

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 159 of 2008**

1. Ramadhar, Son of Punau Ram Sahu, aged about 50 years, Resident of Village Mochha, Tahsil Takhatpur, District Bilaspur (C.G.)
2. Smt. Girja Bai, D/o Punau Ram Sahu, Wife of Charan Sahu, aged about 32 years, Resident of Thakurdeva, Tahsil Takhatpur, District Bilaspur (C.G.)
3. Smt. Jalwanti, D/o Punau Ram Sahu, Wife of Bharat Lal Sahu, aged about 26 years, Resident of Village Kodakhar, Tahsil Takhatpur, District Bilaspur (C.G.)

----Appellants/Plaintiffs.**Versus**

1. Smt. Shanti, widow of Late Durga Singh;
2. Lallu Singh, Son of Late Durga Singh;
3. Bablu Singh, Son of Late Durga Singh;
4. Kapil Singh, Son of Late Durga Singh;

All residents of Village Ghoramar, Post Kargikala, Police Station Kota, District Bilaspur (C.G.)

5. Chandiya Bai, Wife of Jethu Thakur, aged about 40 years, Resident of Village Fultarai, Post Pali, Tahsil Takhatpur, District Bilaspur (C.G.)
6. State of Chhattisgarh, Through : The Collector, Bilaspur (C.G.)

----Respondents/Defendants

For Appellants : Mr. H.S. Patel, Advocate on behalf of
Mr. M.K. Bhaduri, Advocate.

For Respondent No. 6/ State : Mr. Akash Pandey, PL for the State.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/09/2019**

(1) Heard on the question of admission and formulation of substantial question of law on this second appeal preferred by plaintiffs under Section 100 of the Code of Civil Procedure,

1908.

(2) Mr. H.S. Patel, learned counsel appearing for the appellants/plaintiffs would submit that both the courts below have concurrently erred in dismissing the suit as barred by limitation as it has been filed within three years when the plaintiff has notice that performance is refused, after serving notice (Ex. P-6).

(3) Original plaintiff filed a suit for specific performance of the contract stating *inter alia* that though he has performed his part of contract and paid Rs.7,400/- in pursuant to the agreement dated 26.04.1979 and he has also obtained possession of the suit land from defendants No. 1 & 2, yet they were not executing the sale deed on the date fixed as 12.05.1979 in his favour , therefore, decree of specific performance of the contract be granted in his favour.

(4) The defendants No. 1 & 2, by filing a written statement, set up a plea that the suit filed by the plaintiff is time barred as the agreement to sell was executed on 26.04.1979 and it was agreed that sale deed was to be executed on or before 12.05.1979 , therefore, admittedly the suit, which was filed on 5.5.1989, is barred by limitation as it could have been brought within three years from the date fixed for performance of the contract i.e. 12.05.1979.

(5) The trial Court, in the second round of litigation, by its judgment & decree dated 26.07.2002 held that the plaintiff's suit is barred by limitation as it was brought on 5.5.1989 whereas as per paragraph 13 of the plaint, cause of action has arisen in the year, 1980, which the first appellate has also agreed in the first appeal preferred by plaintiffs.

(6) Both the courts below have dismissed the suit filed by the plaintiff as barred by limitation.

(7) At this stage, it would be appropriate to notice Article 54 appended to the Limitation Act, 1963, which states as under :-

	Description of suit	Period of limitation	Time from which period begins to run
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.

(8) In the instant case, vide Ex. P-1, agreement to sell dated 26.04.1979, the date for execution of the sale deed was fixed, that was to be on or before 12.05.1979, therefore, the plaintiff ought to have brought the suit within three years from that date i.e. 12.05.1979, but the suit was brought on 5.5.1989, which both the courts below have rightly held to be barred by limitation. As such, the plaintiff's suit was admittedly barred by limitation as it was not brought within three years from the date fixed for performance of the contract i.e. 12.05.1979.

(9) In view of aforesaid discussion, I do not find any illegality or perversity in the finding of fact recorded by two courts below and no question of law much less substantial question of law is involved in the second appeal preferred by plaintiffs.

(10) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

