

IN THE HIGH COURT OF LAHORE

Decided On: 14.04.1930

Appellants: **Lakha Singh**
Vs.

Respondent: **Ghulam Mahammad and Ors.**

JUDGMENT

Agha Haidar, J.

1. This appeal arises out of a suit for the specific performance of a contract to sell certain property. There is also an alternative prayer for a decree for. Rs. 5,428-14-9 against the defendants. The plaintiff, Lakha Singh, came into Court on the allegation that Ghulam Muhammad, defendant 1, together with certain other persons, with whom we are not concerned, purchased at an auction sale square No. 70. Ghulam Muhammad deposited the usual earnest money into the Government treasury and the remaining amount, which he had to pay before his title could be complete, was to be deposited into the treasury by instalments. Ghulam Muhammad, who apparently had not the necessary money to pay the remaining instalments, on 24th March 1916, entered into an agreement (Ex. P. 1) to sell the square in question to Diwan Singh, defendant 2, and put him in possession of the land, receiving from him the money which he (Ghulam Muhammad) had already paid by way of earnest. According to the plaintiff (para. 3 of the plaint) Ghulam Muhammad had stipulated that, when he acquired ownership from the Government, he would execute a sale deed and get the same registered in favour of Diwan Singh. Under this agreement Diwan Singh entered into possession of the property in suit and continued to pay the instalments into the Government treasury. He also could not pay all the instalments to the Government, and, on receiving from the plaintiff the amount of money which he (Diwan Singh) had already paid into the Government treasury, executed on 18th February 1918, a document (Ex. P. 2) in favour of the plaintiff, Lakha Singh, wherein he stipulated that, on Ghulam

Muhammad defendant 1's transferring square No. 70 to him (Diwan Singh) he would forthwith transfer the same to the plaintiff under a registered sale deed. It is admitted that the plaintiff, as a result of this agreement, was put into possession of square No. 70 now in dispute. The entire amount of the remaining instalments was paid by the plaintiff to the Government, and on 13th June 1920 Ghulam Muhammad, defendant 1, acquired full proprietary rights in the square in question from the Government.

2. The present suit was brought on 19th July 1924. Various pleas in defence were raised by defendant 1. Among them was the plea of limitation specifically based upon the averments contained in para. 3 of the plaint and the further plea that the documents dated 24th March 1916 (Ex. P. 1), and 18th February 1918 (Ex. P. 2) ought to have been properly stamped and registered and that, in the absence of proper stamp and registration, they were inadmissible in evidence. The trial Court struck various issues, but the case was eventually disposed of on the findings on issue 1 dealing with the question of limitation, and on issues 2(a) and 3(a) relating to the deficiency in the stamp and want of registration in respect of Exs. P. 1 and P. 2. These issues were decided against the plaintiff and his suit was dismissed with costs, without any other question having been gone into.

3. The plaintiff has come to this Court on appeal and has attacked the findings of the trial Court on the issues noted above. The parties are agreed that the relevant article of the Limitation Act is Article 113. It is not necessary to cite any authority in support of the well-recognized rule that, if a case ostensibly falls within Clause 1 of the

contents of Col. 3, Article 113, Clause 2 should not be resorted to. The plaintiff, whose title is based upon Ex. P. 2, can only succeed if he can enforce the specific performance of the agreement embodied in Ex. P. 1. In other words, if his transferor, defendant 2, could maintain the present suit for specific performance the plaintiff also can. We have therefore to see the terms of Exs. P. 1 and P. 2. The translation at p. 14 of the printed record of the relevant passage in Ex. P-1 is not a very happy one. After reciting the arrangements arrived at between defendant 2 and defendant 1, it goes on to say that, at the time when the proprietary rights regarding the land mentioned above shall have been "completely conferred" upon the executant, at that very time the executant shall get the document registered in favour of Diwan Singh as proprietor and shall get mutation effected. There cannot be any doubt that, if Ghulam Muhammad could automatically obtain the conveyance in his favour from the Collector on payment of the last instalment, it could have been argued with a good deal of force on his behalf, that the plaintiff's cause of action in such a case would accrue at the moment when Ghulam Muhammad got the conveyance of full proprietary rights from the Collector on payment of the full consideration. In that case the maxim "certum est quod certum reddi potest" would have applied as it might have been predicated from the outset that the payment of the last instalment by the plaintiff would synchronise with the acquisition of full proprietary rights by Ghulam Muhammad. But unfortunately for the defendant Ghulam Muhammad the matter is not so simple. Section 10, Colonization of Government Lands (Punjab) Act 1912, authorizes the Government to frame statements of conditions on which proprietary rights are to be granted. Section 15 of the same Act provides that:

A purchaser from Government of land who has been placed in possession of the land by order of the Collector shall be deemed to be a tenant of such land until the full amount of the purchase money with any interest due thereon has been paid and the other conditions set forth in the statement of the conditions of sale issued by the Collector have been fulfilled.

4. In the Punjab Gazette dated 21st November 1913, part 1, p. 757, there is a statement of conditions on which persons purchasing proprietary rights inland on the Upper Chenab Canal with permission to pay the purchase money by instalments are, in accordance with the provisions of Section 15, Colonization of Government Lands (Punjab) Act 5 of 1912, granted tenancies of the same lands. These conditions are very various e.g., a tenancy granted on the conditions set forth in this statement may be terminated by the Collector on the default of the tenant in the payment of any instalment of purchase money by the date fixed for such payment or on the breach of any other of the conditions of sale issued by the Collector under Section 15 of the Act aforesaid. In para 11 at pp. 758 we find the following condition:

The tenant shall render all such assistance in the prevention of discovery of crime as is incumbent on the owners and occupiers of land by any law or rules for the time being in force in the Punjab, and is and shall be responsible in the same manner as headmen, watchmen or other inhabitants of the villages are under any track law or rules for the time being in force in the Punjab. There Punjab is a condition as regards residence.

5. In the Punjab Colony Manual Vol. II, Chap. 8, p, 261, there is a form of the agreement into which the Secretary of State enters with a tenant. Para. 5 of this form lays down that the purchaser shall be entitled to receive from the Secretary of State a deed of conveyance of the said land conveying to him the land in full proprietary rights subject to the reservations detailed in the conditions mentioned therein.

6. Thus it would appear that the grant of full proprietary rights to the tenant does not follow as a matter of course from the payment of the last instalment but is subject to various restrictions and limitations so that, even if the full number of instalments is paid, it is possible that the tenant may not after all obtain a conveyance giving him the full proprietary rights in the land. This being so, the maxim quoted above does not apply and, therefore, the first portion of the clause in

Article 113, Lim. Act would have no application. The result therefore, is that the second portion of that article would apply and according to it, time begins to run when the plaintiff has notice that the performance of the agreement has been refused. For this we have to turn to para. 6 of the plaint where it is alleged that a month before the institution of the suit the defendant refused to duly execute a sale deed and have it registered. In his statement before the Court Lakha Singh has stated that the refusal took place a month before the plaint was filed. But this statement is merely a part of the pleadings and cannot be treated as evidence of the refusal. No evidence has been led by the plaintiff on the point, as under the order of the Court dated 10th November 1924, the questions relating to limitation, stamp and registration were to be discussed on 2nd December 1924, and the Court had ordered that further opportunity to give evidence on facts shall be allowed. As already explained, the view taken by the trial Judge on the question of limitation is erroneous and the case relied upon by him Venhanna v. Venkatakishnayya [1918] 41 Mad. 18, contains observations which go against the contention of the defendant Ghulam Muhammad.

7. Sir Muhammad Iqbal, the learned Counsel for the respondent, Ghulam Muhammad, very properly admitted that having regard to Section 17, Registration Act as amended by Act 2 of 1927, Ex. P-1 was properly stamped and did not require - registration. And after carefully considering the language of Ex. P-2, we are of opinion that the finding of the trial Judge that this document was insufficiently stamped and required registration is erroneous.

8. The result therefore, is that we allow the appeal and, setting aside the judgment of the Court below on the points mentioned above, remand the case to that Court. The plaintiff, if so advised, may lead evidence in order to prove that his suit for specific performance was within time, having regard to the second portion of Article 113, Lim. Act. There are other issues also in the case which the Court below has not tried. These issues will have to be tried and the parties shall be at liberty to give fresh evidence. As however the plaintiff's suit was disposed of on preliminary points by

the Court below and we have set aside the judgment of the trial Court on those points, the case must go back to the Court below for trial on the merits, under the provisions of Order 41, Rule 23, Civil P.C. The court-fee paid by the appellant in this Court shall be refunded. Other costs shall be borne by the parties in this Court.

Tek Chand, J.

9. I agree.

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