

HIGH COURT OF CHHATTISGARH, BILASPUR**F.A. No. 250 of 2018****Reserved on 23.06.2021****Pronounced on 30.06.2021**

- Sardar Satpal Singh S/o Late Vidyal Singh, Aged About 62 Years
R/o Church Road, Kedarpur, Nagar Ambikapur, Distt. Surguja,
Chhattisgarh.

---- Appellant**Versus**

1. Smt. Saroj Shukla W/o Late Jainath Shukla, Aged About 75 Years
R/o Anand Nagar Raipur, Post Raipur, Distt. Raipur, Chhattisgarh.
(Defendants),
2. Shri Sachin Dev Shukla, S/o Late Jainath Shukla, Aged About 51
Years R/o Anand Nagar Raipur, Post Raipur, Distt. Raipur,
Chhattisgarh. (Defendants),
3. Shri Jaidev Shukla, S/o Late Jainath Shukla, Aged About 48 Years
R/o Anand Nagar Raipur, Post Raipur, Distt. Raipur, Chhattisgarh.
(Defendants),

---- Respondents

For Appellant:	Shri Ravindra Sharma, Advocate.
For Respondents:	Shri Rahul Mishra, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Judgment/Order**

1. This appeal has been preferred by the Plaintiff under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the judgment and decree dated 23.03.2018 passed in Civil Suit No.A34/2015, whereby the trial Court has dismissed the Plaintiff's claim for specific performance of contract. The parties to this appeal shall be referred hereinafter as per their description before the trial Court.

2. The facts which are essential to be stated for adjudication of this appeal are that the Plaintiff- Sardar Satpal Singh instituted a suit claiming

specific performance of contract by submitting *inter alia* that the predecessor-in-interest of the Defendants, namely, Jainath Shukla, has executed an agreement to sale dated 04.07.1987 in his favour agreeing to alienate the land in question bearing Khasra No.1245 and 1246 admeasuring 0.03 acres and 0.40 acres respectively constructed with a *Kachcha* house along with its *badi* (open space), which is situated at Ambikapur, District Surguja for a consideration of Rs.55,001/- upon receiving an earnest amount of Rs.5,000/- from him. According to the Plaintiff, the rest of the sale consideration was to be paid within a period of 90 days, i.e., by 04.10.1987. It is pleaded further that since Late Jainath used to stay out of Surguja district and was not in a position to travel alone, therefore, he could not come in time to Ambikapur for collecting the rest of the sale consideration. However, he informed him to remit the same either by cash or by demand draft as per his convenience, and there will be no time limit for the same. It is pleaded further that despite the payment of entire sale consideration by demand drafts, which were issued with effect from 12.10.1987 upto 11.10.2004, the registered deed of sale has not been executed on one pretext or the other, and in the year 2011, he came to know that the Defendant has not filed any application before the Collector seeking permission for alienation of the land in question, therefore, he has been constrained to institute the suit in the instant nature, instituted on 06.02.2012.

3. While denying the aforesaid claim, it is pleaded by the Defendants that since the Plaintiff has failed to deposit the rest of the sale consideration within a period of 90 days as provided under the alleged agreement to sale and, the suit instituted on 06.02.2012, much beyond the

prescribed period of limitation, is apparently barred by time. It is contended further, while referring to the averments made in the earlier instituted suit, being Civil Suit No.20-A/03 that the cause of action for institution of the suit for specific performance of contract was available with the Plaintiff, but, instead, he has chosen to claim for declaration of title on 01.10.2001, therefore, the instant suit is barred by law and is liable to be dismissed.

4. After considering the evidence led by the parties, it was held by the trial Court that the Plaintiff was never found to be ready and willing to perform his part of the contract nor has paid the rest of the sale consideration as required to be made under the alleged agreement to sale dated 04.07.1987 (Ex.P.10). It held further that the claim of the Plaintiff made on 06.02.2012 much beyond the prescribed period of three years is barred by time under Article 54 of the Indian Limitation Act, 1963 (hereinafter referred to as the 'Act, 1963') and held further that the claim of him for specific performance of contract is barred by Order 2 Rule 2 of CPC as he failed to include this relief in his earlier instituted suit claiming for declaration of title based upon the same cause of action. As a consequence of it, the Plaintiff's claim has been dismissed, which has been impugned by way of this appeal.

5. Shri Ravindra Sharma, learned counsel appearing for the Appellant/Plaintiff submits that the finding of the Court below holding that the Plaintiff was never ready and willing to perform his part of the contract and the claim of him is barred by time, is apparently contrary to law. It is contended further that since said Jainath Shukla himself had failed to come to Ambikapur in time for collecting the rest of the sale consideration, therefore, in such circumstances, it ought not to have been held that the

Plaintiff was not ready and willing to perform his part of the contract. Further contention of him is that the cause of action arose on 03.09.2011 when the Plaintiff came to know that said Jainath has failed to move an application before the Collector seeking permission for its execution, therefore, the claim ought not to have been held to be barred by time. It is contended further that the trial Court has erred in holding that the Plaintiff's instant suit is barred by principles of res judicata on account of not including this relief in his earlier claim for declaration of title and has placed his reliance upon the decision rendered in the matter of ***Sucha Singh Sodhi (Dead) through Legal Representatives v. Balder Raj Walia and another*** reported in **(2018) 6 SCC 733**.

6. On the other hand, Shri Rahul Mishra, learned counsel appearing for the Respondents/Defendants has supported the impugned judgment and decree as passed by the trial Court. According to him, the suit is not only hopelessly barred by time, but has also suffered from the provision prescribed under Order 2 Rule 2 of CPC as he utterly failed to include the relief of specific performance of contract in his earlier claim for declaration of title despite the availability of cause of action for it. In support, he placed his reliance upon the principles laid down by the Supreme Court in the matter of ***Van Vibhag Karamchari Griha Nirman Sahakari Sanstha Maryadit (Regd.) v. Ramesh Chander and Ors.*** reported in **2010 AIR SCW 6761**.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. The questions which arose for the determination based upon the aforesaid facts of the case are:-

(i)“whether the Plaintiff was ever ready and willing to perform his part of the contract;

(ii) whether a claim as made by him on 06.02.2012 on the basis of the alleged agreement to sale dated 04.07.1987 (Ex.P.10), is barred by time under Article 54 of the Act, 1963 and;

(iii) whether the claim is rightly held to be barred by law under Order 2 Rule 2 of CPC?”

9. From perusal of the record, it appears that the Plaintiff instead of instituting a suit for specific performance of contract under the alleged agreement to sale dated 04.07.1987, has earlier chosen to institute the suit (Ex.D.1) for declaration of his title on 03.10.2001 on the premises that despite of his repeated requests being made, Defendant Jainath Shukla has failed to execute the registered deed of sale in his favour in pursuance of the alleged agreement to sale dated 04.07.1987 who has even stopped to reply his letters issued in this regard since July, 2001. It, thus, appears from a bare perusal of its pleadings that the cause of action to sue for specific performance of contract was available with him at that particular time, but instead of including the same, he has claimed only for declaration of title. It appears further that the claim of him registered as Civil Suit No.20-A/2003 was dismissed by the concerned trial Court vide its judgment and decree dated 14.10.2004 (Ex.D.12) and was affirmed further by the appellate Court vide its judgment and decree dated 10.02.2005 (Ex.D.3) and the appeal preferred there-against was also dismissed by the High Court vide its order dated 30.09.2011 (Ex.D.4) in Second Appeal No.256 of 2005. In view thereof, the trial Court has not committed any illegality in holding that the Plaintiff's claim is barred by the provision

prescribed under Order 2 Rule 2 of CPC in the light of the principles laid down by the Supreme Court in the matter of ***Van Vibhag Karamchhari Griha Nirman Sahakari Sanstha Maryadit (Regd.) v. Ramesh Chander and Ors.*** (supra), where it was held at para 33 as under:-

33. This Court is, therefore, of the opinion that the appellant had the cause of action to sue for Specific Performance in 1991 but he omitted to do so. Having done that, he should not be allowed to sue on that cause of action which he omitted to include when he filed his suit. This Court may consider its omission to include the relief of Specific Performance in the suit which it filed when it had cause of action to sue for Specific Performance as relinquishment of that part of its claim. The suit filed by appellant, therefore, is hit by the provisions of Order 2 Rule 2 of the Civil Procedure Code.

10. In so far as the principles laid down by the Supreme Court in the matter of ***Sucha Singh Sodhi (Dead) through Legal Representatives v. Balder Raj Walia and another*** (supra), as relied upon by Shri Sharma, are concerned, the same are, however distinguishable from the facts involved herein. In the said matter, Respondent No.1 agreed to alienate the suit premises to Plaintiff -Sucha Singh on 27.02.1996 while putting him in possession thereof after receiving a considerable amount of Rs.2,00,000/- as advance amount. When he (Sucha Singh) was threatened, i.e., on 10.10.1996 for his dispossession by Respondent No.1, he was compelled to institute the suit for permanent injunction where the said Respondent had taken a plea that since the suit premises had already been transferred by him to Respondent No.2, therefore, the remedy of Plaintiff-Sucha Singh, if any, would have been to sue for specific performance of contract. In view of the said plea, the Plaintiff Sucha Singh had withdrawn his claim with liberty to institute a suit for specific

performance of contract. It was, thus, evident that the cause of action for institution of both the suits is entirely different with each other. However, that is not the position here. In the instant matter, the cause of action to sue for specific performance of contract was very much available with the Plaintiff when he claimed for declaration of title and in the light of the principles laid down in the said matter of ***Van Vibhag Karamchari Griha Nirman Sahakari Sanstha Maryadit (Regd.) v. Ramesh Chander and Ors*** (supra), the Plaintiff's claim is specifically barred by the provisions prescribed under Order 2 rule 2 of CPC. The trial Court has, therefore, not committed any illegality in holding so.

11. It appears further that immediately after the dismissal of the claim as observed herein above, the Plaintiff has instituted the instant suit on 06.02.2012 claiming specific performance of contract based upon the alleged agreement to sale dated 04.07.1987 with a plea that the cause of action for institution of a suit arose on 30.09.2011 when he came to know that the predecessor-in-interest of the Defendants, namely, Jainath Shukla has failed to move an application before the Collector seeking permission for the execution of the registered deed of sale. It, however, appears from a bare perusal of the alleged agreement to sale (Ex.P.10) that no such condition as such was stipulated therein so as to hold that the cause of action arose on 30.09.2011 as alleged by the Plaintiff. It, thus, appears to be a concocted story developed by him with an ulterior motive for bringing his claim in time. What is in fact stipulated in the alleged agreement was that the rest of the sale consideration was required to be paid by him within a period of 90 days, i.e., by 04.10.1987 and admittedly, as evidenced from para 22 of his (PW1) testimony, it was not paid. In view of the conduct of

the Plaintiff, it is difficult to hold that the Plaintiff was ever ready and willing to perform his part of the contract.

12. That apart, the alleged agreement to sale (Ex.P.10) was executed on 04.07.1987 and according to the terms and conditions as stipulated therein and as observed herein above, the Plaintiff is required to make balance sale consideration within a period of 90 days, i.e., by 04.10.1987. The time was, thus, fixed for its performance and if the rest of the sale consideration was not taken by said Jainath Shukla as averred by the Plaintiff, the suit for specific performance of contract should have been instituted immediately by him within a period of three years from the alleged date, i.e., 04.10.1987 as required under the provision prescribed under Article 54 of the Act, 1963. However, instead, the Plaintiff has chosen to institute a suit for declaration of title based upon it on 03.10.2001 and his claim, which was registered as Civil Suit No.20-A/2003, was dismissed by the concerned trial Court vide its judgment and decree dated 14.10.2004 (Ex.D.12) and was affirmed not only in First Appeal on 10.02.2005 (Ex.D.3) but also in Second Appeal on 30.09.2011 (Ex.D.4) and only after the dismissal of his claim, the instant suit has been brought by him on 06.02.2012 while making a false plea much beyond the prescribed period of three years as provided under Article 54 of the Act, 1963. In view of that, the claim of him cannot be held to be instituted in time from any stretch of imagination.

13. In view of the aforesaid backgrounds, the Plaintiff was neither found to be ready and willing to perform his part of the agreement nor his claim was found to be instituted in time under Article 54 of the Act, 1963, rather it was found to be hit by the provisions of Order 2 rule 2 of CPC.

14. Consequently, I do not find any substance in this appeal. The appeal being devoid of merits is accordingly dismissed with cost of Rs.10,000/- payable to the Defendants.

15. A decree be drawn accordingly.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita