

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.283 of 2004

Kewal Sai, aged about 45 years, S/o Shri Purshottam, Caste Bargaah,
Occupation Agriculturist, R/o Village Sargawan, P.S. and Tah.
Ambikapur, District Surguja (C.G.)

---- Appellant

Versus

1. Devendra Nath Mukharjee (Died) Through Legal Heirs

(i) Shibu Mukherjee, aged about 22 years, S/o late Devendra Nath.

(ii) Vibhu Mukherjee, aged about 18 years, S/o late Devendra Nath.

Both R/o Sattipara, Ambikapur, Distt. Ambikapur (C.G.)

2. Sukhlal, S/o Shri Kanwal Sai, Caste Cherwa, R/o Village Sargawan,
P.S. and Tah. Ambikapur, District Surguja (MP) (now CG)

3. The State of Chhattisgarh, through Collector Surguja (C.G.)

---- Respondents

For Appellant: Mr. Sanjay Agrawal and Mr. Akhand Pratap Pandey,
Advocates.

For Respondent No.3 / State: -
Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

01/02/2019

1. The plaintiff's suit for specific performance of contract was partly decreed granting refund of earnest money. Both the parties, the plaintiff and the defendants preferred appeal questioning that decree. The first appellate Court finally, allowed the appeal of the defendants and set aside the decree of earnest money granted in favour of the plaintiff and dismissed the suit in toto against which this appeal has been preferred.
2. Learned counsel for the appellant / plaintiff would submit that both the Courts are absolutely unjustified in not granting decree of specific

performance in favour of the plaintiff and the first appellate Court is unjustified in holding the suit to be barred by limitation. Therefore, the second appeal involves substantial question of law for determination.

3. I have heard learned counsel for the appellant / plaintiff and perused the record with utmost circumspection.
4. Admittedly, the agreement to sale was entered between the plaintiff and defendant No.1 on 3-5-1983, whereas the suit was filed as late as on 22-6-1992 with an allegation that when defendant No.1 sold the suit property in favour of defendant No.2 on 8-7-1991, then only he came to the knowledge of the said sale by defendant No.1 and thereafter, he filed suit.
5. The Supreme Court in the matter of Manjunath Anandappa urf Shivappa Hanasi v. Tammanasa and others¹ held that the plaintiff should have approached the Court within a reasonable time in order to obtain a discretionary relief of specific performance of contract as provided in Section 20 of the Specific Relief Act, 1963 and observed as under: -

“30. There is another aspect of the matter which cannot be lost sight of. The plaintiff filed the suit almost after six years from the date of entering into the agreement to sell. He did not bring any material on record to show that he had ever asked Defendant 1, the owner of the property, to execute a deed of sale. He filed a suit only after he came to know that the suit land had already been sold by her in favour of the appellant herein. Furthermore, it was obligatory on the part of the plaintiff for obtaining a discretionary relief having regard to Section 20 of the Act to approach the court within a reasonable time. Having regard to his conduct, the plaintiff was not entitled to a discretionary relief.”

6. The aforesaid decision squarely applies to the facts of the present case and the first appellate Court is absolutely justified in holding that the plaintiff has not approached the court within reasonable time and

¹ (2003) 10 SCC 390

thus, he is not entitled for the discretionary relief of specific performance of contract after lapse of ten years from the date of agreement and after the sale of suit land by defendant No.1 in favour of defendant No.2. I do not find any substantial question of law in the second appeal. The second appeal is liable to be and is accordingly dismissed *in limine*, without notice to the other side with no order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma