

D.S. THIMMAPPA

v.

SIDDARAMAKKA

MARCH 29, 1996

[K. RAMASWAMY AND G. B. PATTANAIK, JJ.]

*Documents :*

*Deed of reconveyance—Suit for specific performance—Limitation—Deed of reconveyance stipulating that in the event of the respondent-vendor repaying the amount within 8 years, she would be entitled to have the sale deed executed and registered in her favour—Respondent approached the appellant within time but latter declined to facilitate registration of sale deed—Suit by respondent for specific performance—Trial Court decreed the suit holding that the respondent had offered payment within the limitation—First appellate court reversed the decree holding that time was the essence of contract and as respondent had not obtained reconveyance within 8 years period of limitation expired by efflux of time—High Court set aside decree of appellate court and restored that of trial court—Held, unless the deed of agreement of sale stipulated a date for performance time is not always essence of the contract—Respondent had offered the payment of the amount before the expiry of the date of conveyance but the appellant had refused to perform his part—Cause of action arose on expiry of 8 years from date of execution of later sale deed dated 20.7.1973—Appellant by conduct refused to execute sale deed on 19.7.1976—Suit was filed on 20.7.1976, within limitation from date of refusal i.e. 19.7.1976.*

*Limitation Act, 1963 :*

*Schedule—Article 54—Suit for specific performance—Limitation—Held limitation for specific performance begins to run from the date fixed in the contract or from the date of refusal to execute the sale deed.*

*Code of Civil Procedure, 1908 :*

*S. 100—Second appeal—Power of High Court to interfere with the decree of appellate court and to consider relevant circumstantial evidence—Discussed.*

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7054 of 1996.

From the Judgment and Order dated 23.1.95 of the Karnataka High Court in R.S.A. No. 6 of 1988.

B S.S. Javali and E.C. Vidya Sagar for the Appellant.

Ms. S. Janani for the Respondent.

The following Order of the Court was delivered :

C Leave granted.

We have heard learned counsel on both sides.

The appellant had two sale deeds dated April 24, 1990 and July 20, 1968 executed by the respondent transferring the schedule property. On the later date, i.e., July 20, 1968, an agreement of reconveyance was also executed by the appellant with a stipulation that in the event of the respondent repaying Rs. 5,000 within eight years from that date in one lump sum, she would be entitled to have the sale deed executed and registered in her favour. It is the case of the respondent that before the expiry of eight years, some time in June 1976, she had approached the appellant but he avoided the reconveyance. Consequently, she requested her lawyer to issue a notice which came to be issued to the appellant to be present before the sub-Registrar to receive the amount and execute the sale deed but he failed to do that. On July 19, 1976, the sub-Registrar had issued notice calling upon the appellant to be present in the sub-Registrar's office. Although he received the notice, he was not present to receive the amount and facilitate registration of the sale deed on July 20, 1976. Consequently, the suit for specific performance came to be filed.

The trial Court, after adduction of evidence by both the parties had accepted the plea of the respondent that she had offered payment within the limitation but Thimmappa had avoided the receipt thereof. The appellate Court reversed the decree on the finding that the time is the essence of contract. The deed of reconveyance stipulates eight years period from the date of execution of the sale deed and since the respondent had not obtained re-conveyance within that period, the period of limitation expired by efflux of time. Therefore, the suit was barred by limitation. The High

Court of Karnataka in Second Appeal No. 6 of 1988 by judgment and decree dated January 23, 1995 reversed the decree of the appellate Court and restored that of the trial Court. Thus this appeal by special leave.

Shri Javali, learned senior counsel for the appellant, contended that in view of the specific recital in the deed of reconveyance that the respondent had to have the reconveyance executed within eight years from July 20, 1968 and since she had not had the conveyance executed, the suit is barred by limitation. We find no force in the contention.

It is settled law that unless the deed of agreement of sale stipulated a date for performance, time is not always essence of the contract. It would be seen that Thimmappa had the land purchased from the respondent and there was an agreement of reconveyance on condition that the respondent should return the consideration paid under the sale deeds, viz., Rs. 5,000 within eight years from that date. The appellant had gone to the extent of even denying the executing of reconveyance. Therefore, the High Court has gone into the question of the probability of the respondent approaching the appellant for reconveyance before the expiry of the limitation. The High Court has, therefore, rightly gone into the question whether there was an agreement of reconveyance and whether the respondent had performed her part of the contract in seeking reconveyance. That being the material questions which hinge upon the discretion to be exercised by the Court to enforce for specific performance of the contract, the appellate Court had not adverted to that material part. But merely it relied upon the plea of limitation. Under those circumstances, the High Court has not committed any error of law in interfering with the decree of the appellate Court and considering relevant circumstantial evidence that unless the respondent had in the first instance approached and the appellant avoided the receipt of the consideration and execution of sale deed, the respondent had no occasion to approach an advocate to get the notice issued asking the appellant to be present before the Sub-registrar for execution of sale deed. Under Article 54 of the Schedule to the Limitation Act 21 of 1963, limitation for specific performance beings to run from the date fixed in the contract or for the date of refusal to execute the sale deed. Since time is not the essence of the contract, the respondent had offered the payment of the amount before the expiry of the date of reconveyance but the appellant had refused to reconvey the same. The cause of action arose an expiry of eight year from the date of execution of later sale deed, i.e. July

- A 20, 1973. The appellant by conduct refused to execute the sale deed on July 19, 1976, the suit was filed on July 20, 1976. The suit was filed within limitation from the date of refusal, i.e., July 19, 1976, i.e., next day. It is not a case of appreciation of evidence by the High Court in Second Appeal but one of drawing proper inference from proved facts which the first appellate court has failed in law to draw proper inference from proved facts and non application of law in the proper perspective. We, therefore, hold that the suit was filed within limitation. We do not find any illegality warranting our interference.
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The appeal is accordingly dismissed. No costs.

C R.P.

Appeal dismissed.