

PETITIONER:
D.S. THIMMAPPA

Vs.

RESPONDENT:
SIDDARAMAKKA

DATE OF JUDGMENT: 29/03/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIAK (J)

CITATION:
1996 AIR 1960 JT 1996 (4) 324
1996 SCALE (3)704

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides.

The appellant had two sale deeds dated April 24, 1900 and July 20, 1968, an 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. 5000/- 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 reconveyance 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 begins to run from the date fixed in the contract or from 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 on expiry of eight years from the date of execution of later sale deed i.e. July 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.

The appeal is accordingly dismissed. No costs.