

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 107 of 2007**Judgment reserved on 12.1.2017Judgment delivered on 12.2.2017

Narendra Kumar Parakh S/o Shri Panchilal Ji Parakyh, R/o 228 parakh
Mansion, Gudhiyari, Raipur C.G.

----Appellant**Versus**

Umashankar Shrivastava (Now dead) through the LRs

1. Smt. Padma Devi Shrivastava, aged 65 years, W/o Late Shri Umashankar Lal Shrivastava R/omain Road Pandri, Raipur Distt - Raipur C.G.
2. Suresh Kumar Shrivastava, aged 43 years, S/o Late Shri Umashankar Lal Shrivastava R/omain Road Pandri, Raipur Distt - Raipur C.G.
3. Naresh Kumar Shrivastava, aged 41 years, S/o Late Shri Umashankar Lal Shrivastava R/omain Road Pandri, Raipur Distt - Raipur C.G.
4. Ramesh Kumar, aged 32 years, S/o Late Shri Umashankar Lal Shrivastava R/omain Road Pandri, Raipur Distt - Raipur C.G.
5. Bharti Shrivastava, aged 36 years, D/o Late Shri Umashankar Lal Shrivastava R/omain Road Pandri, Raipur Distt - Raipur C.G.
6. Dinesh Kumar Shrivastava, aged 33 years, S/o Late Shri Umashankar Lal Shrivastava R/omain Road Pandri, Raipur Distt - Raipur C.G.
7. Mahesh Kumar Shrivastava, aged 21 years, S/o Late Shri Umashankar Lal Shrivastava R/omain Road Pandri, Raipur Distt - Raipur C.G.
8. State Of C.G. Through Collector Raipur C.G.

-----Respondents

For Appellant:

Shri Ashish Surana, Advocate.

For Respondents 1to 4 & 7:

Ms. Prachi Agrawal, Advocate appears on
behalf of Shri BP Sharma, Advocate.

Hon'ble The Chief Justice**Hon'ble Shri Justice Sanjay Agrawal****C A V Judgment****Per Sanjay Agrawal, Judge**

1. This is an Appeal filed by the Appellant/Plaintiff while exercising the powers enumerated under Section 96 of the Code of Civil Procedure, 1908 questioning the propriety of the judgment and decree dated 25.06.2007 passed by the learned Additional District Judge (FTC), Raipur in Civil Suit

No.10-A/2007, whereby the Appellant/Plaintiff's claim for specific performance of contract has been dismissed.

2. Brief facts of the case are that the Appellant/Plaintiff Narendra Kumar Parakh has instituted a suit for specific performance of contract on the basis of an agreement to sale dated 18.04.1987 purported to have been executed by Respondents/Defendants in respect of their respective properties described in detail at paragraph-2 of the Complaint and had been shown in red colour in the map attached with the Complaint (hereinafter referred to as the suit property). The suit property was agreed to be alienated @ Rs.45,000/- (Forty Five Thousand) per acre upon receiving the earnest amount of Rs.80,008/- (Eighty Thousand and Eight). It is pleaded in the complaint that while executing the alleged agreement to sale, the Respondents/Defendants have agreed to obtain the requisite permission from all the concerned Government Departments prior to the execution of a registered deed of sale in pursuance to the alleged agreement to sale and was agreed further that they will provide him the written information in this regard by a registered post. It is averred in complaint that after receiving the written information, the rest of sale consideration of Rs.6,89,042/- (Six Lacs Eighty Nine Thousand and Forty Two) shall be paid by him at the time of execution of registered deed of sale and was agreed further that if any portion of the suit properties is reserved for the purposes of Government use, then the sale deed would be executed and registered only with regard to the remaining portion of the suit properties.

3. It is pleaded further in the complaint that on 03.02.1988, the Appellant/Plaintiff had issued registered notices to all the Respondents/Defendants and demanded for execution of registered deed of sale in pursuance to the alleged agreement to sale, but, in reply to the said notices, the Respondent/Defendants have cancelled the alleged agreement to

sale on 11.02.1988 and tried to alienate the same on increased rate to some other persons. Upon knowing the said fact, the Appellant/Plaintiff has issued another notice on 09.01.1992 and demanded the Respondents/Defendants for execution of the registered sale deed, however, it was refused by them by their reply on 11.01.1992, giving rise to an instant action, instituted on 21.01.1992.

4. The Respondents/Defendants have contested the aforesaid claim by submitting, inter alia, that as the alleged agreement to sale dated 18.04.1987 has already been cancelled by them on 11.02.1988 in their reply to the Appellant/Plaintiff's notice dated 03.02.1988, therefore, suit as framed and instituted much beyond the prescribed period of 3 years is apparently barred by time and not maintainable. It was contested further on the ground that the Plaintiff himself was responsible for not getting the sale deed executed in his favour in pursuance to the alleged agreement to sale.

5. The Trial Court, after considering the evidence led by the parties, has dismissed the suit by holding, inter alia, that the suit as instituted beyond the prescribed period of 3 years is barred by time as per the provisions enumerated under Article 54 of the Indian Limitation Act, 1963 (hereinafter referred to as 'the Act of 1963').

6. Shri Ashish Surana, learned Counsel for the Appellant/Plaintiff has argued that despite of repeated requests being made by the Appellant/Plaintiff, the Respondents/Defendants have neither obtained necessary permission as required under the alleged agreement to sale from the Government Department nor did they get the suit property demarcated, therefore, the Trial Court erred in dismissing the suit on the ground of limitation and in support, has relied upon the decision rendered in the matter of **Ramzan vs. Smt Hussaini** reported in AIR 1990 Supreme Court 529. He

argued further that even upon holding that the alleged agreement to sale (Ex. P-1) was in existence, the trial court ought not to have dismissed the suit on the ground of limitation.

7. Ms. Prachi Agrawal, learned Counsel for the Respondents/Defendants on the other hand while supporting the judgment and decree under Appeal has argued that despite the cancellation of the alleged agreement to sale (Ex. P-1) on 11.02.1988, the Appellant/Plaintiff has failed to institute a suit within the prescribed period of 3 years and argued that for obtaining the discretionary relief of specific performance of the contract, the Appellant/Plaintiff should have approached the Court within the prescribed period of limitation. She further argued that the trial court while entertaining the issue No.2 has not held that the alleged agreement to sale (Exhibit P-1) was in existence, in fact, what has been observed was that the terms and conditions stipulated therein are not as such, so as to be held that it is hit by any law.

8. We have heard learned Counsel for parties and perused the entire record carefully.

9. Undisputedly, the alleged agreement to sale (Ex P-1) was executed by Respondents/Vendors in favour of the Appellant/Plaintiff on 18.04.1987 agreeing to alienate their respective suit properties as per the terms and conditions stipulated therein. It is true that the alleged agreement to sale was executed but a bare perusal of the record would show that initially the Appellant/Plaintiff had issued registered notices (Exhibits P-3 to P-10) to the Respondents/Defendants, all dated 03.02.1988, but, in reply to the said notices, the Respondents/Defendants have cancelled the alleged agreement to sale on 11.02.1988 (Ex. P-11). Thus, the Respondents/Defendants had shown their intentions very specifically on 11.02.1988 itself for not executing

the registered deed of sale in pursuance to the alleged agreement to sale (Ex P-1) and this is the date/time which had given the right to the Appellant/Plaintiff to institute a suit for specific performance of contract within the period as per the provisions prescribed under Article 54 of the Act, 1963. Despite the occurrence of the cause of action as such, the Appellant/Plaintiff has kept silent and was indulged unnecessarily in issuing further notices to the Respondent/Defendants. What is visualized from the record that once the Respondents/Defendants have shown their intention by their reply-notice dated 11.02.1988 (Ex. P-11) issued in response to the Appellant/Plaintiff's notice dated 03.02.1988, then the Appellant/Plaintiff should have immediately approached the Court for claiming the discretionary relief of specific performance of contract or at least should have instituted a suit in time as provided under Article 54 of the Act of 1963. However, instead of showing his intention to get the registered deed of sale executed in pursuance to the alleged agreement to sale, a suit in the instant nature was brought by him only on 21.01.1992, i.e., much beyond the prescribed period of 3 years.

10. Article 54 of the Act, of 1963, at this juncture which provides limitation of 3 years for claiming a discretionary relief of specific performance of contract is relevant for the purpose is reproduced herein as under:-

Description of suit	Period of Limitation	Time from which period begins to run
Xxxxxxxxxx	Xxxxxxx	Xxxxxx
Xxxxxxxxxx	Xxxxxxx	Xxxxxx
54. For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused

11. The Limitation of 3 years as provided in the above referred provision is in two parts. Firstly, when the date is fixed for the performance of the contract

and secondly, when the date is not fixed, but the Appellant/Plaintiff has noticed that the performance is refused.

12. A bare perusal of the agreement to sale (Ex. P-1), based upon which the instant suit is filed on 21.01.1992, it is evident that no "date" is provided therein for the performance of the contract and therefore the Appellant/Plaintiff's case would certainly fall under the second part of the aforesaid provision. We examined the entire record for ascertaining the fact that when Appellant/Plaintiff came to know regarding refusal of alleged agreement to sale and that on mere perusal, it would establish the fact that the plaintiff knew about it on 17/18th February, 1988 when he received the Respondents/Defendants' notice dated 11.02.1988 (Ex. P-11).

13. Thus, the Appellant/Plaintiff who was very well aware with regard to the cancellation of the alleged agreement to sale on 17/18th February, 1988 should have approached the Court well in time, i.e., from the date of receiving the notice dated 11.02.1988 (Ex.P-11) for claiming the discretionary relief of specific performance of contract. Having failed so, the Appellant/Plaintiff had instituted a suit on 21.01.1992 much beyond the period of 3 years is, therefore, apparently barred by time under Article 54 of the Act of 1963.

14. The Supreme Court in the matter of ***Venkappa Gurappa Hosur vs. Kasawwa C/o Rangappa Kulod*** reported in (1997) 10 Supreme Court Cases 66 has also observed under such an eventuality in paragraph-2 of its judgment as under:-

"2. The appellant had filed a suit for specific performance of the sale agreement dated 9-8-1959 in respect of the land in Village Lingapur for a consideration of Rs.10,200. It is the case of the appellant that he paid as part consideration a sum of Rs 501 on the said date and a further sum of Rs 700 on 4-3-1960. In the meanwhile, the defendant filed Suit No. 9 of 1960 for possession of the said properties. The suit was decided in his favour on 9-11-1971. The appellant, therefore, issued notice for the first time on 22-8-1972. Thereon, the respondent denied

execution of the agreement. Then the appellant filed the suit on 5-11-1972. Thus, according to the plaintiff the suit was filed within limitation. The respondent has denied the execution of the agreement of sale, but the courts below have found that it is one of money transaction. It is, therefore, clear from Suit No.9 of 1960 itself that he had asserted to be the owner of the property and the property is unencumbered property. Therefore, no one has a right to interfere with his possession. Thus, it could be seen that the suit document itself was denied as early as in 1960. As a consequence, mere issuance of notice dated 22.8.1972 does not stop the running of limitation period. Once the same has begun to run, it runs its full course. Therefore, the suit having been filed after the expiry of 3 years from the date of the knowledge of denial, by operation of Article 54 of the Schedule to the Limitation Act, 1963, the suit is hopelessly barred by limitation. The High Court, therefore, is right in dismissing the suit in the second appeal.”

15. The contention of Shri Surana with the help of the said Case-law reported in A.I.R 1990 Supreme Court 529, that since the defendants have failed to obtain the prior permission as required under the terms and conditions stipulated in the alleged agreement to sale (Ex.P-1) therefore, the suit cannot be held to be barred by time is not acceptable in view of the refusal by the Respondents/Defendants in the year 1988 itself as we discussed and found in precedent paragraphs. The Case- law cited by him is clearly distinguishable from the facts involved in the present case. That is the case where the subject matter, i.e. the suit house, required to be alienated by the Defendant/Vendor was in mortgage and the Defendant under the contract had agreed to alienate the same only upon its redemption. Although that was the condition stipulated therein, but the Defendant in the said matter had never cancelled the agreement in question, as was happened in the present case, and therefore in that fact scenario, it was held that the period of limitation would start from the date when the suit house was redeemed. However, in the instant matter, although the terms and conditions of fulfilling the prior permission was not complied with by the Defendants, but they have

already shown their intention for not executing the sale deed on 11.02.1988 by cancelling the alleged agreement to sale (Ex.P-1) when they first received the notice from the Plaintiff. Therefore, the case law as cited by him would not come as rescue for him.

16. As far as the further contention of Shri Surana with regard to the fact that despite having held that the alleged agreement to sale (Ex. P-1) was in existence, the trial court, under such circumstances, ought not to have dismissed the suit on the point of limitation, is noted to be devoid of any substance. No finding as such was given by the trial court as contended by Shri Surana herein. What has been observed and held by the trial court at paragraph – 11 of its judgment in this aspect is that the terms and conditions as stipulated are not as such, so as, to hold that the said agreement is hit by any law. Therefore, the contention of the Appellant is not acceptable.

17. Resultantly, the Appeal being devoid of any substance, is hereby dismissed. There shall be no order as to costs.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE