

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.286 of 2017**

Jageshwar S/o Guman Das Lodhi, Aged About 61 Years R/o Village Nangaldah, Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Nildhwaj S/o Guman Das, Aged About 57 Years R/o Village Nangaldah, Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh
2. Resham Bai W/o Kirtan Lodhi, Aged About 51 Years R/o Village Riwagahan, Post Office Dewkatta, District (Civil & Revenue) Rajnandgaon, Chhattisgarh
3. Remun Bai W/o Bahal Lodhi, Aged About 47 Years R/o Village Kolendra, Post Office Dhora, Tahsil Dongargarh, District (Civil & Revenue) Rajnandgaon, Chhattisgarh
4. Girdhari S/o Panchkaud (Dead)
 - 4 . (A) Smt. Milapa Bai Aged about 51 Years Wd/o Late Pachkaud, R/o Village Nangaldah, Post Singarpur Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh
 - 4 . (B) Ghasiya Lodhi Aged about 32 Years S/o Late Pachkaud, R/o Village Nangaldah, Post Singarpur Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh
 - 4 . (C) Radhika Bai Aged about 29 Years W/o Salikram, R/o Village Ghirdauli, Tahsil Khairagarh, District (Revenue & Civil) Rajnandgaon, Chhattisgarh
 - 4 . (D) Suhaga Bai Aged about 23 Years Wd/o Girdhari, R/o Village Nangaldah, Post Singarpur Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh
 - 4 . (E) Pappu Aged about 23 Years S/o Girdhari, R/o Village Nangaldah, Post Singarpur Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh
 - 4 . (F) Pintu Aged about 21 Years S/o Girdhari, R/o Village Nangaldah, Post Singarpur Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh
 - 4 . (G) Neema Bai Aged about 16 Years D/o Girdhari, Minor Through Legal Guardian Mother Smt. Suhaga, Wd/o Late Girdhari, R/o Village Nangaldah, Post Singarpur Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh
5. Hombati Bai W/o Feruram Janghel, Aged About 55 Years R/o Nangaldah, Post Singarpur Tahsil & District (Civil & Revenue) Rajnandgaon, Chhattisgarh (Wrongly Not Show In Judgment And Decree)
6. State Of Chhattisgarh, Through: Collector Rajnandgaon, District (Civil & Revenue) Rajnandgaon, Chhattisgarh(Defendants)

-----Respondents

For Appellant:	Shri R. N. Jha, Advocate.
For Respondents No.6/State:	Shri R. K. Jaiswal, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

18.07.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 06.03.2017 passed by the District Judge, Rajnandgaon in Civil Appeal No.94-A/2016 by which the lower appellate Court, while affirming the judgment and decree dated 19.11.2008 passed by the 2nd Civil Judge, Class-I, Rajnandgaon in Civil Suit No.18-A/2008, has dismissed the Appeal.

2. The undisputed facts of the case are that Plaintiff-Jageshwar instituted a suit for specific performance of contract on 05.01.1998 by submitting *inter alia* that his father Guman Das had obtained a loan from the Central Cooperative Bank and made a proposal on 30.05.1986 (Ex.P-14) in which, it was stated that whosoever of his sons repay the loan amount as obtained by him, he will execute the registered deed of sale in his favour with regard to Khasra No. 244 admeasuring 0.08 acres and Khasra No. 632 admeasuring 3.14 acres which was mortgaged with the said Bank for security of the loan amount. It is pleaded further that he and Defendant No. 1- Nildhwaj had paid half of the loan amount each. It is pleaded further that Defendant No.1 had earlier instituted a suit for specific performance of contract against the legal representatives of said Guman Das which was decreed on 22.02.1995 and in Appeal also, it was affirmed by order dated 13.12.1995 and the Review Petition preferred against it

was also dismissed on 12.09.1997. It is pleaded further that after the dismissal of the said suit, the Plaintiff had issued the notice on 19.11.1997 for the execution of sale deed based on the alleged agreement with regard to the half portion of the said Khasra No. 244 admeasuring 0.08 acres and Khasra No. 632 admeasuring 3.14 acres.

3. The Defendants No.1, 4 & 5 have contested the aforesaid claim for specific performance of contract by submitting that the suit as instituted in the year 1998 on the basis of alleged agreement (proposal) dated 30.5.1986 is barred by time and no relief as such could be claimed by the Plaintiff.

4. The trial Court, after considering the evidence led by the parties, has dismissed the Plaintiff's suit by holding that the suit as instituted in the year 1998 much beyond the prescribed period is barred by time.

5. The aforesaid judgment and decree has been affirmed further in an appeal preferred by the Plaintiff.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri R. N. Jha, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below by holding that the suit is barred by time is apparently contrary to law. He submits further that the reasonings as assigned by the trial Court as well as the lower appellate Court are not sustainable in the eye of law, therefore, the same deserves to be set aside. He submits further that after the decision of the earlier instituted suit, the Plaintiff had issued notice on 19.11.1997, therefore, under such circumstances, the suit cannot be held to be barred by time.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. The Plaintiff – Jageshwar has instituted a suit for specific performance of contract on 05.01.1998 on the basis of an *ikrarnama* (proposal) (Ex.P-14) purported to have been executed by his father Guman Das on 30.05.1986. It was stated in the said agreement that Gunman Das had obtained the loan amount from the Central Cooperative Bank and was not in a position to repay the same, therefore, he had made a proposal that whosoever of his sons would repay the said loan amount, the registered deed of sale with regard to the property in question i.e. Khasra No. 244 admeasuring 0.08 acres and Khasra No. 632 admeasuring 3.14 acres would be executed in his favour by him. It is not in dispute that Defendant No. 1 Nildhwaj and Jageshwar, the Plaintiff herein, both have paid the said loan amount in equal share in respect of the alleged loan taken by their father Guman Das from the Central Cooperative Bank, where the said properties in question were mortgaged for its security. Pertinently to be noted here that when the legal heirs of Guman Das had refused to execute the sale deed in pursuance to the alleged proposal (Ex.P.-14) made by his father Guman Das, Defendant No. 1-Nildhwaj immediately approached the Court by instituting a suit claiming discretionary relief of specific performance of contract against all the legal heirs of his father Guman Das. The said suit was registered as Civil Suit No. 103-A/1990 and was decided by decreeing the said claim on 22.02.1995, affirmed further in Appeal on 13.12.1995 (Ex.P-1) in Civil Appeal No. 9-A/1995.

9. After passing of the aforesaid judgment and decree, a Review Petition was filed. However, that was also dismissed vide order dated 12.09.1997. The Plaintiff kept silent during the pendency of said suit

although the cause of action for instituting a suit, like his brother Nildhwaj was available to him but has failed to claim the discretionary relief of specific performance of contract in time. Only after the disposal of the earlier suit as mentioned herein above, the Plaintiff Jageshwar had issued a notice for the first time on 19.11.1997 (Ex.P.-3) and based on these facts, the instant suit for specific performance of contract has been made on 05.01.1998.

10. From perusal of the entire Plaint averments as well as the evidence led by him, it is clear that he was never assured by any of the legal representatives of said Guman Das to execute the registered deed of sale on the basis of the alleged agreement (proposal) as made by their father Guman Das on 30.05.1986. The Plaintiff Jageshwar and his wife Dilipa Bai, both were impleaded as Defendants in an earlier instituted suit, which was filed by Defendant No.1-Nildhwaj with regard to half of the said Khasra No. 244 admeasuring 0.08 acres and Khasra No. 632 admeasuring 3.14 acres. Even during the pendency of the said suit, the Plaintiff-Jageshwar had not chosen to claim for specific performance of contract as claimed by Defendant No.1-Nildhwaj on the basis of the said proposal for the reasons best known to him. The conduct of the Plaintiff would therefore, lead to an irresistible conclusion that he was never ready and willing to get the sale deed executed and in fact was waiting for the result of the said suit instituted by his brother based upon the same agreement/proposal (Ex.P-14) as made by his father Guman Das. The cause of action as made in the Plaint is therefore fictitious and has been made in an ulterior motive to get an undue advantage of alleged proposal.

11. Instead of showing his intention to get the registered deed of sale

executed in pursuance of the alleged proposal (Ex.P-14) dated 30.5.1986, a suit in the instant nature was brought by him only on 05.01.1998. Therefore, based upon these factual scenario, it is difficult to hold that the suit as framed and instituted on 05.01.1998, i.e. 11 years after the execution of the said proposal/agreement dated 30.05.1986 (Ex.P-14) can be held to be instituted within time. The findings as recorded by the trial Court as well as the lower appellate Court under such circumstances cannot be held to be perverse and therefore, the same deserve to be and are hereby affirmed.

12. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya