Khairatan Bibi & Anr** reported in 2017(1) PLJR 223.

9. Having heard the contentions of both the parties, I went through the record. Admittedly, the basis of suit of plaintiff-opposite party is the agreement of sale dated 04.04.1974 and the aforesaid agreement of sale contains condition that absolute sale deed shall be executed within three months from the date of

WEB COPY

execution of agreement of sale or after treatment of son of plaintiff-opposite party. Therefore, the first part of aforesaid condition speaks about fix time for execution of absolute sale deed whereas second part of term of agreement of sale does not speak a fix time rather it says that after completion of treatment of son of plaintiff-opposite party, the sale deed shall be executed. However, in plaint, it has been mentioned that son of defendants-petitioners was suffering from Polio. Moreover, at this stage, it is worthless to discuss the aforesaid facts because in the present matter, the only question is involved as to whether the suit filed by the plaintiff-opposite party was time barred or not. Admittedly, the agreement of sale was executed on 04.04.1974 whereas the present Title Suit No 249 of 2013 was filed on 15.04.2013 i.e. after 39 years of execution of aforesaid agreement of sale.

10. Article 54 of Schedule of Limitation Act, 1963 says about the limitation of filing of a suit for specific performance of a contract and according to aforesaid Article 54 of aforesaid Act, the period of limitation for filing the suit for specific performance of a contract is three years from the date fixed for the performance of the contract and if no such date is fixed for the purpose of a contract, then in that circumstance, when the plaintiff has noticed that performance is refused.

WEB COPY

11. It is obvious from perusal of the aforesaid provision that Article 54 of Limitation Act, 1963 can be divided in two parts. The first part of the aforesaid provision relates to the suit in which date is fixed for the performance of a contract whereas the second part deals with the suit in which no date is fixed for performance of the contract and according to second part of aforesaid provision, the suit for specific performance of a contract can be filed within three years from the date when the performance is refused.

12. Now, it has to be seen as to which part of the aforesaid provision is applicable in the present case. In agreement of sale dated 04.04.1974, two riders are given for execution of absolute sale deed. The first part of the condition says that the sale deed shall be executed within three moths from the date of execution of agreement of sale whereas second part of the term of agreement of sale says that the sale deed shall be executed after completion of treatment of son of plaintiff-opposite party. Therefore, the second part of the aforesaid term does not tell any fix date and the execution of absolute sale deed depends upon completion of treatment of son of plaintiff-opposite party. No doubt, in the plaint, the plaintiff-opposite party claims that son of the executant, Naravadeshwar Singh was suffering from Polio but in my view, if there is any controversy in respect of the facts, then

WEB COPY

that controversy can only be decided after full fledged trial. Moreover, the agreement of sale dated 04.04.1974 also says that executant executed the aforesaid agreement of sale for treatment of his son as well as other necessities. Therefore, in the aforesaid circumstance, in my view, the learned court below rightly rejected the petition filed under Order 7 Rule 11(d) of the C.P.C. and there is no need for this court to interfere into the impugned order.

13. Accordingly, this civil revision petition stands dismissed on admission stage itself. However, the finding/ observation given in this order shall not affect the right of the petitioners to challenge the maintainability of Title Suit No. 249 of 2013 on the ground of limitation at appropriate stage.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	27.04.2017
Uploading Date	04.05.2017
Transmission Date	N.A.

WEB COPY