

RAMAN (DEAD) BY LRS.

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v.

R. NATARAJAN

(Civil Appeal No. 6554 of 2022)

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SEPTEMBER 13, 2022

[INDIRA BANERJEE AND V. RAMASUBRAMANIAN, JJ.]

Specific Relief Act, 1963 – s.12, 13(1)(b) – Limitation Act, 1963 – s.18(1), Art.54 – Suit for specific performance involving third party – Grant of decree for specific performance – Correctness of – Held: High Court ought to have seen that the specific performance of the Agreement in question comprised of two parts (i) the defendant (predecessor of appellants) entering into an agreement with his brother's wife for the purchase of a land for providing access to the land agreed to be sold under the suit Agreement of Sale; and (ii) the defendant then executing a sale deed conveying the property covered by the suit Agreement of Sale – Since the defendant's brother's wife was not a party to the suit agreement of sale, the Court cannot compel her to enter into an agreement with the defendant – Thus, performance of the first part of the obligation cannot be compelled by the Court, as it depended upon the will of a third party – Consequently, the performance of the second part of the obligation, may be hit by s.12(1) – Also, none of the exceptions contained in sub-sections (2), (3) and (4) will apply – Even the limited rights conferred by s.13(1)(b) are not available to the respondent-plaintiff – Further, the High Court could not have answered the question of limitation in favour of the respondent without framing any substantial question of law and without even a reference to Article 54 – Impugned judgment set aside – Relief of specific performance claimed by the respondent is rejected.

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Suit – For specific performance involving third party – Held: Court cannot grant the relief of specific performance against a person compelling him to enter into an agreement with a third party and seek specific relief against such a third party.

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A **Allowing the appeal, the Court**

- HELD:** 1.1 The mistakes committed by the High Court were manifold. First, the High Court framed a question which was actually a question of fact which involved appreciation of evidence and not a substantial question of law. As a consequence, B the answer given by the High Court was only a finding of fact. Next, the High Court reversed the finding of the First Appellate Court on the question of limitation, without framing a substantial question of law and without even referring to the statutory provisions. The Agreement is dated 19.06.1993. The Agreement C contains four endorsements which are dated 12.11.1995, 11.05.1998, 27.01.2001, 10.07.2005. The defendant raised the question of limitation, on the basis of the fact that the fourth endorsement was made beyond a period of three years from the date of the third endorsement. Such a defence was based upon Section 18(1) of the Limitation Act, 1963. But as a matter of fact, D the limitation for filing a suit for specific performance, in terms of Article 54 of The Schedule to the Limitation Act, 1963 is three years, “from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that the performance is refused.” But in the entire memorandum of grounds of second E appeal filed by the respondent before the High Court, there was no whisper or reference to Article 54 of the Schedule to the Limitation Act, 1963. The only substantial question of law framed by the High Court at the time of entertaining the second appeal was not about limitation revolving around Article 54 of the Schedule to the Limitation Act. Therefore, the High Court could F not have answered the question of limitation in favour of the respondent herein, (i) without framing any substantial question of law; and (ii) without even a reference to Article 54. [Paras 11-15][232-G-H; 233-A-E]
- 1.2 In any case, the High Court ought to have seen that a G Court cannot grant the relief of specific performance against a person compelling him to enter into an agreement with a third party and seek specific relief against such a third party. In other words, the specific performance of the agreement by the appellants herein, depended upon (i) the appellants entering into an agreement with a third party; and (ii) appellants being in a position H

to compel such third party to perform her obligations under such agreement. The High Court ought to have seen that the specific performance of the Agreement in question comprised of two parts namely, (i) the defendant entering into an agreement with his brother's wife for the purchase of a land for providing access to the land agreed to be sold under the suit Agreement of Sale; and (ii) the defendant thereafter executing a sale deed conveying the property covered by the suit Agreement of Sale. Since the defendant's brother's wife was not a party to the suit agreement of sale, the Court cannot compel her to enter into an agreement with the defendant. In other words, the performance of the first part of the obligation, which we have indicated in the preceding paragraph, cannot be compelled by the Court, as it depended upon the will of a third party. As a consequence, the performance of the second part of the obligation, may be hit by Section 12(1) of the Specific Relief Act, 1963. [Paras 16, 17][233-E-H; 234-A-B]

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1.3 From the pleadings on record, it appears that the case on hand will not even be covered by sub-sections (2), (3) & (4) of Section 12 of the Specific Relief Act. Since it is stated very clearly in the suit Agreement of Sale that the land covered by the Agreement will not have any access, unless the defendant entered into an agreement with his brother's wife, it is clear that none of the exceptions contained in sub-sections (2), (3) and (4) of Section 12 will apply. Even the limited rights conferred by Section 13(1)(b) of the Specific Relief Act are not available to the respondent, as there was no legal right in the defendant to compel 3rd parties to convey their land to him for the purpose of providing a pathway to the land agreed to be sold to the respondent herein. Therefore, the High Court committed a grave error in law in granting a decree for specific performance. Hence the appeal is allowed, the impugned judgment of the High Court is set aside and the relief of specific performance claimed by the respondent is rejected. However, there will be a decree directing the appellants to pay to the respondent, the amount of Rs.1,44,400/- paid by the respondent, with interest @ 9% p.a. from the date of filing of the suit, till the date of repayment. The parties shall bear their respective costs throughout. [Paras 18-21][234-D-E; 235-A-B]

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6554
of 2022.

From the Judgment and Orders dated 24.04.2018 of the High Court of Judicature at Madras in Second Appeal No. 64 of 2015.

B G. Sivabalamurugan, P. Shankar, C. Adhikesavan, Advs. for the Appellants.

S. Nandakumar, Ms. Deepika Nandakumar, Anand Murthi, Naresh Kumar, Advs. for the Respondent.

The following Judgment of the Court was passed :

C **JUDGMENT**

Leave granted.

D 2. The suit for specific performance of an Agreement of Sale of an immovable property, filed by the respondent herein, was decreed by the Trial Court but the said decree was reversed by the First Appellate Court. However, the High Court reversed the Judgment and decree of the First Appellate Court and restored the decree for specific performance granted by the Trial Court. Aggrieved by the same, the legal representatives of the original defendant are on appeal.

E 3. We have heard Mr. G. Sivabalamurugan, learned counsel for the appellants and Mr. S. Nandakumar, learned counsel for the respondent.

F 4. The respondent herein filed a suit in O.S. No.360 of 2008 on the file of the First Additional District Munsif, Salem, for specific performance of an Agreement of Sale dated 19.06.1993, contending *inter alia* :

- F ◆ that the appellants agreed to sell the suit property which is a land of the extent of about 76 cents for a total sale consideration of Rs.1,44,000;
- G ◆ that an advance of Rs.25,000 was paid at the time of execution of the Agreement;
- H ◆ that the defendant received further amounts of Rs.50,000/- on 19.11.1995, Rs.43,000/- on 11.05.1998, Rs.10,000/- on 27.01.2001 and Rs.16,400/- on 10.07.2005;
- ◆ that appropriate endorsements were made on the reverse of the first, second and third pages of the agreement;

- ❖ that the entire sale consideration thus stood paid; A
- ❖ that it was provided in the Agreement that the defendant should simultaneously enter into an agreement with his brother's wife for the purchase of a portion of her land, to be used as pathway for access to reach the suit property;
- ❖ that the time for performance of the obligations under the Agreement was fixed as 11 months from the date of the defendant entering into an agreement with his brother's wife for the purchase of the land for the pathway; B
- ❖ that however when the plaintiff issued a legal notice dated 27.03.2007, the defendant sent a reply denying everything; and C
- ❖ that therefore, the plaintiff was constrained to file the suit.

5. The defendant filed a written statement denying everything, including the execution of the Agreement. Therefore, the Trial Court framed the following issues; D

- (i) Is the Agreement of Sale dated 19-8-93 real and true?
- (ii) Is the suit barred by limitation?
- (iii) Is the plaintiff eligible for the relief of specific performance? E
- (iv) Any other relief?"

6. After trial, the Trial Court passed a Judgment and decree dated 14.02.2012, holding *that* the Agreement dated 19.06.1993 was true and valid; *that* the suit was not barred by limitation; and *that* the plaintiff was entitled to the relief of specific performance. F

7. The First Appellate Court came to the conclusion,

- ❖ that the endorsements made in the Agreement of sale on 12.11.1995, 11.05.1998, 27.01.2001 and 10.07.2005 marked as Exhibit A-2 to A-5, were not proved; G
- ❖ that the plaintiff could not prove that he was ready and willing to perform his part of the obligations;
- ❖ that the suit was barred by limitation; and
- ❖ that, therefore, the plaintiff was not entitled to specific performance. H

A 8. The only substantial question of law framed by the High Court at the time of admission of the second appeal was as follows:

B “In the light of the finding of the trial Court that Ex. A-1 – sale agreement is true, whether the First Appellate Court was right in holding that the endorsements made on Ex.A.1 under Exs.A.2 to A.5 have not been proved though, according to the plaintiff, it has been proved by the evidence of P.Ws. 2 and 3?”

9. The High Court recorded its opinion on the above substantial question of law as follows:

C “From over all consideration of pleadings, oral and documentary evidence and the judgment of the trial Court, it is clear that the first respondent only executed Exs.A.1 to A.5 and the First Appellate Judge on erroneous consideration of pleadings and evidence of P.Ws.2 to 3 held that the appellant failed to prove the endorsements in Exs.A.2 to A.5 after holding that Ex.A.1 was executed by the first respondent and relying of Ex.A.2 to hold that suit is barred by limitation.”

D 10. What was recorded as above was not actually an answer to the substantial question of law, even if we construe what was framed, to be a substantial question of law. The above finding is actually a finding of fact. Apart from that, the High Court also went beyond the substantial question of law framed by it and proceeded to hold that the suit was not barred by limitation. The High Court opined that the time for performance of the obligations under the Agreement was fixed as 11 months from the date on which the defendant entered into an agreement with his brother’s wife for the purchase of a land to be used as pathway. However, the

E defendant did not enter into any agreement with his brother’s wife. On the other hand, the defendant chose to deny the very execution of Agreement of Sale in his reply notice dated 04.04.2007. Therefore, the High Court held that limitation started running from the date of refusal and that the suit filed in November, 2007 was within the period of limitation.

F G 11. The mistakes committed by the High Court were manifold. First, the High Court framed a question which was actually a question of fact which involved appreciation of evidence and not a substantial question of law. As a consequence, the answer given by the High Court was only a finding of fact. Next, the High Court reversed the finding of the First Appellate Court on the question of limitation, without framing a substantial question of law and without even referring to the statutory provisions.

12. As we have pointed out earlier, the Agreement is dated 19.06.1993. The Agreement contains four endorsements which are dated 12.11.1995, 11.05.1998, 27.01.2001, 10.07.2005. A

13. The defendant raised the question of limitation, on the basis of the fact that the fourth endorsement was made beyond a period of three years from the date of the third endorsement. Such a defence was based upon Section 18(1) of the Limitation Act, 1963. B

14. But as a matter of fact, the limitation for filing a suit for specific performance, in terms of Article 54 of The Schedule to the Limitation Act, 1963 is three years, “*from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that the performance is refused.*” C

15. But in the entire memorandum of grounds of second appeal filed by the respondent-herein before the High Court, there was no whisper or reference to Article 54 of the Schedule to the Limitation Act, 1963. The only substantial question of law framed by the High Court at the time of entertaining the second appeal was not about limitation revolving around Article 54 of the Schedule to the Limitation Act. Therefore, the High Court could not have answered the question of limitation in favour of the respondent herein, (i) without framing any substantial question of law; and (ii) without even a reference to Article 54. D E

16. In any case, the High Court ought to have seen that a Court cannot grant the relief of specific performance against a person compelling him to enter into an agreement with a third party and seek specific relief against such a third party. In other words, the specific performance of the agreement by the appellants herein, depended upon (i) the appellants entering into an agreement with a third party; and (ii) appellants being in a position to compel such third party to perform her obligations under such agreement. F

17. The High Court ought to have seen that the specific performance of the Agreement in question comprised of two parts namely, (i) the defendant entering into an agreement with his brother’s wife for the purchase of a land for providing access to the land agreed to be sold under the suit Agreement of Sale; and (ii) the defendant thereafter executing a sale deed conveying the property covered by the suit Agreement of Sale. G H

- A 18. Since the defendant's brother's wife was not a party to the suit agreement of sale, the Court cannot compel her to enter into an agreement with the defendant. In other words, the performance of the first part of the obligation, which we have indicated in the preceding paragraph, cannot be compelled by the Court, as it depended upon the will of a third party. As a consequence, the performance of the second part of the obligation, may be hit by Section 12(1) of the Specific Relief Act, 1963 which reads as follows:-

"12. Specific Performance of part of contract.-(1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of contract.

C xxx xxx xxx"

19. From the pleadings on record, it appears that the case on hand will not even be covered by sub-sections (2), (3) & (4) of Section 12 of the Specific Relief Act. Since it is stated very clearly in the suit Agreement D of Sale that the land covered by the Agreement will not have any access, unless the defendant entered into an agreement with his brother's wife, it is clear that none of the exceptions contained in sub-sections (2), (3) and (4) of Section 12 will apply.

20. Even the limited rights conferred by Section 13(1)(b) of the E Specific Relief Act are not available to the respondent, as there was no legal right in the defendant to compel 3rd parties to convey their land to him for the purpose of providing a pathway to the land agreed to be sold to the respondent herein. Section 13(1)(b) reads as follows:

"13. Rights of purchaser or lessee against person with no title or imperfect title.—(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights namely:-

- F (a) xxx xxx xxx
G (b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance,"

21. Therefore, the High Court committed a grave error in law in granting a decree for specific performance. Hence the appeal is allowed, the impugned judgment of the High Court is set aside and the relief of specific performance claimed by the respondent is rejected. However, there will be a decree directing the appellants to pay to the respondent, the amount of Rs.1,44,400/- paid by the respondent, with interest @ 9% p.a. from the date of filing of the suit, till the date of repayment. The parties shall bear their respective costs throughout.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.