

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.133 of 2003**

1. Smt. Yashoda Bai Rajak, W/o. Late Shri Jhaman Rajak, aged about 50 years,
2. Rajesh Kumar Rajak, S/o. Late Shri Jhaman Rajak, aged about 23 years,

Both are R/o. Village Darrighat, Tahsil Masturi, Distt. Bilaspur (CG)

---- Appellants**Versus**

1. Smt. Saraswati Gupta, W/o. Late Shri Shyam Manohar Gupta,
2. Shri Prabhat Kumar Gupta, S/o. Late Shri Shyam Manohar Gupta,
3. Praveen Kumar Gupta, S/o. Late Shri Shyam Manohar Gupta,

All are R/o. Kilaward, Juna-Bilaspur, Tahsil & Distt. Bilaspur (CG)

---- Respondents

 For the appellants : Shri Rishi Rahul Soni, Advocate
 For the respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment On Board

07.02.2019.

1. This appeal is preferred against judgment and decree dated 25.02.2003 passed by First Additional District Judge, Bilaspur (CG) in a Civil Suit No.8A/2001 wherein the said Court dismissed the suit filed by the appellants for specific performance of contract dated 18.9.1996.

2. The appellants preferred civil suit for specific performance of contract for sale of land bearing Survey No.22/4 area 0.30 acre situated at village Darrighat, Distt. Bilaspur. As per the pleading the land was owned by one Shyam Manohar Gupta who was the ancestor of the respondents and husband of appellant No.1

namely Jhaman Rajak entered into agreement with Shyam Manohar Gupta for sale of said land for a sale consideration of Rs.90,000/- and written agreement was signed by the parties on 18.9.1996. An amount of Rs.75,000/- was paid in different dates to Shyam Manohar Gupta by Jhaman Rajak. A date for executing the sale deed was fixed to be four months from the date of agreement. But said Shyam Manohar Gupta did not execute the sale deed. Shyam Manohar Gupta and Jhaman Rajak died before the execution of the sale deed and as per the averments of the plaint the agreement was admitted to be executed by the respondents in March 2001. The trial Court dismissed the suit on the ground that the suit filed on 25.6.2001 is time barred and therefore, no relief can be granted in favour of the appellants.

3. Learned counsel for the appellants submits as under:

(i) The trial Court failed to appreciate that time was not the essence of the contract, therefore, suit preferred within three years from the date of first express refusal by the respondents shall be counted for the purpose of limitation and in that way the suit was within limitation.

(ii) As Shyam Manohar Gupta failed to execute the sale deed and get the measurement done within the period of four months, therefore, finding on the issue of limitation is absolutely perverse.

(iii) Period of limitation as provided under Article 54 of the Limitation Act, has not been properly calculated, therefore, decree for execution of the sale deed should be passed or advance amount be returned to the appellants.

4. In the present case, date of agreement is 18.9.1996 as per Ex-P/1 which is agreed document. In the said agreement it is mentioned that the sale deed was to be executed within four months of the written agreement or prior to that date if parties agree for some other date but that date should be prior to four months. Therefore, it is clear from the agreement that date fixed for the purpose of contract was four months since 18.9.1996 i.e. 18.01.1997. No notice was given by the appellants to the respondents within four months. The appellants never served any written notice to the respondents for execution of the sale deed.

5. Learned counsel for the appellants submits that as per the statement of Rajesh Rajak (AW-1) assurance was given in the year 2001 for the registration but the fact remains that the agreement was executed on 18.9.1996 and specific performance of contract could have been enforced from three years of the agreement i.e. upto 18.9.1999 or upto 18.01.2001. Therefore, any conversation between the parties after 18.01.2001 has no consequence because non filing of the suit before 18.01.2001 had already expired its limitation and therefore, this argument is not available to the present appellants. Learned counsel for the appellants submits that there was negotiation for compromise and Shyam Manohar Gupta was ill in the year 1997 and he died on 25.4.1997, therefore, suit filed in June 2001 is within limitation. This argument is also without substance because when the limitation is passed on 18.01.2001 the negotiation could not revived the limitation. The negotiation or illness of Shyam Manohar Gupta could not revive limitation.

6. Again the suit is time barred on 18.01.2001, therefore, no decree can be passed for return of advance amount to the appellants.

7. On overall assessment of the evidence and factual and legal aspects of the matter, the trial Court recorded a finding that no relief can be granted in favour of the appellants. The finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking the jurisdiction of the appeal. Accordingly, the appeal is liable to be dismissed and the decree is passed in favour of the respondent and against the appellant as under:

- (1) The appeal is dismissed with cost.
- (2) The parties to bear cost of litigation of their own.
- (3) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (4) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE