CASE NO.:
Appeal (civil) 2706 of 1991

PETITIONER:
SHRIMANT SHAMRAO SURYAVANSHI AND ANOTHER

Vs.

RESPONDENT:
PRALHAD BHAIROBA SURYAVANSHI (D) BY LRS. & ORS.

DATE OF JUDGMENT: 22/01/2002

BENCH:
V.N. Khare & Ashok Bhan

JUDGMENT:

(with C.A. Nos. 1349/1991, 1350/1991 & 3304/1993)
J U D G E M E N T

V.N.KHARE, J.

In this group of appeals the question that arises for our consideration is "whether in a suit brought by a transferor for recovery of possession of the suit property, a defendant transferee can defend or protect his possession over the suit property obtained in pursuance of a part performance on an agreement to sell under Section 53A of the Transfer of Property Act (hereinafter referred to as 'the Act'), even if a suit for specific performance of an agreement to sell has barred by limitation".

Since common question of law is involved in these appeals, we are deposed to notice the facts which have given rise to Civil Appeal No. 2706/1991.

The appellants herein were the defendants in the suit brought by the plaintiff-respondents for recovery of the suit property and for mesne profit. On 9th July, 1964,Respondent no. 3 executed an agreement for sale of an agricultural land in favour of appellant no. 1 for a total consideration of Rs. 9,000/-. Appellant no. 1 paid a sum of Rs. 5,700/- towards earnest money. The appellants in pursuance of the said agreement for sale was put in possession over the said property. After the execution of the said agreement, it came to the notice of the appellant that the transferor is negotiating for sale of the said land in favour of respondent no. 1. Under such circumstances, the appellant brought a suit on 2nd August, 1965 for injunction restraining the transferor from selling the said land in favour of respondent no. 1. On 30th April, 1966 the trial court granted injunction as prayed for. It is the case of the appellants that despite the said injunction order, the transferor sold the said property through a registered sale deed dated 24th May, 1966 in favour of respondent no. 1.

After the sale deed was executed, the plaintiff-respondent no. 1 on the strength of the said sale deed brought a suit for recovery of possession of the land. The appellants filed a written statement wherein the suit claim was resisted on the ground that they are in possession of the property in pursuance of agreement entered into on 9th July, 1964 and their possession is protected as they are always and still willing and ready to perform their part of the contract. Another contention raised was that the decree passed by the civil court in a suit for injunction operates as res judicata and the sale deed which is the basis of the title of the appellant has not been proved. The trial

court dismissed the suit. The Learned Single Judge of Bombay High Court dismissed the appeal preferred by the plaintiff-respondents. However, the Letters Patent Bench allowed the Letters Patent Appeal filed by the plaintiff-respondents. The view taken by the Letters Patent Bench was that the protection as regards possession is not available to the defendant-appellants as the suit for specific performance of agreement for sale is barred by limitation. It is against the said judgment of the Letters Patent Bench, the appellants are in appeal before us.

The first question that arises for consideration is whether the defendant-appellants are entitled to protect their possession of the suit property obtained in pursuance to part performance of agreement for sale even after the suit for specific performance of contract for sale is barred by limitation.

The argument of learned counsel appearing for the appellants is that even though the suit for specific performance of the agreement for sale is barred by limitation, still a transferee in a suit for recovery of possession by the vendor, can defend his possession under Section 53A of the Act so long as he is willing and ready to perform his part of the contract. Whereas, the contention raised on behalf of the respondents' counsel is that, once a remedy for specific performance of an agreement for sale is lost by limitation, the equitable relief of protection of possession of the suit property under the agreement for sale also comes to an end and is lost. In other words, the contention is that the right to defend possession to a vendee is available so long as the period of limitation prescribed by law for its enforcement continues and it comes to an end as soon as the period of limitation expires.

A perusal of Section 53-A shows that it does not forbid a defendant transferee from taking a plea in his defence to protect his possession over the suit property obtained in part performance of a contract even though the period of limitation for bringing a suit for specific performance has expired. It also does not expressly provide that a defendant transferee is not entitled to protect his possession over the suit property taken in part performance of the contract if the period of limitation to bring a suit for specific performance has expired. In absence of such a provision, we have to interpret the provisions of Section 53-A in a scientific manner. It means to look into the legislative history and structure of the provisions of Section 53-A of the Act.

Earlier, the assistance of historical facts or any document preceding the legislation was very much frowned upon for purposes of construction of statutes. At that time, there was some injunction against applying principle of looking into the historical facts or reports preceding the legislation in construing a statute. However, by passage of time, this embargo has been lifted.

In R.S. Nayak vs. A.R. Antulay - 1984 (2) SCC 183, it was held thus :

" Report of the Committee which preceded the enactment of a legislation reports of Joint Parliament Committee report of a commission set up for collecting information leading to the enactment are permissible external aid to construction. If the basic purpose underlying construction of legislation is to ascertain the real intention of the Parliament why should the aids which Parliament availed of such as report of a Special Committee preceding the enactment existing State of Law, the environment necessitating enactment of legislation and the object sought to be achieved be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enactment of the

legislation. Such denial would deprive the Court of a substantial and illuminating aid to constructions.

The modern approach has to a considerable extent eroded the exclusionary rule even in England."

Now the accepted view is that the document or report preceding the legislation can legitimately be taken into consideration while construing the provisions of an Act.

We, therefore, proceed to examine the question before us in the light of facts stated hereinafter.

In England, the provisions of the law of Property Act of the Statute of Fraud provided that no suit or action would be brought on agreement relating to a property which was not in writing signed by the parties. The aim and object of the statute was to protect a party against fraud. However, certain difficulties were experienced when it was found that under an oral agreement a party has performed his part of the contract, yet he was unable to bring any action or suit against other party viz., transferor for a specific performance of the agreement which was not in writing in view of the provisions contained in the Statute of Fraud. Under such situations, transferors managed to play fraud on innocent buyers who entered into an oral agreement and performed their part of the contract. In view of such prevailing circumstances in England, the Court of Equity intervened on the ground of equity and took action to enforce specific performance of a parole agreement. The view taken by the Court of Equity was that the object behind the Law of Property of the Statute of Fraud was to protect against a fraud, but the provisions of Law of Property of Statute of Fraud were being used as an instrument to help and protect fraud. Thus, the Court of Equity did not permit the Statute of Fraud to be used as an instrument to cover the fraud by the transferors where there was a part performance of a parole agreement.

When the Transfer of Property Act was enacted, Section 53-A did not find place in it. In the absence of Section 53-A, there arose difference of opinion between various courts in India as regards the application of English doctrine of part performance of contract as it was then prevailing in England. Since there was a difference of opinion on question of the application of English equitable doctrine of part performance in various courts of India, the Govt. of India resolved to set up a Special Committee for making recommendations amongst others whether the British equitable doctrine of part performance be extended in India also. The Special Committee was of the view that an illiterate or ignorant buyer who had partly performed his part of contract required statutory protection. The Committee was of the further view that where a transferee in good faith that lawful instrument i.e. a written contract would be executed by the transferor takes possession over the property, the equity demanded that the transferee should not be treated as trespasser by the transferor and subsequently evict him through process of law in the absence of lawful transfer instrument. The Special Committee also considered the question whether protection under the proposed Section 53-A to a transferee would also be available even if the period of limitation for bringing an action for specific performance of an agreement to sell has expired. On the said question, the Committee was of the view that even after expiry of period of limitation, the relationship between the transferor and transferee remains the same as it was within the period of limitation and, therefore, the possession over the property taken in part performance of an agreement is required to be protected even if the period of limitation for bringing an action for specific performance has expired.

The aforesaid recommendation of the Special Committee were accepted by the Govt. of India as the same is well reflected in the aims and

objects of amending Act 1929 whereby Section 53-A was inserted in the Act.

The Special Committee's report which is reflected in the aims and objects of amending Act 1929 shows that one of the purposes of enacting Section 53-A was to provide protection to a transferee who in part performance of the contract had taken possession of the property even if the limitation to bring a suit for specific performance has expired. In that view of the matter, Section 53-A is required to be interpreted in the light of the recommendation of Special Committee's report and aims, objects contained in amending Act 1929 of the Act and specially when Section 53-A itself does not put any restriction to plea taken in defence by a transferee to protect his possession under Section 53-A even if the period of limitation to bring a suit for specific performance has expired.

But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are

1) there must be a contract to transfer for consideration any immovable property;
2) the contract must be in writing, signed by the transferor, or by someone on his behalf;
3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;
5) the transferee must have done some act in furtherance of the contract; and
6) the transferee must have performed or be willing to perform his part of the contract.

We are, therefore, of the opinion that if the conditions enumerated above are complied with, the law of limitation does not come in the way of a defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract has barred by limitation.

The matter may be examined from another angle. The established rule of limitation is that law of limitation is not applicable to a plea taken in defence unless expressly a provision is made in the statute. The law of limitation applies to the suits and applications. The various articles of the Limitation Act show that they do not apply to a defence taken by a defendant in a suit. Thus, the law of limitation bars only an action in a court of law. In fact, what the Limitation Act does is, to take away the remedy of a plaintiff to enforce his rights by bringing an action in a court of law, but it does not place any restriction to a defendant to put forward any defence though such defence as a claim made by him may be barred by limitation and cannot be enforced in a court of law. On the said principle, a defendant in a suit can put forward any defence though such defence may not be enforceable in a court of law, being barred by limitation.

In M.K. Venkatachari & Ors. vs. I.A.R. Arunachalam Pillai & Ors. AIR 1967 Madras, 410, it was held, thus:

"that defence to limitation is a creature of a positive law and, therefore, cannot be extended to cases which do not strictly fall within the enactment. It is an established canon of construction of law of limitation not to enlarge the scope of statutory provisions of limitation by analogy or logic".

It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part performance of the contract to protect his possession, though he may not able to enforce that right through a suit or action.

In the present case, it is not disputed that the transferee has taken possession over the property in part performance of the contract. It is also not disputed that the transferee has not brought any suit for specific performance of the agreement to sell within the period of limitation. It is also not disputed that the transferee was always and still ready and willing to perform his part of the contract. Further, the view taken by the High Court in judgment under appeal was overruled by the Full Bench of the Bombay High Court in the case of Mahadeo Nathuji Patil vs. Surajbai Khushal Chand Lakkad & Ors. - 1994 Maharashtra Law Journal, 1145, which, according to our view, lay down the correct view of law. In that view of the matter these appeals deserve to be allowed.

Since the High Court has allowed the appeals solely on the ground that the remedy for bringing a suit for specific performance is lost, therefore, the defendant is not entitle to protect his possession under Section 53-A of the Act, we, after setting aside the judgment under challenge, send the matters back to the High Court to decide any other question of law, if arises in these appeals.
Consequently, the appeals are allowed. There shall be no order as to costs.

..J.
(V. N. KHARE)

.J.
(AHOK BHAN)

January 22, 2002