

TARLOK SINGH

VIJAY KUMAR SABHARWAL

MARCH 25, 1996

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

*Limitation Act, 1963 :*

*Article 54—Suit for specific performance—Limitation—Initially suit for perpetual injunction instituted—Later, application under Order 6 Rule 17 CPC for amendment of the plaint filed to amend the suit as one for specific performance—Agreement of sale stipulating that sale deed would be executed within 15 days of vacation of injunction by Court—Injunction suit disposed of on 22.3.1986—Amendment application allowed on 25.8.89—Held, the suit for specific performance in fact was claimed by way of amendment—The crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7020 of 1996.

From the Judgment and Order dated 6.7.94 of the Punjab & Haryana High Court in R.S.A. No. 2485 of 1993.

U.R. Lalit, Mahabir Singh and Mridul Aggarwal for the Appellants.

Prem Malhotra for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

Shorn of all the details regarding diverse litigations that went on between the parties, suffice it to state that the appellant is the owner of the lands. The respondent is successor-in-interest. The respondent's father admittedly had an agreement of sale on December 21, 1984 executed by the appellant to alienate the lands. In view of the pending proceedings time for conveyance was further extended by agreement dated August 18, 1984

stipulating that the appellant shall be required to execute the sale deed within 15 days from the date of the order vacating the injunction granted in a suit. We are informed that the suit was initially dismissed and thereafter a review application was also dismissed as withdrawn on March 22, 1986. Initially, the respondent had instituted the suit on December 23, 1987 for perpetual injunction. The application under Order 6, Rule 17, CPC came to be filed for converting the suit into one for specific performance of agreement dated August 18, 1984. That application was filed on July 17, 1989. By order dated August 25, 1989, the amendment was allowed. The appellant carried the matter in revision to the High Court in C.R. No. 2724/89. The High Court by order dated November 29, 1989 had held thus:

"I do not find any illegality or irregularity in the order passed by the trial Judge, However, the vendor will be at liberty to take a specific plea in the written statement which he will file pursuant to the amended plaint that the suit is beyond limitation and that the suit was even beyond limitation on the date when the application for amendment was filed. After the amended written statement is filed the trial Judge will frame proper issues and dispose of the same according to law."

In view of the above directions, the appellant has pleaded that the suit was barred by limitation. The trial Court negatived it and decreed the suit. On appeal, it was confirmed. Second appeal No. RSA No. 2485/93 by order dated July 6, 1994, the Punjab & Haryana High Court dismissed it. Thus, this appeal by special leave.

The only question is : whether the suit is barred by limitation? Pursuant to the agreement dated December 21, 1984, time was extended for specific performance which started running after 15 days from the date the stay was vacated. It is now admitted position that review petition was dismissed on March 22, 1986. Thus, limitation began to run on April 6, 1986. The question, therefore, is : whether the suit for specific performance is within the limitation? Article 54 of the Schedule to the Limitation Act 21 of 1963 reads thus :

"For specific performance of a contract the period of limitation is 3 years. The limitation begins to run from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

Shri Prem Malhotra, learned counsel for the respondent, contended that since the respondent had refused performance the suit must be deemed to have been filed on December 23, 1987 and, therefore, when the amendment was allowed, it would relate back to the date of filing the suit which was filed within three year from the date of the refusal. Accordingly, the suit is not barred by limitation. Shri U.R. Lalit, learned senior counsel for the appellant, contended that in view of the liberty given by the High Court the appellant is entitled to raise the plea of limitation. The suit filed after expiry of 3 years from 1986 is barred by limitation. The question is : as to when the limitation began to run? In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on April 6, 1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated August 25, 1989, the suit must be deemed to have been instituted on August 25, 1989 and the suit was clearly barred by limitation. We find force in the stand of the appellant. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from April 6, 1986. Suit merely for injunction laid on December 23, 1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order 6, Rule 17 CPC on September 12, 1979. It will operate only on the application being ordered. Since the amendment was ordered on August 25, 1989 the crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation. The courts below, therefore, were not right in decreeing the suit.

The appeal is accordingly allowed. The suit stands dismissed. No costs.

Appeal allowed