

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 376 of 2006.

Decided on : August 31, 2006.

Mool Raj

.....Appellant.

VERSUS

Mool Raj

.....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ashwani K. Sharma, Advocate.

For the Respondents :

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent Mool Raj, hereinafter called plaintiff, filed a suit for specific performance of an agreement for sale of immovable property executed in his favour by the appellant, hereinafter called defendant on 25.2.1997. As per agreement, which is stated to be executed only by the appellant- defendant and not by the respondent- plaintiff, the appellant- defendant received the entire sale consideration of Rs. 11,000/- and put the respondent- plaintiff in possession and agreed to execute the sale deed after the mutation in respect of the property agreed to be sold was attested in his (defendant's) favour. Plaintiff alleged that he came to know in the year 2000 that mutation had been attested in favour of the defendant,

Whether the reporters of the local papers may be allowed to see the Judgment?

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but despite that he (the defendant) did not come forward to execute the sale deed in his favour, despite the fact that he had received the consideration in full.

3. Defendant contested the claim and pleaded that neither the sale consideration had been paid to him nor had he delivered the possession to the plaintiff. Plea of limitation was also raised. Trial court decreed the suit holding that the entire sale consideration stood paid to the defendant and possession had also been delivered to the plaintiff. Plea of limitation raised by the appellant also did not find favour with the trial court. Defendant filed an appeal in the court of District Judge, which stands dismissed.

4. I have heard the learned counsel for the appellant. Three submissions have been made by him, which are as follows:-

- (i) The agreement is not enforceable in law, because, it is not executed by the plaintiff and is in the form of a unilateral writing.
- (ii) The suit was barred by time, inasmuch as the agreement was executed on 25.2.1997 and the mutation had been attested in favour of the defendant on 29.9.1997 and the limitation even if counted from the date of the attestation of the mutation, stood expired long before the institution of the suit. (The date of the institution of the suit is 10.9.2002).
- (iii) Plaintiff did not take the plea nor he did lead any evidence that he is ready and willing to perform his part of the contract, in terms of Section 16 (c) of the Specific Relief Act.

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5. As regards the first submission, the two courts below have given a concurrent finding of fact that defendant had received the entire sale consideration and delivered the possession of the property agreed to be sold to the plaintiff. Now, when the plaintiff had paid the entire amount of sale consideration, nothing remained to be performed by him for the finalization of the transaction, and therefore, there was no need for him to have executed the sale deed. As a matter of fact, it was the defendant who had to perform his part of the contract, that is to say to execute the sale deed and get it registered, which could not be executed and registered immediately as the land had yet not been mutated in favour of the defendant, who had purchased it from some other person in the year 1996. Hence, the first submission has no merit.

6. Coming to the next submission, the agreement as has been read out by the learned counsel does not fix any particular date after attestation of mutation for the execution of the sale deed. The agreement simply recites that the sale deed would be executed after the mutation is attested in favour of the defendant. Article 54 of the Schedule to the Limitation Act, says that in a suit for specific performance of an agreement, limitation begins to run on a date fixed for the performance of the agreement, or where no date is fixed, when the plaintiff has notice that performance is refused.

7. In the present case, no date for the performance of contract has been fixed. The agreement was that the sale deed will be executed after the mutation is attested in favour of the defendant. There is nothing on record suggesting that after the mutation was

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attested in his favour, the defendant informed the plaintiff that mutation having been attested, he should come forward to get the sale deed executed. On the contrary, the judgements of the two courts below show that the plaintiff adduced evidence indicating that it was in February, 2000, that he came to know for the first time that mutation had been attested in favour of the defendant and thereafter he issued a notice to the defendant to execute the sale deed, but the defendant refused to accept the notice.

8. Learned counsel has placed reliance on a judgement of the Hon'ble Supreme Court in Ramzan vs. Hussaini, [1990 (1) SCC 104]. The facts of the case are different from the facts of the case in hand. There the agreement was that the sale deed would be executed on the very date of the redemption of the mortgage and the delivery of the title-deeds to the vendor by the mortgagee on redemption of mortgage. That means, in that case, a specific date for performance of the contract had been agreed. In the present case, as already noticed, no date had been fixed. Thus this submission is also without merit.

9. Coming to the third and the last submission, as already noticed, the plaintiff had paid the entire sale consideration and thus he had performed his part of the contract in its entirety. Nothing remained to be done by him. Therefore, there was hardly any need for him to state or to prove that he was ready and willing to perform his part of the contract.

10. Since no substantial question of law is involved, as is clear from the aforesaid discussion, the appeal is dismissed.

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CMP No. 717 of 2006.

Infructuous.

August 31, 2006.
(Hem)

(Surjit Singh)
Judge.