



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8446 OF 2024
(Arising out of SLP (C) No.2997 OF 2023)

USHA DEVI & ORS.

...APPELLANT(S)

VERSUS

RAM KUMAR SINGH & ORS.

...RESPONDENT(S)

ORDER

1. Leave granted. This is the defendant's appeal against the judgment and order dated 14.12.2022, passed by the High Court of Jharkhand at Ranchi in Second Appeal No. 349 of 2005, Usha Devi & Ors. versus Ram Kumar Singh & Ors., confirming the judgment and decree of the First Appellate Court, decreeing the suit for specific performance filed by the respondents.
2. According to the plaint allegations, the facts are as follows:
 - 2.1 The dispute relates to plot No. 2339, situated at Purulia Road, Kumhar Toli, Gali No. 2, Namkum, District Ranchi, which belonged to Kisun Ram, the grandfather of the appellants.

However, the plot was subdivided amongst the shareholders, and plot No. 2 () of /hata No. 2*2 was same into the share of Jihari Lal, succeeded by the defendants after his death.

2.2 , during his lifetime, Jihari Lal is said to have entered into an agreement with the plaintiff on 22.09.1971, for the sale of the land along with superstructure for a total sale consideration of Rs. 90,000/-. Out of the said amount, Rs. 1,000/- was paid in advance.

2.3 As per the said agreement, the sale deed was to be executed upon payment of the remaining amount of Rs. 89,000/- within a period of nine months. The sale deed was not executed within the time stipulated.

2.4 According to the respondents, the balance amount of Rs. 89,000/- was paid on 20.09.1971, for which an endorsement was made on the agreement dated 20.09.1971, and it was agreed that the sale deed would be executed by 30.11.1971. The plaintiff and respondents were put in possession of the property at that stage.

2.5 The sale deed was still not executed, and a fresh agreement was to be executed between the parties on 19.12.1971.

2.6 The land in question, covered by the initial agreement to sell, was 10 Kathas. However, in 1971, a fresh measurement

... as undertaken according to which it is to only ...
... and the price was enhanced from Rs. 9,000/- per ...
to Rs. 1,000/- per ...

2.7 At the time of the execution of the agreement dated 19.12.1980, an initial amount of 10,000/- was paid. Thus, out of the total sale consideration of Rs. 1,000/-, only Rs. 1,000/- remained as balance to be paid at the time of the execution of the sale deed.

2.8 As per this agreement to sell, the sale deed was to be executed and registered within one month i.e. up to 19.01.1981. It is interesting to note that agreement to sell also incorporated a clause at the end of the document stating that the said agreement would be valid for five years. Since the sale deed was not executed, the respondents instituted a suit for specific performance of the contract in September, 1981.

2.9 The affidavit filed along with the plaint was sworn and attested on 19.01.1981.

3. The appellants filed a written statement denying the plaint allegations.

3.1 According to the defendants, the said agreement to sell was a forged and fabricated document and did not bear the signatures

of their father, 7ihari Lal, 2ho had sin\$e died in 1))0.

3.2 The appellants further alleged that the suit 2as barred by limitation inasmu\$h as it 2as Oled beyond the period of three years from the date of performan\$e of the sale deed as per the agreement.

3.3 Aarious other issues 2ere raised 2hi\$h 2e may not enter into, as primarily, it is the issue of limitation 2hi\$h 2ill de\$ide this appeal.

4. 7ased on the pleadings, the Trial ourt framed the follo2ing issues3

- a) ?s the suit as framed maintainableB
- b) Have the plainti8s got any valid \$ause of a\$tion of the suitB
- c) ?s the suit barred by limitationB
- d) ?s the suit bad due to non6joinder of ne\$essary partiesB
- e) Chether so6\$alled agreements 2ere done bet2een the plainti8s and late 7ihari Lal, husband of defendant 'o. 1 and 2hether those agreements are binding on ,efendant 'os. 1,2,4 and *B
- f) &re the alleged agreements forged, fabri\$ated and \$on\$e\$ted, 2hi\$h do not bear the signature of 7ihari LalB
- g) Chether at the time of agreement, 7ihari Lal 2as the

absolute owner in possession of the suit property or whether the suit property was joint

h) Whether the defendant 'o. (is the adopted son of Hari Lal or the son of Shivlal and whether he has the right to contest this suit

i) Whether the plaintiffs are entitled to the reliefs sought in the plaint and other reliefs

5. Both parties led evidence. The Trial Court, *vide* judgment dated 11.01.2004, dismissed the suit with costs. All the issues except the issue nos. 1, 2 and 3 were decided in favour of the plaintiffs. Insofar as issue no. 4 is concerned it was held that the suit was barred by limitation.
6. The plaintiffs respondents preferred an appeal registered as Title & Appeal 'o. 40 of 2004. The said appeal came to be allowed, *vide* judgment dated 01.01.2004, and the suit was decreed. The defendants were directed to execute and register the sale deed as per the terms and conditions of the agreement dated 19.12.1991, after receiving the balance consideration within 90 days.
7. Aggrieved by the same, the defendants appellants preferred a second appeal before the High Court, which has since been dismissed by the impugned order, giving rise to the present

appeal.

8. Ce need not enter into the other issues as 2e are \$onvin\$ed that the suit 2as barred by limitation. The limitation under &rti\$le *4 of the Limitation &\$t, 1)=(for instituting a suit for spe\$iO\$ performan\$e of a \$ontra\$t 2ould be three years from the date 0<ed for the performan\$e, or, if no su\$h date is 0<ed, 2hen the plainti8 has noti\$e that performan\$e is refused. &rti\$le *4 of the Limitation &\$t, 1)=(is reprodu\$ed hereunder3

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*4.

lor %pe\$iO\$ performan\$e of a \$ontra\$t

Three
Years

The date 0<ed for the performan\$e, or, if no su\$h date is 0<ed, 2hen the plainti8 has noti\$e that performan\$e is refused.

9. oming to the fa\$t\$ of the present \$ase, 2e 0nd that in the agreement dated 19.12.1) :), it is spe\$iO\$dally mentioned that the sale deed 2ould be e<e\$uted 2ithin one month from the date of the said agreement. The period of one month 2ould e<pire on 1=.01.1))0, and on\$e there is a spe\$iO\$d date 0<ed for performan\$e, the limitation period 2ould be three years from the said date, 2hi\$h 2ould e<pire on 1=.01.1))(. The Trial ourt thus held that the suit 2as barred by limitation as it 2as 0led in

September 1)) (.

10. The First Appellate Court and the High Court went on the consideration that the agreement further recorded that this agreement would remain valid for a period of One year from today's date i.e. date of the execution of the agreement to sell. Relying on this clause, in our considered opinion, is totally irrelevant. The performance as to take place within one month. The validity of the agreement is something different and does not change the date of performance. That was the reason for incorporating this clause of validating the agreement for One year is not spelled out in the agreement, but in any case, it does not change the date fixed for the performance.
11. As such, the suit was liable to be dismissed on the ground of limitation alone. The appeal is thus liable to be allowed. Therefore, we have not entered into the other issues regarding the agreement to sell being valid or invalid.
12. Excepting that the plaintiffs respondents paid an amount of Rs. 1,00,000/- to the defendant appellant, and there being no relief claimed for refund of this money, in order to do complete justice between the parties, we feel it appropriate that the said amount of Rs. 1,00,000/- be returned to the plaintiffs along with 12%

simple interest by the appellants within three months from today.

13. The appeal is accordingly allowed. The impugned order is set aside, and the suit is dismissed. However, it is directed that the appellants shall return the advanced amount of Rs. 10,00,000 with interest at the rate of 12% per annum from the date it was paid to the appellants till the date it is paid. There shall however be no order as to costs.

.....J.

(VIKRAM NATH)

.....J.

(PRASANNA BHALACHANDRA VARALE)

**NEW DELHI
AUGUST 5, 2024**