

Rojasara Ramjibhai Dahyabhai vs Jani Narottamdas Lallubhai (Dead)By ... on 10 April, 1986

Equivalent citations: 1986 AIR 1912, 1986 SCR (2) 447, AIR 1986 SUPREME COURT 1912, 1986 (3) SCC 300, 1986 UJ(SC) 2 346, (1986) 2 SCJ 359, (1987) 1 GUJ LR 239, (1986) 2 CIVLJ 348, (1986) 2 CURCC 557, (1986) 3 SUPREME 137

Author: A.P. Sen

Bench: A.P. Sen, B.C. Ray

PETITIONER:

ROJASARA RAMJIBHAI DAHYABHAI

Vs.

RESPONDENT:

JANI NAROTTAMDAS LALLUBHAI (DEAD)BY LRS. & ANR.

DATE OF JUDGMENT10/04/1986

BENCH:

SEN, A.P. (J)

BENCH:

SEN, A.P. (J)

RAY, B.C. (J)

CITATION:

1986 AIR 1912

1986 SCR (2) 447

1986 SCC (3) 300

1986 SCALE (1)566

ACT:

A. Suit for specific performance - Agreement to sell contains an implied covenant on the part of the vendor to do all things necessary to give effect to the Agreement, including the obtaining of the permission for the transfer of property - Vendor who has become the statutory occupant and owner of the land and who has obtained necessary permission subsequently as such occupant refuses to execute the sale-deed on the plea that the agreement to sell entered into by him was interdependent on his earlier Agreement to purchase the lands from the Girasdar and contingent on his obtaining the permission and since he failed, the Agreement to sell is incapable of performance - Contract Act, 1872, sections 31 & 32 - Whether the Court can order specific performance of transfer - Specific Relief Act, 1877, section 13 - Doctrine of "feeding the estoppel", applicability.

B. Limitation Act, 1963, Article 113, applicability of

- Computation of period of time from what date, explained.

HEADNOTE:

The appellant-defendant who was the owner of two plots of land admeasuring 491 and 1599 square yards situate in village Dudheraj recorded as Girasdari agricultural land entered into an agreement in writing (Ex.26), on October 19, 1949, with the Girasdar, Rana Mohabat Singh to purchase the said lands at Rs.2.50 per square yard and paid an earnest money of Rs.1,001. The agreement stipulated that the vendor was to apply for permission from the Collector to convert the agricultural land into village site for non-agricultural use and that the sale deed was to be executed after obtaining the requisite permission. On November 14, 1949 the appellant entered into another agreement to sell some property to the respondents Jani Narottamdas Lallubhai and Thakur Dhirajlal Dhaneshvar at Rs. 3.75 per square yard agreeing to contend that the appellant was to get the land converted into village site at his own expense and thereafter executed the sale-deed.

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In 1950-51 Rana Mohabat Singh applied to the Collector for grant of permission to convert the land into village site but since his application was rejected he refunded the earnest money to the appellant. However, after coming into force of the Saurashtra Land Reforms Act, 1951, with effect from September 1, 1951, the right and title of Rana Mohabat Singh as the ex-Girasdar were extinguished and the appellant was recognised to be an occupant thereof under the provisions of the Bombay Land Revenue Code, 1898. On 13 August, 1957, the appellant made an application to the revenue authorities for the grant of occupancy certificate, which was granted on 6.2.58 by the Mamlatdar. The occupancy certificate was to come into effect from August 1, 1958. On two applications of the appellant dated June 23, 1958 and September 10, 1959 revenue authorities granted permission for converting the lands under his possession into village site, that is, for non-agricultural use. On 5 October, 1959 the respondents called upon the appellant to execute a conveyance of the property in accordance with the agreement of sale between the parties dated 14.11.1949 and on the appellant's failure to comply, they filed a suit for specific performance. The Trial Court upheld the pleas of the appellant, namely, (i) the suit was barred by limitation; and (ii) the agreement between the parties was a contingent contract depending upon the contingency referred to in the agreement (Ex.26) dated 19 October, 1949 and since that contract became incapable of execution by virtue of Rana Mohabat Singh failing to obtain a permission of the Collector the agreement dated 14 November, 1949, and non-suited the respondents. On appeal the High Court reversed

the decree and held that the second agreement between the parties had not been cancelled by mutual consent and that the suit was within time and that the time started, running only from 10th September, 1959, as the date on which requisite permission was obtained from the Collector for the use of the land as a village site.

Dismissing the appeal, on certificate, the Court,

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HELD: 1.1 The agreement embodied in the suit Banakhat (Ex.25) dated November 14, 1949 was not a contingent contract; the contract was an absolute and unconditional one, and there was no question of its performance being dependent on the fulfilment of the condition under the earlier agreement

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(Ex.26) by which the appellant's vendor Rana Mohabat Singh had undertaken upon himself the obligation of procuring the necessary sanction from the Collector. Under the terms of the suit Banakhat (Ex.25), the appellant had undertaken the obligation of getting the agricultural land converted into village site. Under the Saurashtra Land Reforms Act, 1951 there was an extinguishment of the right and title of Rana Mohabat Singh as a girasdar of the suit land and the appellant was recognised to be an occupant thereof under the provisions of the Bombay Land Revenue Code. The contention that the appellant had an imperfect title is therefore without any basis whatever. As such occupant, it is undisputed that the appellant applied for and obtained the requisite permission from the revenue authorities for conversion of the disputed land into village site. There was therefore no legal impediment to the specific performance of the contract between the parties. [454 C; 454 H; 455 A; E-F]

1.2 There is always in such contracts, an implied covenant on the part of the vendor to do all things necessary to give effect to the agreement, including the obtaining of the permission for the transfer of the property. Ex.25, the suit Banakhat embodies an express covenant to that effect. [457 C-D]

Dalsukh M. Pancholi v. The Guarantee Life & Employment Insurance Company Ltd. & Ors., A.I.R. 1947 P.C. 182, distinguished.

F. Ranchhodas v. Nattmal Hirachand & Co., [1951] Bom. L.R. 491; Motilal v. Nanhelal Ghasiram, L.R. [1930] 57 Indian Appeals 333; Mrs. Chandnee Widya Wati Madden v. Dr. C.L. Katial, [1964] 2 S.C.R. 495; and Ramesh Chandiok & Anr. v. Chuni Lal Sabharwal (Dead) by his Lrs. & Ors., [1971] 2 S.C.R. 573, referred to.

1.3 In the facts and circumstances of the case, it could not be said that the respondents' suit for specific performance filed on September 6, 1960 was barred by limitation inasmuch as permission to convert a portion of the disputed land was obtained on August 26, 1958 and for the remaining portion on September 10, 1959, and the suit

was therefore brought within three years from the date when the cause of action arose. The cause of action for the suit arose

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after the appellant had obtained the requisite permission from the revenue authorities upon conferral of rights of an occupant on him. [459 F-H]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 315 of 1971.

From the Judgment and Decree dated 3/4 December, 1969 of the Gujarat High Court in Appeal No. 160 of 1961.

S.H. Sheth, Vandana Sharma and M.V. Goswami for the Appellant.

S.T. Desai and B.B. Singh for the Respondents. The Judgment of the Court was delivered by SEN, J. This appeal on certificate is directed against the judgment and decree of the Gujarat High Court dated February 1, 1971 reversing those of the Civil Judge, Senior Division, Surendranagar dated January 31, 1961, and decreeing the plaintiffs' suit for specific performance.

Put very shortly, the essential facts are these. By an agreement in writing (Exh.26) dated October 19, 1949, the appellant who was the defendant entered into an agreement to purchase two plots of land admeasuring 491 and 1599 square yards situate in Village Dudheraj recorded as Girasdari agricultural land of which he was the tenant @ Rs. 2.50 per square yard from the Girasdar, Rana Mohabat Singh and paid Rs.1,001 by way of earnest money in lieu thereof. The agreement stipulated that the vendor Rana Mohabat Singh was to apply for permission from the Collector to convert this agricultural land into village site i.e. for non- agricultural use. The sale-deed was to be executed by Rana Mohabat Singh after he had obtained the requisite permission from the Collector. Within about a month therefrom i.e. on November 14, 1949, the appellant by a contract (Exh.25) covenanted to sell the same property to the respondents Jani Narottamdas Lallubhai and Thakur Dhirajlal Dhaneshvar who were the plaintiffs @ Rs. 3.75 per square yard. The agreement provided that the vendor i.e. the appellant was to get the land converted into village site at his own expense.

IN 1950-51, Rana Mohabat Singh applied to the Collector for grant of permission to convert the land into village site but his application was rejected and thereafter he refunded the earnest amount to the appellant. The Saurashtra Land Reforms Act, 1951 came into force w.e.f. September 1, 1951. Under the provisions of the Act, there was an extinguishment of the right and title of Rana Mohabat Singh as the ex-Girasdar of the land and the appellant was recognised to be an occupant thereof under the provisions of the Bombay Land Revenue Code, 1898. On August 13, 1957, the appellant made an application to the revenue authorities for the grant of an occupancy certificate. The Mamlatdar by his order dated February 6, 1958 directed the issue of an occupancy certificate in favour of the appellant on condition of his paying occupancy price in accordance with the provisions

of the Saurashtra Land Reforms Act. On that very day i.e. on February 6, 1958, the occupancy certificate was issued to the appellant on such payment being made but it was to come into effect from August 1, 1958. On June 23, 1958, the appellant applied for converting 1000 square yards out of the two plots which prior to 1958 were agricultural land into village site, and on August 26, 1958 the revenue authorities granted such permission. Thereafter, on September 10, 1959 the revenue authorities granted permission for converting the remaining area of land into village site. Thus, by September 10, 1959 the appellant obtained permission for converting both the plots for non-agricultural use. On October 5, 1959 the respondents called upon the appellant to execute a conveyance of the property in accordance with the agreement of sale between the parties and on his failing to comply, commenced the present suit on September 6, 1960.

The material terms of the agreement between the parties are to be found in the suit Banakhat (Exh.25) and they are to the effect :

"You can construct a house or building or a factory or put up a park, garden etc. on this land after getting it converted into village site land. The sale-deed in respect of this land is to be executed after the land has been converted into such use The title of the land is free from any doubt. No one has any right, title or interest therein. If any amount is to be paid either to the Government or to the Darbar in respect of the land, then you are not liable for the same, but this agreement has been entered into with you on the footing that the land is to be considered as village site land. We have to give you a certified copy of the permission whereby the land is converted into village site land and all expenses in connection with the grant of such conversion are to be borne by us."

It is common ground that the word "we" refers to the vendor i.e. the appellant and "you" refers to the respondents i.e. the purchasers.

The appellant contested the suit on various grounds. He pleaded inter alia that (1) the agreement between the parties as per Banakhat (Exh.26) was a contingent contract and not an absolute contract and that the appellant's vendor Rana Mohabat Singh having failed to obtain permission of the Collector in terms of the agreement (Exh.25) entered into by him with the appellant for converting the land into village site, and execute a sale-deed in his favour, the agreement between the parties was incapable of performance and (2) the suit was barred by limitation. The Courts below have differed in their conclusion. The learned Civil Judge who tried the suit upheld these pleas and non-suited the respondents. He held that the suit was barred by limitation and further that the contract between the parties being a contingent contract, the agreement in view of the events that had happened made it unenforceable.

On appeal, the High Court reversed the decree and held that the agreement between the parties had not been cancelled by mutual consent and that finding has not been challenged before us. On the question as to whether the agreement was a contingent contract or a contract creating absolute liabilities as between the parties without contemplating any contingency, the High Court reproduced the material portion of the agreement (Exh.25) set out above and held that the agreement clearly

contemplated that the sale- deed was to be executed after the requisite permission was obtained from the Collector for use of the land as a village site and that the land was not to be sold as agricultural land but as village site. In coming to that conclusion the High Court took into consideration the agreement between the appellant and Rana Mohabat Singh (Exh.26) which contained the recital :

"I will execute the registered sale-deed in your favour immediately after permission to convert these plots into village site land has been obtained."

In the light of that recital, it held that the agreement between the parties (Exh.25) contemplated that the sale-deed was to be executed after permission was obtained from the revenue authorities for use of the land as a village site and it was not being sold as agricultural land.

Following the decision of Chagla, CJ. in *F. Ranchhodas v. Natmal Hirachand & Co.*, [1951] Bom. LR 491 the High Court held that the words "after the permission is obtained" in Exh. 26 and the words "after the land is converted" in Exh. 25 both indicate the point of time at which the sale-deed within the contemplation of the parties had to be executed in accordance with the terms of the document. In the circumstances, the High court held that the contract could not be interpreted as a contingent contract. Upon that view, it held that there was no contingency whatsoever and even though Rana Mohabat Singh had failed to obtain the requisite permission to convert the land into village site, as and when such permission was obtained by the appellant, the rights of the respondents for the performance of the agreement came into existence. It also held that the respondents were entitled to rely on the doctrine of 'feeding the estoppel' embodied in s.13 of the Specific Relief Act, 1963. It held that at the time when the agreement was entered into between the parties in 1949, the appellant had only a right to get the land in suit conveyed to him by Rana Mohabat Singh in pursuance of the agreement (Exh.26). However, by virtue of the provisions of the Saurashtra Land Reforms Act, his title as an occupant became complete and he had obtained the permission to convert the land into village site and the respondents were therefore entitled to get specific performance of the agreement in respect of the rights which he had at the date of the suit. It further held that the permission to convert the disputed land into village site having been obtained on August 26, 1958, insofar as a part of the land was concerned and on September 10, 1959, as regards the balance thereof it could not be said that the respondents suit was barred by limitation. Upon these findings, the High court reversed the decree of the learned Civil Judge and decreed the respondents suit for specific performance.

Two questions are raised upon this appeal. First of these is whether the agreement embodied in the suit Banakhat (Exh.25) dated November 14, 1949 was a contingent contract and as the contingency failed, there was no contract which could be made the basis for a decree for specific performance, and the second is that the suit as framed was barred by limitation under Art.113 of the Limitation Act, 1963. As to the first contention, it is urged that the High Court proceeded on the erroneous belief that the grant of permission by the Collector was a certain event and therefore its finding that the contract was an absolute and unconditional one, is vitiated. It is said that the appellant's vendor Rana Mohabat Singh having failed to obtain permission from the Collector in 1950-51 in terms of the agreement (Exh.26) entered into by him with the appellant for converting the land into village

site and execute a deed of conveyance in his favour, the appellant had an imperfect title and therefore the right to specific performance of the suit Banakhat (Exh.25) did not arise inasmuch as the conversion of the Girasdari lands at the instance of Rana Mohabat Singh was a condition on which the mutual rights and obligations of the parties would arise. The submission proceeds on the basis that the two transactions were interdependent and Rana Mohabat Singh's application for permission for conversion of the agricultural land to non-agricultural purposes having been rejected, the appellant was relieved of his obligation to convey the suit lands under the Banakhat (Exh.25). In support of the contention, reliance is placed on the decision of the Privy Council in *Dalsukh M. Pancholi v. The Guarantee Life & Employment Insurance Company Ltd. & Ors.*, A.I.R. 1947 P.C. 182.

We do not see any basis for the submission that the contract between the parties as embodied in the suit Banakhat (Exh.25) was a contingent contract, the performance of which was dependent upon fulfilment of the condition under the earlier agreement (Exh.26) by which the appellant's vendor Rana Mohabat Singh had undertaken upon himself the obligation of procuring the necessary sanction from the Collector. As to the appellant having an imperfect title the question is purely hypothetical. May be, initially the two transactions were not independent of each other but were inter-dependent, for the performance of one depended upon the fulfilment of the other agreement. If there was no abolition of proprietary rights, it could well be said that the suit Banakhat (Exh.25), being subject to the fulfilment by Rana Mohabat Singh of the terms of the earlier agreement (Exh.26), the appellant had an imperfect title and therefore the contract between the parties was contingent on Rana Mohabat Singh obtaining the approval of the Collector and as he could not secure such approval and execute a conveyance in favour of the appellant, no effective agreement came into being which could be ordered to be specifically enforced. But the contention that unless the appellant's vendor Rana Mohabat Singh conveyed title by execution of a proper conveyance, the contract as between the parties became impossible of performance and further that for want of such conveyance the appellant had an imperfect title, does not take into account the subsequent events.

It is common ground that shortly thereafter, the Saurashtra Land Reforms Act, 1951 came into force w.e.f. September 1, 1951. Under the provisions of the Act, there was an extinguishment of the right and title of Rana Mohabat Singh as a Girasdar of the suit land and the appellant was recognised to be an occupant thereof under the provisions of the Bombay Land Revenue Code. It would, therefore, appear that the contention that the appellant had an imperfect title is without any basis whatever. With the extinction of the title of Rana Mohabat Singh and the conferral of the rights of an occupant on the appellant, the property became transferable by him. As such occupant, it is undisputed that the appellant made an application to the revenue authorities permitting the conversion of the disputed land into village site. Thereafter, there was no legal impediment in the way of the appellant in executing a sale-deed. Under the terms of the suit Banakhat (Exh.25), the appellant had undertaken the obligation of getting the land converted into village site. As indicated, the word 'we' in the document (Exh.25) refers to the vendor i.e. the appellant and 'you' refers to the respondents. The terms of the document are clear and explicit and admit of no ambiguity. The appellant had by the contract bound himself to furnish a certified copy of the permission whereby the land was converted into village site apart from bearing all expenses in connection with the grant of such permission.

In our opinion, the decision in Dalsukh M. Pancholi's case is clearly distinguishable on facts. It is clear from the terms of the offer and acceptance in that case, that the parties had contemplated that, to make the contract effective the 'approval of the attaching Court' must be obtained. The learned Subordinate Judge held that the term 'subject to the approval of the Court' was not an essential condition, but in the High Court it was conceded that it was an essential term. The facts of the case show that there was good reason for insisting on this condition for at the time of execution of the agreement it was well-known to the parties that the property was under attachment by various courts. In those circumstances, the Privy Council observed :

"In their Lordships' opinion there can be no doubt that the condition was an essential one. It was essential not for one party alone, but for both parties. From the point of view of the purchaser it is unnecessary to observe that he would get a clear title to the property only if the creditors, through the Court, consented to take Rs. 6,50,000 in full satisfaction of their decrees against the vendor's family. The purchaser was not willing to risk even the payment of the earnest money without the knowledge of the attaching Court for it was to be paid only to the nominee of the Court named at the time of giving the approval to the transaction. The condition was not exclusively for the benefit of the purchaser; it was equally important from the standpoint of the vendors also. Ram Jas would accept the offer only with the proviso "subject to the approval of the Court".

The family was heavily indebted. It was important for Ram Jas that he should get effective discharge of all the liabilities of the family by the payment of Rs.6,50,000; thus, it was necessary from his standpoint also, that the sale should be subject to the approval of the attaching Court."

It was accordingly held that the contract was a contingent one and as the contingency failed, there was no contract which could be made the basis for a decree for specific performance.

Although Rana Mohabat Singh having failed to fulfil the terms of his contract with the appellant and execute a sale- deed in his favour might have rendered the contract between them incapable of performance, but with the extinction of the title of Rana Mohabat Singh and the conferral of the rights of an occupant on the appellant, the property became transferable subject, of course, to the express covenant on the part of the appellant to do all things necessary to give effect to the agreement. Here, the suit Banakhat (Exh. 25) embodies an express covenant to that effect. There is always in such contracts an implied covenant on the part of the vendor to do all things necessary to give effect to the agreement, including the obtaining of the permission for the transfer of the property. The principles on which a term of this nature may be implied in contracts are well-settled. It is enough to refer to Halsbury's Law of England, Vol. 8, 3rd Edn., p. 121 where the principles are summarised as follows :

"In construing a contract, a term or condition not expressly stated may, under certain circumstances be implied by the Court, if it is clear from the nature of the transaction or from something actual found in the document that the contracting parties must have intended such a term or condition to be part of the agreement between them.

Such an implication must in all cases be founded on the presumed intention of the parties and upon reason, and will only be made when it is necessary in order to give the transaction that efficacy that both the parties must have intended it to have, and to prevent such a failure of consideration as could not have been within the contemplation of the parties."

Chitty on Contract, Vol.1, 23rd Edn., paragraphs 694-95 points out that a term would be implied if it is necessary in the business sense, to give efficacy to the contract.

In this context reference may be made to the decision of the Privy Council in *Motilal v. Nanhelal Ghasiram*, L.R. [1930] 57 Indian Appeals 333. There, the facts were these. In that case, the plaintiff Mst. Jankibai entered into an agreement to purchase from Raibahadur Seth Jiandas of Jabalpur four annas proprietary share of Mauja Raisalpur together with the sir and khudkast lands appurtenant thereto, with cultivating rights in the sir lands. The property was subject to the provisions of the Central Provinces Tenancy Act, 1920. She filed a suit for specific performance of the said contract. The Privy Council held that the contract was for a transfer of the sir lands without reservation of the right of occupancy, and that the sanction of the Revenue Officer to the transfer was necessary under s. 50(1) of the Act, which was in these terms :

" S. 50(1) : If a proprietor desires to transfer the proprietary rights in any portion of his sir land without reservation of the right of occupancy specified in s. 49, he may apply to a revenue officer and, if such revenue-officer is satisfied that the transferor is not wholly or mainly an agriculturist, or that the property is self- acquired or has been acquired within the twenty years last preceding, he shall sanction the transfer."

It was contended before the Privy Council that a decree for specific performance of the agreement of sale could not be made, because such performance would necessitate an application by or on behalf of the vendor to the Revenue Officer for sanction to transfer the cultivating rights in the sir land, and that the Court had no jurisdiction to require the vendor to make such an application. In repelling the contention, the Privy Council observed that in view of their construction of the agreement, namely, that the vendor agreed to transfer the cultivating rights in the sir land :

"(T)here was, in their Lordships' opinion, an implied covenant on the part of the vendor to do all things necessary to effect such transfer, which would include an application to the Revenue Officer to sanction the transfer."

It was further observed that it was not necessary for their Lordships to decide whether in that case the application for sanction to transfer must succeed, but that it was material to mention that no facts were brought to their Lordships' notice which would go to show that there was any reason why such sanction should not be granted. After making the said observations, the Privy Council held that in those circumstances the Court had jurisdiction to enforce the contract under the Specific Relief Act, 1877 and Order 21, r. 35 of the Code of Civil Procedure, 1908 by a decree ordering the vendor to apply for sanction and to execute a conveyance on receipt of such sanction. The decision of the Privy Council in *Motilal v. Nanehalal Ghasiram*, supra, therefore is an authority for the proposition that if

the vendor agrees to sell the property which can be transferred only with the sanction of some Government authority, the Court has jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming to convey to the purchaser within a certain time. See also : Mrs. Chandnee Widya Vati Madden v. Dr. C.L. Katial, [1964] 2 S.C.R. 495 and Ramesh Chandra Chandiok & Anr. v. Chuni Lal Sabharwal (dead) by his Lrs. & Ors., [1971] 2 S.C.R. 573 where this Court following the Privy Council decision in Motilal v. Nanehlal Ghasiram's case supra, reiterated the same principle.

The next and the last contention that the suit brought by the appellant was barred by limitation is wholly devoid of substance. Under Art. 113 of the Limitation Act, 1963, the limitation prescribed for a suit for specific performance is a period of three years which runs from the date when the cause of action accrues. In the facts and circumstances of the case, the respondents were required to have a conveyance executed immediately upon the conferral of occupancy rights on the abolition and the permission granted by the revenue authorities to him to convert the suit land into village site. As already stated, the permission to convert the disputed land into village site having been obtained on August 26, 1958 insofar as a part of the land admeasuring 1,000 square yards and on September 10, 1959 as regards the remaining portion, it could not be said that the respondents' suit filed on September 6, 1960 was barred by limitation.

The result therefore is that the appeal must fail and is dismissed. The judgment and decree of the High Court decreeing the plaintiff's suit for specific performance are upheld. The respondents shall be entitled to their costs throughout.

S.R.

Appeal dismissed.