

## **Fatehji & Company & Anr vs L.M. Nagpal & Ors on 24 April, 2015**

**Equivalent citations: AIR 2015 SUPREME COURT 2301, 2015 AIR SCW 3401, 2015 (4) ADR 359, 2015 (3) AIR KANT HCR 350, AIR 2015 SC (CIVIL) 1872, (2016) 1 MPLJ 557, (2015) 2 GUJ LH 345, (2015) 4 MAD LJ 495, (2016) 2 MAH LJ 389, (2015) 3 PAT LJR 207, (2015) 4 ANDHLD 183, (2015) 151 ALLINDCAS 118 (SC), (2015) 2 CAL LJ 116, (2015) 4 RAJ LW 3089, (2015) 2 RECCIVR 999, (2015) 3 ICC 696, (2015) 3 JLJR 183, (2015) 2 KER LJ 590, (2015) 2 LANDLR 280, (2015) 5 MAD LW 593, (2015) 3 CIVILCOURTC 145, (2015) 5 SCALE 488, (2015) 1 WLC(SC)CVL 798, (2015) 1 CLR 1219 (SC), (2015) 111 ALL LR 515, (2015) 3 ALL RENTCAS 1, (2015) 4 CURCC 166, (2015) 2 ORISSA LR 128, (2016) 1 PUN LR 98, (2015) 129 REVDEC 163, 2015 (8) SCC 390, (2015) 3 JCR 125 (SC), (2015) 4 ALL WC 3351, (2016) 1 CIVLJ 882, 2015 (2) KLT SN 108.1 (SC), 2015 (4) KCCR SN 418 (SC)**

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**Bench: C. Nagappan, V. Gopala Gowda**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 3912 OF 2015

[Arising out of Special Leave Petition (Civil) No.35686 of 2013]

Fatehji & Company & Anr. .. Appellants

- vs -

L.M. Nagpal & Ors. .. Respondents

J U D G M E N T

C. NAGAPPAN, J.

Leave granted.

This appeal is preferred against the judgment and order dated 19.7.2013 in R.F.A. no.350 of 1997 passed by the High Court of Delhi in which the High Court allowed the Appeal by setting aside the order dated 7.8.1997 of the Court of Additional District Judge, Delhi rejecting the plaint in Suit no.87 of 1994.

Briefly the facts are as follows : The perpetual lease hold right in respect of the suit land as vacant plot was granted in favour of original lessee Col. A.N. Kapur by registered lease deed dated 16.4.1962 by the Government of India and he built two storied building with barsati and he sold his rights in the said property to the first defendant-Firm by registered sale deed dated 6.5.1963. The first defendant entered into a written agreement of sale dated 2.7.1973 in respect of the suit property with Smt. Ram Pyari. As per the terms of the agreement the possession of the suit property including the building was handed over to Smt. Ram Pyari Nagpal on the date of agreement itself. The date for execution of the sale deed was fixed for 2.12.1973. Extension of time for execution of sale deed on the plea of obtaining permission to sell the property from the lessor was sought by the defendants by way of letters and the last of such extension was sought for six months w.e.f. August 1976. The sons of second defendant in July 1985 filed a suit seeking for declaration that the suit property is joint family property and the sale made by defendants in favour of plaintiffs be declared as null and void, was filed against defendants 2, 3 and the plaintiffs and on contest the same was dismissed on 5.4.1989. According to the plaintiffs the final cause of action accrued and arose after August 1991 when the defendants began hiding themselves and avoiding the plaintiffs and they filed the suit on 29.4.1994 seeking for a decree for specific performance of the agreement of sale dated 2.7.1973 against the defendants.

The defendants 1 to 3 filed an application under Order VII Rule 11 CPC on 10.10.1996 seeking for rejection of the plaint as barred by the law of limitation. The Trial Court after hearing both sides by a speaking order held that the suit is patently barred by the law of limitation and allowed the application by rejecting the plaint. The plaintiffs preferred appeal in RFA no.350 of 1997 and the High Court by the impugned judgment allowed the appeal by setting aside the order of the Trial Court and restored the suit to file. Aggrieved by the same the defendants have preferred the present appeal. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in this suit.

5. The learned senior counsel appearing for the appellants/defendants submitted that the suit patently appears to be barred by law of limitation by looking at the plaint averments and the High Court committed manifest error in arriving at a finding that the suit has to be tried. He relied on the decisions of this Court in Ahmadsahab Abdul Mulla (2)(Dead) by proposed Lrs. vs. Bibijan and ors. (2009)5 SCC 462 and Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee (2012) 8 SCC 706. Per contra the learned counsel appearing for the respondents contended that although the agreement of sale dated 2.7.1973 had a fixed date for performance, the defendants by subsequent letters sought for extension for obtaining permission of lessor viz. Land & Development Office (L&DO) and the said permission was not taken till now and the High Court has rightly dismissed the claim for rejection of plaint. He relied on three decisions of this Court in S. Brahmanand and ors. vs. K.R. Muthugopal (Dead) and ors. (2005) 12 SCC 764,

Panchanan Dhara and ors. vs. Monmatha Nath Maity (Dead) through Lrs. and anr. (2006) 5 SCC 340 and Niranjana Kumar and ors. vs. Dhyan Singh and anr. (1976) 4 SCC 89.

6. We considered the rival submissions. The specific performance is claimed of a written agreement of sale dated 2.7.1973 and as per the terms the performance of the contract was fixed till 2.12.1973. The defendants by subsequent letters dated 7.4.1975, 1.10.1975 and 1.8.1976 sought for extension of time to enable them to obtain permission of lessor and the last extension of six months expired on 1.2.1977. In view of Order VII Rule 11(a) and 11(d) the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. Article 54 of the Limitation Act stipulates that the limitation for filing the suit for specific performance of the contract is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has noticed that performance is refused.

7. The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the suit for specific performance. In fact both the courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part performance of the agreement or otherwise. In the same way the courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not obtained the said permission would not lead to inference that no cause of action for filing the suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of six months w.e.f. 1.8.1976 sought for by the defendants expired on 1.2.1977. The present suit seeking for specific performance was filed by the plaintiffs on 29.4.1994, much beyond the period of three years.

8. Yet another circumstance was pointed out to prove the laches on the part of the plaintiffs. The sons of the second defendant filed a suit in July 1985 against defendants 2, 3 and the plaintiffs seeking for declaration that the present suit property is their ancestral joint family property and the sale made by the defendants in favour of the plaintiffs be declared as null and void. The plaintiffs herein contested the said suit and it came to be dismissed on 5.4.1989. The suit for specific performance was not filed within three years from the said date also.

9. The plaintiffs averred in the plaint that the last and final cause of action accrued and arose to them after August 1991 when the defendants succeeded in hiding themselves and started avoiding the plaintiffs and the cause of action being recurring and continuous one, they filed the suit on 29.4.1994. As already seen the original cause of action became available to the plaintiffs on 2.12.1973, the date fixed for the performance of the contract and thereafter the same stood extended till 1.2.1977 as requested by the defendants. Though the plaintiffs claimed that oral extension of time was given, no particulars as to when and how long, were not mentioned in the plaint. On the other hand even after knowing the dishonest intention of the sons of the second defendant with regard to the suit property in the year 1985, the plaintiffs did not file the suit immediately. The suit having been filed in the year 1994 is barred by limitation under Article 54 of the Limitation Act.

10. We are of the view that the High Court committed manifest error in reversing the well considered order of the Trial Court rejecting the plaint as barred by the law of limitation and the impugned judgment is liable to be set aside. In the result, the appeal is allowed and the impugned judgment of the High Court is set aside and the order of the Trial Court is restored. No costs.

.....J. (V. Gopala Gowda) .....J. (C. Nagappan) New Delhi;

April 24, 2015