

AJAIB SINGH
v.
GURBAX SINGH & ORS.

NOVEMBER 17, 1987

[SABYASACHI MUKHARJI AND G.L. OZA, JJ.]

Indian Contract Act, 1872: Agreement of sale—Specific performance of—Major portion of sale price paid by buyer—Possession of property with buyer in part performance of agreement—Documents of title not executed—Limitation bar pleaded—Held High Court erred in denying specific performance on account of hardship without deciding whether claim was barred by limitation.

Under an agreement of sale entered into by respondents the appellant had paid the major portion of the agreed price long time ago and the balance thereof that was to be paid at the time of execution of the documents was a sum of Rs. 75 only. Possession of the premises was with the appellant for all these years in part performance of the agreement.

Upon failure of the respondents to execute documents of title, the appellant sought specific performance of the agreement. The respondents canvassed the question of limitation before the High Court. The High Court, however, without deciding that question took the view that due to passage of time prices of lands had gone up sky high and it would be unjust to enforce the agreement of sale.

Allowing the appeal by special leave,

HELD: The High Court exercised discretion on wrong principles. Without deciding the question whether the claim of the plaintiff was barred by limitation or not it proceeded to refuse to grant the relief on the ground that there has been good deal of delay and the parties would suffer if specific performance of the agreement was granted. This principle was not applicable to the facts of the case and the exercise of discretion was not proper. The matter remanded to the High Court for decision in merits. [1100G; E; 1101B]

Madamsetty Satyanarayana v. G. Yellogi Rao & Ors., [1965] 2 SCR 221; Dr. Jiwan Lal & Ors. v. Brij Mohan Mehra & Anr., [1973] 2 SCR 230 and Debendra Nath Mandal v. Sakhilal Kar & Ors., AIR 1950 Calcutta 526, referred to.

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3066 of 1987.

From the Judgment and Order dated 9.7.1986 of the Punjab and Haryana High Court in R.S. A. No. 163 of 1978.

B Mala Ram Ghana and Dalveer Bhandari for the Appellant.

M.S. Gujral and Dr. Meera Aggarwal for the Respondents.

The Judgment of the Court was delivered by

C **SABYASACHI MUKHARJI, J.** Special leave granted.

The High Court in its judgment and order dated 9th July, 1986, has observed that the question of limitation has been canvassed before the High Court. The High Court expressed the view that there was a lot of conflict between the various High Courts on the interpretation of

D Article 54 of the Limitation Act which governed the point of limitation. The High Court, however, did not decide this question and expressed the view that due to passage of time prices of lands had gone up sky-high and it would be unjust to enforce the agreement of sale entered into. In other words, it appears that without deciding the question whether the claim of the plaintiff was barred by limitation or

E not, the High Court exercised its discretion in refusing to grant the relief on the ground that there has been good deal of delay and the parties would suffer if specific performance of the agreement was granted. It appears from the facts that in this case the major portion of the agreed price had been paid long time ago and the balance thereof was to be paid at the time of execution of the documents was a sum of

F Rs. 75 only. It further appears that possession of the premises was with the appellant for all these years in part performance of the agreement. In those circumstances, the principle upon which the High Court refused to exercise its discretion, in our opinion, was not applicable and such discretion was not proper. The High Court exercised discretion on wrong principles. See in this connection *Madamsetty Satyanarayana*

G v. *G. Yellogi Rao & Two others*, [1965] 2 SCR 221; *Dr. Jiwan Lal & Ors. v. Brij Mohan Mehra & Another*, [1973] 2 SCR 230 and see also the observation in *Debendra Nath Mandal v. Sakhilal Kar & Ors.*, AIR 1950 Calcutta 526.

H In that view of the matter, we cannot sustain the exercise of discretion in the manner done by the High Court. This, however, does

not decide the matter because the High Court declined to go into the facts and decide the question of limitation on merits, the High Court took the view in exercise of its discretion. Since we are not sustaining the High Court's exercise of discretion hence the order and the Judgment of the High Court are set aside but the matter is remanded to the High Court for its decision on the merits. The matter should be disposed of by the High Court as early as possible. The appeal is accordingly allowed with no order as to costs.

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P.S.S.

Appeal allowed.