

[2014] 7 S.C.R. 1105

SURESH KUMAR DAGLA

v.

SARWAN & ANR.

(Civil Appeal No. 6363 OF 2014)

AUGUST 26, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND
S. A. BOBDE, JJ.]

Suit for declaration: Limitation - Delay of 14 years in filing suit - Suit for declaration of title and for declaration that the sale deed dated 30th November, 1992 was null and void filed by first respondent on 28th June, 2006 - First respondent had already instituted a complaint of cheating regarding purchase of suit land which was rejected on 30th November 1993 - Held: Suit is barred by limitation as first respondent had knowledge about the sale deed as back as in the month of 1993 - Also, first respondent cannot derive benefit in terms of s.257 of Chhatisgarh Land Revenue Code, 1959 - Application by appellant u/Or.7 r.11 r/w s.151 allowed - Suit dismissed.

On 30th November, 1992, the first respondent executed a registered sale deed in favour of the appellant and his father in respect of certain land and received the consideration. Subsequently, the first respondent filed a complaint before the District Judge against the appellant alleging that the appellant had cheated him regarding the purchase of the suit land. The complaint was found to be false and dismissed on 30th November, 1993. After 14 years, on 28th June, 2006, the first respondent filed a suit against the appellant and his father seeking declaration of title and for declaring the sale deed dated 30th November, 1992 as null and void. The first respondent

A also filed application for condonation of delay which was dismissed.

B The appellant filed applications under Order 7 Rule 11 r/w section 151, CPC and under section 257 of the Chhatisgarh Land Revenue Code, 1959 raising objections as to maintainability of the suit on the ground of limitation. The trial court dismissed the applications which decision was upheld by the High Court. The instant appeal was filed challenging the order of the High Court.

C Allowing the appeal, the Court

HELD: As per paragraph 4 of the copy of the plaint, the case of the first respondent was that the appellant has succeeded in registration of the sale deed in favour of himself by inducing the first respondent to believe that he will be executing the sale deed in favour of the State and the State will pay the consideration which is not paid till filing of the civil suit and has not taken possession. Therein at paragraph 17 it was stated that cause of action arose in the month of August, 2006. The High Court noticed that paragraph 17 of the plain was cryptic but observed that it would not be possible for the Court to infer that the first respondent was having knowledge about the alleged deed prior to August, 2006. The first respondent did not dispute the fact that he had already instituted a case alleging therein that the appellant inter alia cheated him while purchasing the said land which was rejected on 30th September, 1993. From the said fact, it is clear that the first respondent had knowledge about the sale deed and as back as in the month of September, 1993. Therefore, the suit is barred by limitation and thereby first respondent cannot derive any benefit in terms of Section 257 of the Chhattisgarh Land Revenue Code, 1959. The application filed by the appellant under order 7 Rule 11 read with Section 151 of

H

the CPC is allowed and the suit is dismissed as barred
(by limitation. [Paras 8 to 11] [1109-F-H; 1110-A-D] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
6363 of 2014 .

From the Judgment and Order dated 12.09.2012 of the
High Court of Chattisgarh at Bilaspur, in Civil Revision No. 120
of 2012 B

Ravindra Shrivastava, Kunal Verma for the Appellant.

Vikrant Singh Bais, Yogesh Tiwari for the Respondents. G

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This appeal
has been preferred by the appellant-defendant no.1 against the
order dated 12th September, 2012 passed by the High Court
of Chhattisgarh, Bilaspur in Civil Revision No.120 of 2012. By
the impugned order, the High Court upheld the Trial Court's
order dated 23rd June, 2012 refusing to allow the application
filed by the appellant under Order 7 Rule 11 read with Section
151 of the Code of Civil Procedure (hereinafter referred to as,
"the CPC") for dismissal of suit on the ground that the suit is
barred under the law and thereby dismissed the civil revision
application. D E

2. The factual matrix of the case is as follows: F

The 1st respondent executed a registered sale deed dated
30th November, 1992 in favour of the appellant and his father
in respect of land admeasuring 0.64 acres in Khasra No.445;
land admeasuring 1.71 acres in Khasra No.625; land
admeasuring 0.42 acres in Khasra No.575; land admeasuring
0.22 acres in Khasra No.576 of agricultural land situated in
Village Sakri, Tehsil Takhatpur, District Bilaspur after receiving
consideration for an amount of Rs.2,72,000/-. Subsequently, the
1st respondent-plaintiff filed a complaint before the District H

- A Judge, Bilaspur against the appellant-defendant inter alia alleging that the appellant has committed cheating regarding the purchase of the suit land owned by the plaintiff. On such complaint, the matter was referred to Lokayukt and upon preliminary inquiry by the Lokayukt a criminal case (Special Case No.07/1999) was registered against the appellant under Sections 420, 467, 468, 471 and 120 B IPC read with Section 12 of the Prevention of Corruption Act, 1988. In the said complaint, the 1st respondent alleged that the sale deed was obtained fraudulently. Additional Sessions Judge (Special Judge), Bilaspur dismissed the complaint on 30th November, 1993 by recording a finding that a false complaint has been lodged by the 1st respondent against the appellant.

3. According to the appellant, after more than 14 years on 28th June, 2006 the 1st respondent filed a Civil Suit No.12A/06 (renumbered as Civil Suit No.53A of 2011) against the appellant and his father seeking declaration of title and for declaring the sale deed dated 30th November, 1992 as null and void. No reason was shown therein as to why the civil suit was filed after delay of 14 years of execution of the sale deed. In the suit, the 1st respondent admitted that he had filed the complaint against the appellant. The appellant filed his written submission on 28th July, 2007 and categorically raised an objection regarding relief for declaration of sale deed as null and void being barred by limitation. Thereafter, the 1st respondent filed an application under Section 5 of the Limitation Act on 22nd November, 2007 stating that inadvertently he was pursuing the criminal proceeding being an illiterate villager he did not initiate a civil proceeding. However, as the petition under Section 5 of the Limitation Act was not maintainable in the suit the 1st respondent did not press the application and on 22nd January, 2008 the same was dismissed as not pressed.

4. The appellant filed three applications under Order 7 Rule 11 read with Section 151 CPC and under Section 257 of the

Chhattisgarh Land Revenue Code, 1959 raising preliminary objections with regard to maintainability of the civil suit. It was contended that the suit was barred by limitation and hence was liable to be dismissed.

A

5. The Fourth Civil Judge, Class-1, Bilaspur by order dated 23rd June, 2012 in Civil Suit No.53-A/2011 dismissed the application under Order 7 Rule 11 read with Section 151 CPC and the said order was upheld by the High Court by the impugned order.

B

6. Learned counsel appearing on behalf of the appellant submits that the allegation made by the 1st respondent in paragraph 4 of the plaint makes it clear that the alleged sale deed dated 30th November, 1992 was to his knowledge but the 1st respondent filed the civil suit on 28th August, 2006 after lapse of 14 years which is much beyond 3 years of limitation for filing suit for declaration in terms of Article 56 of the Limitation Act. Therefore, the suit was time barred and there is no provision for extension of time.

C

D

7. Per contra, according to learned counsel for the 1st respondent, the suit is not barred in terms of Section 257 of the Chhattisgarh Land Revenue Code, 1957.

E

8. We have noticed the rival contentions made on behalf of the parties and perused the record. As per paragraph 4 of the copy of the plaint, the case of 1st respondent is that the appellant has succeeded in registration of the sale deed in favour of himself by inducing the 1st respondent to believe that he will be executing the sale deed in favour of the State and the State will pay the consideration which is not paid till filing of the civil suit and has not taken possession. Therein at paragraph 17 it is stated that cause of action arose in the month of August, 2006. The High Court noticed that paragraph 17 of the plaint is cryptic but observed that it would not be possible for the Court to infer that the 1st respondent was having knowledge about the alleged deed prior to August, 2006.

F

G

H

A 9. The 1st respondent has not disputed the fact that he had already instituted a case alleging therein that the appellant inter alia cheated him while purchasing the said land which was rejected on 30th September, 1993. From the aforesaid fact, it is clear that the 1st respondent had knowledge about the sale deed and as back as in the month of September, 1993.

B 10. From the aforesaid fact, it is clear that the suit was barred by limitation and thereby 1st respondent cannot derive any benefit in terms of Section 257 of the Chhattisgarh Land Revenue Code, 1959.

C 11. For the reasons aforesaid, we set aside the order dated 12th September, 2012 passed by the High Court of Chhattisgarh, Bilaspur in Civil Revision No.120 of 2012; order dated 23rd June, 2012 passed by the 4th Civil Judge, Class-1, Bilaspur in Civil Suit No.53-A/2011, allow the application filed by the appellant under Order 7 Rule 11 read with Section 151 of the CPC and dismiss the suit as barred by limitation. The appeal is allowed with aforesaid observation. No costs.

E Devika Gujral Appeal allowed.