

Van Vibhag K.G.N.Sahkari ... vs Ramesh Chander & Ors on 19 October, 2010

Bench: Asok Kumar Ganguly, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8982 OF 2010
(Arising out of SLP (Civil) No.1518 of 2008)

Van Vibhag Karamchari Griha Nirman
Sahkari Sanstha Maryadit (Regd.)

..Appellant(s)

Versus

Ramesh Chander & Others

..Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. The appellant, Van Vibhag Karamchari Griha Niraman Sahkari Sanstha Maryadit, Indore (hereinafter referred to as 'the appellant'), was constituted and registered under the Madhya Pradesh Cooperative Society Act, 1960 on 26.5.1970, for the purpose of providing residential plots to the employees of the forest department of Madhya Pradesh Government.

3. On 28.3.1974, three farmers, namely Ramesh Chander (hereinafter referred to as 'the first respondent'), Mahavir Singh and Chunni Lal, entered into an oral agreement with the appellant to sell their respective land measuring 2.039 hectares bearing khasra No. 203/2, 1.019 hectares bearing khasra No. 203/1 and 1.602 hectares bearing khasra No. 204/1, situated at village Chitawad tehsil and district Indore, to the appellant at Rs.2 lacs per hectare. On 25.1.1975, all the three farmers jointly received Rs.2000/- as earnest money as per the agreement dated 28.3.1974 and

delivered possession of the said land to the appellant. The agreement to sell was executed and signed by all three farmers on 31.3.1976. The present dispute only concerns Ramesh Chander, i.e. the first respondent.

4. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter the Ceiling Act) was passed by the Central Government and enforced by the Government of Madhya Pradesh (MP) on 9.9.1976. The first respondent filed details of the total vacant land possessed by him before the competent authority under the Ceiling Act on 24.12.1979 and also filed an exemption application under Section 20 of the Ceiling Act, in which he specified that land bearing khasra No. 203/2 was sold to the appellant.

5. The first respondent also submitted his affidavit to the appellant on 23.7.1982 that he had sold his agricultural land bearing khasra No. 203/2 to the appellant for consideration and that possession of the same had been handed over. Full payment of the sale consideration amounting to Rs.3,20,000/- was made to the first respondent on 28.8.1984.

6. On 26.4.1985, the Indore Development Authority declared a Scheme over including the disputed land. Accordingly, the Government of M.P. issued a notification under Section 4(1) of the Land Acquisition Act, 1894 with respect to the said land. On 17.6.1985, the first respondent filed an application to the District Collector, Indore stating that he had sold the disputed land to the appellant and possession of the same had been handed over to the appellant, and that the first respondent did not have any right regarding the acquisition of the said land or to get compensation for the same. All proceedings regarding acquisition were to be referred to the appellant and he prayed that the said land be exempted from acquisition.

7. Thereafter, notification under Section 6 of Land Acquisition Act was published on 11.6.1986.

8. The first respondent had filed another affidavit dated 16.12.1986 stating that the appellant was in possession of the land in question.

9. On 5.1.1987, the appellant filed a writ petition (No.39/1987) along with the first respondent in the High Court, for quashing the acquisition of the disputed land. The High Court issued an ad-interim injunction on 15.1.1987 staying further proceedings before the Land Acquisition Officer.

10. The first respondent, on 3.2.1991, issued a public notice in a local daily, called Dainik Bhaskar, that he is the owner and in possession of the disputed land, and any action taken by the appellant over such land would not affect the rights of ownership and possession of the first respondent over the land. He also stated that the agreement to sell and Power of Attorney in favour of the appellant stood cancelled. Immediately, thereafter, the appellant filed a suit on 11.2.1991 (COS No. 19A/1990) for declaration of ownership of the appellant Society in suit land and for permanent injunction in the court of 3rd Civil Judge, Class II, Indore. The suit was subsequently transferred to the 7th Civil Judge, Class II, Indore as COS No. 603A/1992.

11. Appellant's prayer for temporary injunction made in the suit was dismissed by the Trial Court on 8.10.1998 by a detailed reasoned order and in that order it has been mentioned by the learned Trial Judge, that the appellant (plaintiff in the suit) failed to make out any strong prima facie case and that the suit was not filed for relief of specific performance. (Para 48 of the order).

12. On 14.1.1994, when the writ petition before the High Court came up for hearing, the Indore Development Authority declared that it had withdrawn its scheme, and therefore, the High Court allowed the writ petition and quashed the notification under the Land Acquisition Act. The High Court ordered the land be reverted to the original owner as the notification under challenge was quashed.

13. On 3.1.2000, Samroj Khan, 7th Civil Judge, Class II and Judicial Magistrate, 1st class, filed a complaint before the Chief Judicial Magistrate (CJM), 1st Class, Indore, under Section 340 of the Code of Criminal Procedure, 1973, on the ground that the first respondent had committed offences under section 199/193 of the IPC, and requested the CJM to prosecute him for such offences. The said complaint is still pending.

14. The Parliament enacted the Urban Land (Ceiling and Regulations) Repeal Act, 1999 and the Legislative Assembly of Madhya Pradesh adopted it by a resolution dated 17.2.2000. Accordingly, the Ceiling Act stood repealed in Madhya Pradesh with effect from 17.2.2000.

15. Thereafter, appellant by a legal notice dated 4.6.2000 called upon the first respondent to execute and register the sale deed of the disputed land in favor of the appellant and failing which the appellant threatened to file a suit for specific performance. The first respondent, by a legal notice dated 17.6.2000, refused to act in terms of the notice of the appellant dated 4.6.2000. In the meantime the appeal filed by the appellant against the order dated 8.10.1998 passed by the Trial Court refusing to grant temporary injunction, was also dismissed by the order dated 15.5.2002, and the findings reached by the Trial Court in its order dated 8.10.1998 were affirmed by the First Additional District Judge, Indore. The appellant did not carry the challenge any further against such concurrent refusal of its prayer for temporary injunction.

16. Then the appellant moved on 16.12.2002 an application for amendment of the pleadings under Order 6 Rule 17 of CPC in the pending civil suit for inclusion of the relief of specific performance of contract. The same was allowed by the order dated 10.3.2003 and the amendment was accordingly incorporated on 17.3.2003.

17. The first respondent filed an application under Section 114 and Order 47 Rule 1 CPC for a review of the order dated 10.3.2003. The same was dismissed by Court on 23.6.2003. The plaint was returned to the appellant for filing the same in the Court of competent jurisdiction as the suit exceeded the pecuniary jurisdiction of the Civil Court (category II).

18. Immediately on 25.6.2003, the appellant presented the plaint in the Court of 6th Additional District Judge, Indore along with an application under Section 14 of the Limitation Act, praying for exclusion of time spent in prosecuting the suit in the Court of 7th Civil Judge Class II, Indore (i.e.

from 11.2.1991 to 23.6.2003). The plaint was transferred to the 19th Additional District Judge, Indore and was registered as COS No. 6A/2003.

19. Before the trial court, the appellant contended that on 11.2.1991, while instituting the suit, it had not sought the relief of specific performance in view of the fact that no exemption under Section 20 of Urban Land Ceiling Act (hereinafter, 'the Act') was obtained in respect of suit land. However, the said contention was rejected by the Trial Court on 23.8.2004 by a detailed order and the suit was dismissed. The trial court also dismissed the application under Section 14 of the Limitation Act filed by the plaintiff (appellant herein) praying for exclusion of time from 11.2.1991 to 23.6.2003.

20. Aggrieved thereby, the appellant filed a writ petition before the High Court, which was treated as Appeal No. 142/2005. The High Court, vide its impugned judgment dated 10.8.2007, dismissed the appellant's appeal.

21. Assailing the judgment of the High Court, the learned Counsel for the appellant urged that the agreement for sale, dated 31.3.1976, was acted upon by all the vendors including the first respondent. It was specifically urged that the first respondent participated and cooperated with the appellant in all legal proceedings in respect of the said land wherein the first respondent took the stand that the land in question has been agreed to be sold to the appellant for valuable consideration and that the appellant has been put in possession of the same. This Court therefore, should not allow the appellant to approbate and reprobate by taking a completely different stand in the public notice which was published by him in Dainik Bhaskar. In support of such contention, the learned counsel relied on a few judgments.

22. Reliance was first placed on the judgment of this Court in the case of C. Beepathumma & Ors. v. V.S. Kadambolithaya & Ors., reported in (1964) 5 SCR 836. The learned Counsel relied on the doctrine of election, by referring to Maitland's Lectures on Equity, as also on Leading Cases on Equity by White and Tudor, considered by this Court in page 850 of the report. In the aforesaid case, this Court was explaining the doctrine of election that prohibits a person from taking inconsistent stand in connection with certain documents. It may be noted that neither before the Trial Court nor the High Court, did the appellant advance this argument. Apart from that, in the notice dated 3.2.1991, the first respondent clearly stated that the agreement of sale between him and the appellant stood cancelled and the first respondent asserted his title over the plot of land in question.

23. Under the aforesaid circumstances, the crucial question is whether the appellant has a cause of action to file a suit for specific performance. In our judgment, the refusal by the first respondent to acknowledge the right of the appellant over the land in its public notice dated 3.2.1991 definitely furnishes the appellant with a cause of action to file a suit for Specific Performance.

24. If the appellant had filed such a suit, it could in the said suit, have questioned the action of the first respondent as blowing hot and cold. But it has not filed such a suit within the period of limitation prescribed for filing such a suit.

25. Therefore, the principles of the law of election, discussed in C. Beepathumma (supra) in a totally different factual context, is of no assistance to the appellant in this case.

26. The other decision on which reliance was placed by the learned Counsel for the appellant was rendered in the case of New Bihar Biri Leaves Co. & Ors. v. State of Bihar & Ors. reported in (1981) 1 SCC 537. The same principles of approbation and reprobation have been discussed in paragraph 48. In the said case, this Court invoked the said principles to disapprove the actions of the petitioner who participated in a public auction by accepting its terms but later on sought to impugn them as violative of Articles 14 and 19(1)(g) of the Constitution. In the present case, the factual situation is totally different and the appellants have not filed any suit for Specific Performance against the first respondent within the period of limitation.

27. In this context, the provision of Article 54 of the Limitation Act is very relevant. The period of limitation prescribed in Article 54 for filing a suit for specific performance is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.

28. Here admittedly, no date has been fixed for performance in the agreement for sale entered between the parties in 1976. But definitely by its notice dated 3.2.1991, the first respondent has clearly made its intentions clear about refusing the performance of the agreement and cancelled the agreement.

29. The appellant, on noticing the same, filed a suit on 11.2.1991 but he did not include the plea of Specific Performance. The appellant wanted to defend this action by referring to two facts- (i) there was an acquisition proceeding over the said land under the Land Acquisition Act and (ii) in view of the provisions of the Ceiling Act, the appellant could not have made the prayer for Specific Performance.

30. The aforesaid purported justification of the appellant is not tenable in law. If the alleged statutory bar referred to by the appellant stood in its way to file a suit for Specific Performance, the same would also be a bar to the suit which it had filed claiming declaration of title and injunction.

31. In fact, a suit for Specific Performance could have been easily filed subject to the provision of Section 20 of the Ceiling Act. Similar questions came up for consideration before a Full Bench of Gujarat High Court in the case of Shah Jitendra Nanalal v. Patel Lallubhai Ishverbhai [AIR 1984 Guj 145]. The Full Bench held that a suit for Specific Performance could be filed despite the provisions of the Ceiling Act. A suit for Specific Performance in respect of vacant land in excess of ceiling limit can be filed and a conditional decree can be passed for Specific Performance, subject to exemption being obtained under Section 20 of the Act. (Paras 11-

13)

32. We are in respectful agreement with the views of the Full Bench in the abovementioned decision and the principles decided therein are attracted here.

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.

34. Though the appellant has not subsequently filed a second suit, as to bring his case squarely within the bar of Order 2 Rule 2, but the broad principles of Order 2 Rule 2, which are also based on public policy, are attracted in the facts of this case.

35. Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act.

36. Here in this case, the inclusion of the plea of Specific Performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court.

37. This Court held in *Vishwambhar & Ors. v.*

Laxminarayan & Anr. reported in (2001) 6 SCC 163, if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation. (Para 9 at pg. 168-9) Those principles are applicable to the present case.

38. In *K. Raheja Constructions Ltd. & Anr. v.*

Alliance Ministries & Ors. reported in 1995 Suppl.(3) SCC 17, this court held that an application for amendment filed 7 years after the filing of the suit to include the plea of Specific Performance, would not defeat the valuable rights of limitation accruing to the other side. In that case, the factual position was somewhat similar to the present case and this Court held that when a plea for Specific Performance was not included in the original suit, it could not be included after a period of 7 years having regard to Article 54 of the Limitation Act. (Para 4 at pg.18-19).

39. For the reasons aforesaid, this court is of the view that the plea of specific performance, which is a discretionary relief, cannot be granted to the appellant in this case. The Court below and the High Court were correct in their reasoning in dismissing the suit and the first appeal respectively.

40. The appeal, therefore, is dismissed. The parties are left to bear their own costs.

.....J. (G.S. SINGHVI)J. (ASOK KUMAR GANGULY) New Delhi October 19,
2010