

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.187 of 2008

- =====
1. Salma Khatoon @ Salma Ara W/o Sagir Ahmad
 2. Sagir Ahmad @ Sagir Ahmad Ansari son of late Azmat Ansari
Both resident of Village Bara Parewa PO nd PS Razul Dist East Champaran at
present residing at Professors' colony Shahganj Mohammadpur P.S. Sultanganj
PO Mahendru District and Town Patna

.... Appellant/s

Versus

Mohammad Anwar Alam son of Md. Allaiddin resident of Mohalla Sabzibagh,
Ismail Khan Lane PS Pirbahore PO Bankipore District and Town Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.Kamal Nayan Choubey
Mr. Aditya Nr. Singh -1

For the Respondent/s : Mr. Pushkar Narain Shahi
Mr. Manish Kumar no.2

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 18-07-2018

1. This appeal has been preferred by the defendants-appellants (hereinafter referred to as 'defendants') against the judgment and decree dated 10.6.2008 passed by the learned Sub Judge II, Patnacity in Title suit no. 153/2005 by which and whereunder learned Sub Judge decreed the aforesaid Title suit no. 153/2005 against the defendant on contest directing the defendants to execute registered sale deed of the disputed property as mentioned in Schedule I of the plaint in favour of the plaintiff-respondent (hereinafter referred to as 'the plaintiff') within two months from the date of



passing of the judgment and decree, failing which registered sale deed shall be executed through the process of the court.

2. The plaintiff filed the above stated Title suit no. 153/2005 on 15.9.2005 against the defendants for specific performance of contract. The case of the plaintiff is that defendant no.1, namely, Ms Salma Khatoon was owner of the disputed property fully detailed in Schedule I of the plaint and defendant no.2 being husband of defendant no.1 negotiated for sale of the aforesaid property with the plaintiff and subsequently, defendants agreed to sell the disputed property to the plaintiff for a sum of Rs 4, 40,000/- and accordingly, agreement for sale was entered into between the plaintiff and defendant no.1 on 1.6.1998 and at the time of execution of the agreement for sale, the plaintiff paid Rs one lac only as advance and subsequently, on the same day Rs 80,000/- was also paid and remaining balance amounts were paid on different dates such as Rs 1,30,000/- on 20.12.1998, Rs. 1,00000/- on 30.1.1999 and Rs 30,000/- on 30.1.2003 and accordingly, entire consideration amount of Rs 4, 40,000/- was paid to the defendants. Further, case of the



plaintiff is that defendants agreed to obtain prior permission from the competent authority under the Urban Land (Ceiling and Regulation) Act 1976 (hereinafter referred to as 'the Ceiling Act') within six months after execution of the agreement for sale on 1.6.1998 and to convey the plaintiff-appellant about permission so obtained through registered post with A/d at least one month before so-that same could be incorporated in the final deed of transfer. The plaintiff claimed that after execution of agreement for sale, he was put in physical possession over the disputed property and has been coming in physical possession over the disputed property since then. Further, case of the plaintiff is that he approached and contacted the defendants several times to ascertain as to whether defendants have taken any step for obtaining permission from the competent authority or not but the defendants gave false assurance to him and the plaintiff did not suspect dishonest intention of the defendants and believed defendants' false assurance as genuine, real and actual. The plaintiff, again, approached the defendants on 20.12.2004 in order to get sale deed registered relating to the suit land but the defendants



refused to obtain permission from the competent authority with a view to avoiding registration of the sale deed relating to the disputed property. The plaintiff sent and served legal notice dated 28.7.2005 upon defendants requesting them to obtain necessary permission from the competent authority under the provision of the Ceiling Act within one month from the date of receipt of the legal notice and take appropriate and positive step for getting sale deed registered in favour of the plaintiff but the defendants did not give any response to the aforesaid legal notice. The plaintiff is ready and willing to get sale deed executed and registered from defendant no.1 but defendants even after taking full consideration amount are not in a mood to execute registered sale deed in favour of the plaintiff and accordingly, the plaintiff brought the above stated suit against defendants.

3. The plaintiff sought reliefs for a decree for specific performance of contract of sale in respect of the disputed property by issuance of direction to defendants to execute registered sale deed in respect of the disputed property after completing all requirements of law within the period of time fixed by the court and if the court feels



any difficulty to pass decree in respect of the above stated relief, then in that event, a decree for a sum of Rs 4, 40,000/- along with interest at the rate of 12 % per annum be passed in favour of the plaintiff against defendants. Plaintiff also sought relief for issuance of permanent injunction against defendants directing them not to interfere in the plaintiff's possession over the disputed property and transferring the above stated property to any other person.

4. The defendants filed joint written statement stating therein that the plaintiff has got no valid cause of action, suit is barred by principle of waiver, acquiescence, estoppel and the suit is barred by law of limitation. The case of the defendants is that no lawful and enforceable agreement for sale exists between the plaintiff and defendants and the suit of the plaintiff is barred under the provision of Specific Relief Act, 1962. Defendants admitted this fact that defendant no.1 is owner of the disputed property and she had negotiated to sell the aforesaid property with the plaintiff to meet her urgent need of money and defendant no.1 agreed to sell the disputed property but it was agreed between the parties



that the plaintiff shall make payment of entire consideration money within a fixed time and time was essence of the agreement and furthermore, it was agreed that if the plaintiff fails to pay entire consideration money within the period as prescribed in the agreement, the aforesaid agreement shall become ineffective and invalid and will not have any binding effect on either of the parties. Further defendants' case is that the plaintiff paid Rs one lac on 1.6.1998 to the defendants and agreed to pay Rs one lac by 7.6.1998 and it was agreed between the parties that sale deed would be executed within six months from 1.6.1998, if the plaintiff makes payment of balance amount within fixed time and it was also agreed that if the defendants fails to execute sale deed on receipt of balance consideration amount within the time, the plaintiff shall have right to receive back the amount of advance paid to the defendants. Further defendants pleaded that they were always willing and ready to perform of their contract and to obtain permission of sale of the disputed property from the competent authority under the Ceiling Act but the plaintiff did not swear affidavit as a result whereof defendants could not be able



to obtain permission of sale from the competent authority as for filing permission application, affidavit of the plaintiff was necessary and it was the plaintiff who caused much delay in execution of the sale deed and not only this the plaintiff failed to make payment of remaining consideration amount within the stipulated period. Further, defendants averred in their written statement that defendant no.1 gave registered notice on 23.7.2001 to the plaintiff giving an opportunity to get sale deed executed from defendant no.1 but the plaintiff failed to perform his part of the agreement for sale. Further defendants averred that the plaintiff paid Rs 1 lac on 1.6.1998 i.e. on the date of the execution of agreement for sale and remaining amount for a sum of Rs 3, 40,000/- was to be paid by the plaintiff to the defendants before stipulated period but the plaintiff paid for a sum of Rs 3, 10,000/- till 30.1.1999 i.e. beyond the stipulated period of agreement. Defendants further averred that amount of Rs.30,000/- was never paid by the plaintiff to the defendants.

5. Furthermore, defendants averred in their written statement that physical possession was never



given to the plaintiff over the disputed property and, as a matter of fact, defendants are still in possession of the disputed property. Defendants also averred that no notice was sent by the plaintiff to them and, as a matter of fact, it was the plaintiff who was not ready and willing to perform his part of the agreement and after expiry of fixed term of agreement, defendants are not legally bound to execute registered sale deed of the disputed property in favour of the plaintiff and accordingly, defendants prayed for dismissal of the suit of the plaintiff.

6. The learned court below, on the basis of the pleadings of the parties, framed following issues :-

- (i) Is the suit, as framed, maintainable?
- (ii) Is the suit barred by law of limitation?
- (iii) Has the plaintiff got valid cause of action to file the suit?
- (iv) Is the suit barred under the provision of Specific Relief Act?
- (v) Is the plaintiff entitled to get decree for specific performance of contract and was ready to perform terms and conditions of agreement for sale?
- (vi) Has plaintiff not paid remaining consideration amount of Rs 30,000/-to the defendants?
- (vii) Is the plaintiff in possession of the suit property?



(viii) Is the plaintiff entitled to get relief or other reliefs as sought for?

7. To prove his case, the plaintiff examined, three plaintiff's witnesses and also got exhibited original agreement for sale dated 1.6.1998 as exhibit 1, endorsement of agreement for sale as exhibit 2, legal notice dated 28.7.2005 as exhibit 3, postal receipt dated 28.7.2005 as exhibit 4.

8. Defendants got examined themselves as defendant witness no.1 and defendant witness no.2 and also got exhibited legal notice dated 23.07.2001 as exhibit A, acknowledgment receipt as exhibit B, postal receipt dated 23.7.2001 as exhibit C.

9. Learned court below, after hearing and scrutinizing the evidences available on record, decided issue nos. v and vi in favour of the plaintiff and similarly, decided issue no. vii in favour of the plaintiff. The learned court below took issue nos. ii and iv together and decided the aforesaid issues in favour of the plaintiff on the ground that no evidence had been adduced by the parties in respect of the aforesaid issues and similarly, took issue nos. i, iii and viii together for determination



and decided all the aforesaid issues in favour of the plaintiff.

10. The learned court below while deciding issue nos. v and vi came to the conclusion that defendants breached terms and conditions of agreement for sale dated 1.6.1998 (exhibit 1), though the plaintiff had already performed his part of agreement by paying entire consideration amount of Rs 4, 40,000/- and on the basis of the aforesaid findings, learned trial court passed decree for specific performance of contract in favour of the plaintiff.

11. Learned counsel appearing for the defendants challenged the impugned judgment and decree arguing that the suit of the plaintiff was hopelessly time barred but the learned court below ignored the aforesaid fact observing that parties had not adduced evidence in respect of above stated fact. He, further, submitted that admittedly, agreement for sale between the parties was executed on 1.6.1998 and according to clause 2 of terms and conditions of agreement for sale dated 1.6.1998, the plaintiff had to pay a sum of Rs one lac at the time of execution of the agreement and further had to pay a sum



of Rs one lac by 7.6.1998 and the balance amount of Rs 2, 40,000/- was to be paid at the time of completion of purchase i.e. at the time of admission of the execution of the sale deed before the appropriate registering authority. He, further, submitted that according to clause v of terms and conditions of agreement for sale dated 1.6.1998, the absolute sale was to be executed by defendant no.1 in favour of the plaintiff or his nominee within the period of six months from the date of agreement for sale dated 1.6.1998 and during the above stated period of six months, the defendants had to obtain necessary permission from the competent authority under Urban Land (Ceiling and Regulation) Act 1976 and after obtaining permission, defendants had to communicate the aforesaid permission to the plaintiff through registered post A/d one month earlier. He, further, submitted that according to clause vi of the aforesaid terms and conditions of agreement for sale dated 1.6.1998, the parties agreed on this point that if defendant no.1 fails or neglects to complete legal formality, the plaintiff will be at liberty to enforce specific performance of the agreement or may demand part consideration amount of



Rs 2 lacs from the defendants. He, further, submitted that terms and conditions of agreement for sale dated 1.6.1998 go to show that time was essence of the contract and defendants had to pay balance amount of Rs one lac by 7.6.1998 but admittedly, the plaintiff only paid Rs 80,000/- by 7.6.1998 and moreover, the aforesaid agreement for sale expired after six months from the date of its execution. He, further, submitted that the plaintiff could have filed the suit for specific performance of contract within three years from the date of execution of the agreement for sale dated 1.6.1998 or within three years from the date of expiry of the aforesaid agreement dated 1.6.1998 which was expired on 1.12.1998 but admittedly, he filed the present suit on 15.9.2005 i.e. beyond period of limitation. He, further, submitted that evidence in respect of the aforesaid fact was available on the record but the learned court below ignored the aforesaid evidence and decided issue of limitation in favour of the plaintiff.

12. Learned counsel for the defendants further submitted that defendants admitted in their written statement that balance consideration amount of Rs 4,



10,000/- was paid to them and they had, specifically, denied that the balance consideration of 30,000/- was never paid to them. He, further, submitted that exhibit 2 goes to show that according to the case of the defendants, last balance consideration amount of Rs one lac was paid to them on 30.1.1999 and admittedly, the aforesaid payment was paid beyond the period of limitation and aforesaid payment can not give fresh limitation to the plaintiff. In support of his contention, he referred decision of **Subhash Chander Kathuria vs Umed Singh and another reported in AIR 2006 Delhi 194** and submitted that even if part payment is made after expiry of 3 years period of limitation, the same can not give afresh period of limitation. He also relied upon decision of **Mst. Sugani vs. Rameshwar Das and another reported in AIR 2006 SC 2172.**

13. He, further, submitted that story of delivery of possession was brought by the plaintiff first time in the plaint and agreement for sale dated 1.6.1998 does not contain any term and condition of delivery of possession to the plaintiff by defendants. He, further, submitted that no documentary evidence has been brought on the record



to show that possession of disputed property was given by the defendants to the plaintiff and moreover, admittedly, agreement for sale dated 1.6.1998 is an unregistered document and, therefore, the aforesaid document does not create any right of possession to the plaintiff.

14. On the other hand, learned counsel appearing for the plaintiff submitted that execution of the agreement for sale dated 1.6.1998 has been admitted by the defendants and furthermore, it has also been admitted that Rs 4, 10,000/- had been paid to the defendants and, therefore, the aforesaid fact goes to show that the plaintiff was always willing and ready to perform the terms and conditions of the agreement. He, further, submitted that according to exhibit 1, agreement for sale dated 1.6.1998, defendants had to obtain permission under the provision of the Ceiling Act from the competent authority but the defendants intentionally did not obtain permission from the competent authority under the provision of the Ceiling Act. He, further, submitted that although Ceiling Act had already been repealed in the year 1999 and there was no requirement of taking any permission from the competent



authority after repeal of Ceiling Act, even though the defendants did not execute absolute sale deed in favour of the plaintiff. He, further, submitted that it is apparent from perusal of exhibit A that the defendants received Rs 1, 00,000/- at the time of execution of the agreement for sale dated 1.6.1998 and on the same day, Rs 80,000/- was paid to the defendants and similarly, Rs 1, 30,000/- were paid to the defendants on 20.12.1998 and 30.1.1999 respectively which is evident from perusal of exhibit 2. He, further, submitted that the plaintiff had, specifically, pleaded in his plaint that Rs 30,000/- was paid on 30.11.2003 in cash to the defendants. He, further, submitted that the defendants had denied in their written statement regarding payment of Rs 30,000/- on 30.11.2003 but witnesses very clearly stated in their depositions that Rs 30,000/- was paid by the plaintiff to the defendants in cash on 30.11.2003. He, further, submitted that the aforesaid fact goes to show that time was not essence of the contract.

15. Learned counsel appearing for the plaintiff, further, submitted that balance consideration amount Rs 30,000/- was paid to the defendants on 30.11.2003 and



the suit was filed in the year 2005 that is within three years of payment of balance consideration amount and, therefore, suit was filed within time.

16. He, further, submitted that the plaintiff several times approached and contacted the defendants to ascertain as to whether defendants were taking appropriate steps for obtaining permission from the competent authority or not and on each and every time, defendants gave false excuse and assurance for not taking permission from the competent authority on one pretext or the other and, therefore, the aforesaid fact goes to show that it were defendants who had not performed part of the contract. He, further, submitted that on 28.7.2005 the plaintiff gave legal notice to the defendants requesting to obtain permission from the competent authority under the provision of the Ceiling Act but the defendants did not respond to the aforesaid notice and the above stated fact also goes to show mala fide intention of the defendants. He, further, submitted that the aforesaid fact also goes to show that the plaintiff was always ready and willing to get the sale deed executed and registered.

17. Learned counsel for the plaintiff, further



submitted that the plaintiff had, specifically, pleaded in his plaint that at the time of execution of the agreement for sale dated 1.6.1998 the delivery of possession of disputed land was handed over to the plaintiff and since then the plaintiff has been coming in possession of the suit property and he is still in possession of the suit property. He, further, submitted that DW 1 at para 24 and DW 2 at para 25 admitted in their evidence that the plaintiff is in possession of the suit property and, therefore, the aforesaid fact goes to show that agreement for sale dated 1.6.1998 was acted upon.

18. Learned counsel for the plaintiff relied upon decision reported in AIR 2006 SC 2172 wherein it has been held by the Hon'ble Apex Court that if agreement for sale does not fix any date for performance and agreement is denied by the defendants and suit is filed within few months of receipt of notice about execution of the sale deed in favour of third party, the suit is not barred by limitation. In the said judgment the Hon'ble Court has also held that it is not essential to aver in specific word in plaint regarding readiness and willingness and the question of readiness and willingness shall be decided on



the basis of contract of the parties.

19. Having heard the rival contentions of both parties, I went through the record. It is admitted position that on 1.6.1998 defendant no.1 had executed the agreement for sale in respect of disputed property in favour of the plaintiff and at the time of execution of the agreement for sale, she received Rs 1,00,000/- and on the same day, she, again, received Rs 80,000/- towards balance consideration amount. The agreement for sale dated 1.6.1998 has been brought on record by the plaintiff as exhibit 1. Exhibit 1 goes to show that defendant no.1 agreed to sell and the plaintiff agreed to purchase the disputed property for total consideration amount of Rs 4,40,000/- and at the time of execution of the agreement for sale, Rs 1,00,000/- was paid to defendant no.1 by the plaintiff. Furthermore, terms and conditions of exhibit 1 speak that the plaintiff agreed to pay a sum of Rs 1,00,000/- by 7.6.1998 and balance amount of Rs 2,40,000/- was to be paid at the time of execution of the sale deed before appropriate registering officer. It is pertinent to note here that out of Rs 1,00,000/-, which was to be paid by 7.6.1998, the plaintiff paid Rs 80,000/-



on the day of execution of the agreement for sale dated 1.6.1998. Term and condition V of agreement for sale dated 1.6.1998 goes to show that parties agreed on this term that absolute sale deed would be executed by defendant no.1 in favour of the plaintiff or his nominee or assign within the period of six months from the date of agreement and during this period, defendant no.1 will obtain necessary permission from the competent authority under the provision of the Ceiling Act and the permission so granted shall be communicated to the plaintiff by defendant no.1 through registered A/d post one month earlier so that the same may be incorporated in the final deed of transfer. The aforesaid condition goes to show that absolute sale deed had to be executed within six months from the date of execution of the agreement for sale dated 1.6.1998 and within the above stated period of six months, defendant no.1 was duty bound to obtain necessary permission under the provision of the Ceiling Act from the competent authority and she was also duty bound to communicate grant of permission to the plaintiff through registered post one month earlier. Furthermore, term VI of execution of the agreement for sale dated



1.6.1998 says that if defendant no.1 fails or neglects to execute the absolute sale deed after completing required formality, the plaintiff will be at liberty to enforce specific performance of agreement or may demand refund of part consideration amount of Rs 2, 00,000/-. The conjoint reading of terms and conditions of V and VI of the agreement for sale dated 1.6.1998 goes to show that defendant no.1 had to obtain necessary permission under the provision of the Ceiling Act from the competent authority and to inform the plaintiff after obtaining necessary permission within six months from the date of execution of agreement for sale and failure on the part of defendant no.1 to comply the aforesaid legal formality shall give liberty to plaintiff to enforce specific performance of agreement or make demand to refund of part consideration amount which had already been paid. Therefore, it is obvious from the above stated terms and conditions that permission under the provision of the Ceiling Act was to be taken within six months from the date of execution of the agreement for sale dated 1.6.1998 and the absolute sale deed was also to be executed within the aforesaid period of six months. Furthermore, it is also



obvious that if defendant no.1 fails or neglects to obtain permission or execute absolute sale deed, the plaintiff may file suit for specific performance of contract or for refund of consideration amount. The aforesaid fact also goes to show that parties to the aforesaid agreement for sale dated 1.6.1998 had fixed a specific date for execution of absolute sale deed and the aforesaid conditions go to show that time was essence of the contract.

20. In the present case, admittedly, defendant no.1 did not obtain permission under the provision of the Ceiling Act from the competent authority within six months from the date of execution of the agreement for sale and, therefore, in my view, cause of action to file the suit for specific performance arose after expiry of six months from the date of execution of the agreement for sale.

21. Now, it has to be seen as to whether the suit filed by the plaintiff was within time or was hit by law of limitation. In this connection, I would like to refer Schedule 54 of the Limitation Act, 1963 which prescribes three years limitation for filing the suit for specific performance of contract and according to Schedule 54 of



the Limitation Act, three years limitation begins to run from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

22. In the present case, it is obvious from perusal of exhibit 1 that six months' time from the date of execution of the agreement for sale was fixed for the performance of contract and, therefore, in my view, the plaintiff ought to have filed the suit for specific performance of contract by 1.12.2001 because the plaintiff had to file suit for specific performance of contract within three years from the expiry of six months period as fixed in the agreement for sale dated 1.6.1998. It has been argued by learned counsel for the plaintiff that defendants accepted consideration amount on 20.12.1998, 30.1.1999 as well as 30.11.2003 and by accepting balance consideration amount, they acknowledged agreement for sale dated 1.6.1998 and by accepting balance consideration amount, they agreed to extend the period of agreement for sale dated 1.6.1998 but I am not at all convinced with the above stated submissions of learned counsel for the plaintiff because



there is no documentary evidence in respect of payment of Rs 30,000/- to defendants on 30.11.2003 and exhibit 2 goes to show that last payment of Rs 1,00,000/- was made to defendants on 30.1.1999 and, therefore, even if the defendants received Rs 1,00,000/- on 30.1.1999, then also, the plaintiff ought to have filed suit within three years from 30.1.1999 but admittedly, the plaintiff did not file any suit within three years from 30.1.1999. Furthermore, I would like to say that even if it assumed that the plaintiff paid the balance consideration amount of Rs 30,000/- to the defendants on 30.11.2003, then also, the aforesaid payment of balance consideration amount does not protect the plaintiff from clutches of schedule 54 of the Indian Limitation Act, 1963 because section 18 of the aforesaid Limitation Act says that if before expiration of prescribed period for a suit, acknowledgement of liability is claimed, then in that circumstance afresh period of limitation shall be computed from the time when the acknowledgement was so made and in the present case, according to exhibit 2, Rs 1,00,000/ was paid on 30.1.1999 i.e. before expiration of period of limitation and, therefore, even if period of limitation is



computed from 30.1.1999, then also, period of limitation expired on 30.1.2002 and according to pleadings of the plaintiff, balance of consideration amount of Rs 30,000/- was paid on 30.11.2003 i.e. after expiration of period of limitation to file suit for specific performance of contract and, therefore, in the aforesaid circumstances, section 18 of the Limitation Act does not help to the plaintiff.

23. Learned trial court while dealing with issue of limitation vide issue no. ii held that the parties had not adduced any evidence on the aforesaid point but, in my view, learned trial court committed illegality in holding that there was no evidence on record to decide the point of limitation because the point of limitation could have been decided on the basis of admitted pleadings of the parties and, therefore, I am of the view that the suit of the plaintiff was highly time barred.

24. Exhibit 1 goes to show that defendant no.1 had to obtain permission from the competent authority under the provision of the Ceiling Act and it is an admitted position that the aforesaid Act, 1976 was repealed in the month of March, 1999 but admittedly, above stated repeal Act was adopted by the State of Bihar



in the year 2006. Moreover, even if it assumed that defendant no.1 did not take any step to obtain permission under the provision of the Ceiling Act from the competent authority and did not perform her part of contract, then also, period of filing the suit for specific performance could not have been extended.

25. The plaintiff has, specifically, pleaded in his plaint that possession of the disputed property was delivered to him by the defendants after execution of the agreement for sale dated 1.6.1998 (exhibit 1) and the plaintiff is in possession of the disputed property since then. It has also been argued that the plaintiff has taken entire consideration amount and is in possession of the disputed property and the aforesaid fact establishes that the plaintiff was/is willing or ready to purchase the suit property but again, I am not in agreement with the submission of learned counsel for the plaintiff because exhibit 1 does not show anything regarding delivery of possession of disputed property at the time of execution of the agreement for sale. The plaintiff has based his claim of possession over the disputed property on the basis of exhibit 1 and it is well settled principle of law



that if any claim is based on a document, party can prove his claim by placing the aforesaid document in evidence and no oral evidence shall be admitted. In the case of **Nanjappan versus Ramasamy and another reported in 2015 (2) PLJR 420 (SC)**, it has been held by the Hon'ble Apex Court that when terms of a contract are reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for contradicting, varying, adding to or subtracting from the term. Therefore, in my view, even if defendants' witnesses directly or indirectly admitted possession of the plaintiff over the suit property, then also, it can not be said that at the time of execution of the agreement for sale dated 1.6.1998 (exhibit 1) possession of suit property was handed over to the plaintiff.

26. The plaintiff has sought alternative relief for refund of paid consideration amount with interest but, in my view, the aforesaid relief can also not be granted to the plaintiff because his suit was itself highly time barred and when the suit of the plaintiff could not have been entertained, in my view, the court has no jurisdiction to



grant any relief to the plaintiff. Furthermore, it is needless to discuss other issues involved in the present case.

27. On the basis of the aforesaid discussions, in my view, learned trial court has committed error in decreeing the suit of the plaintiff passing the impugned judgment and, therefore, I am of the view that the impugned judgment and decree can not sustain in the eye of law.

28. In the result, this first appeal is allowed and impugned judgment and decree dated 10.6.2008 passed by the learned Sub Judge II, Patnacity in Title suit no. 153/2005 are, hereby, set aside as the same being not maintainable on account of limitation.

Shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	AFR
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