REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6687 OF 2016

Madina Begum & Anr. ....Appellants

versus

Shiv Murti Prasad Pandey & Ors. ....Respondents

J U D G M E N T

Madan B. Lokur, J.

1. The two questions for our consideration are whether the suit filed by the appellant Madina Begum was barred by limitation in terms of the first part of Article 54 of Schedule 1 of the Limitation Act, 1963 and whether the High Court ought to have decided the first appeal filed by Madina Begum not only on the preliminary issue of limitation but also on all other issues. As far as the first question is concerned our answer is in the negative and as far as the second question is concerned, in our opinion, the High Court ought to have considered all the issues in the first appeal rather than only the preliminary issue of limitation.

2. The land in dispute in this appeal is 1.63 acres of agricultural land bearing khasra nos. 438, 439, 440 and 456 (total area being 2.13 acres) in Patwari Halka No. 26 Gram Amkhera, Tehsil and District Jabalpur.

3. There was a dispute about the title of the entire aforesaid land and to resolve that dispute, Gulab Bai claiming to be the owner and in possession of the entire land, filed Suit No. 479A of 1994 in the Court of the Additional District Judge in Jabalpur. The defendants in the suit were Amar Singh and Jaswant Singh. The prayer made by Gulab Bai in her plaint was for a declaration with regard to her title and possession. She also prayed for an injunction restraining the defendants Amar Singh and Jaswant Singh from interfering with her possession.

4. On 2nd August, 2001 the suit was decreed in favour of Gulab Bai and thereafter on 3rd September, 2001 she entered into an agreement to sell 1.63 acres of agricultural land being the disputed property to Madina Begum. The consideration for the sale was Rs. 4,89,000/- out of which an advance of Rs. 1,25,000/- was paid by Madina Begum to Gulab Bai. This fact is recorded in the agreement to sell.

5. What we are concerned with in this appeal is the

interpretation of Clause 3 of the agreement to sell which reads as follows:-

> "3 That Party no. 1 has sold 1.63 acres land at the rate of Rs. 3,00,000/- (Rs. Three lakh) per acre and Party no. 1 Gulab Bai has obtained Rs. 1,25,000/- (One lakh twenty five thousand) as advance. The rest of the amount of Rs. 3,64,000/- (Rs. Three lakh sixty four thousand) would be paid by Party no. 2 to Party no. 1 within the period of six months from this date and having received it the party no. 1 will execute Benama Registry in favour of Party no. 2 or any such person specified by party no. 2 in one part or many parts."

6. Apparently on coming to know that Gulab Bai had agreed to sell the disputed land to Madina Begum an appeal being F.A. No.399 of 2001 was filed by Amar Singh and Jaswant Singh in the High Court of Madhya Pradesh challenging the decree dated 2nd August, 2001. An interim application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure was filed along with the appeal. The application was taken up for consideration on 22nd September, 2001 and while issuing notice in the application it was directed as follows:-

> "In the meanwhile till the disposal of M(C) P. No. 3231/2001, status quo regarding possession over the suit property shall be maintained and the respondent shall not alienate the suit property."

7. On 16th November, 2001 Gulab Bai executed a Will (which was registered) in which she categorically mentioned that she had negotiated the sale of 1.63 acres of land to Madina

Begum and had given possession thereof to her but the remaining amount and registration of the sale remained to be completed. In her Will, Gulab Bai appointed Shiv Murti Prasad Pandey and Devendra Prasad Pandey (respondents herein) as her executors. The Will mentioned that upon her demise, her agricultural land except 1.63 acres will devolve on Shiv Murti Prasad Pandey and Devendra Prasad Pandey and in the event of her death before the registration of the sale deed it would be their responsibility to execute and register the sale deed in favour of Madina Begum. Unfortunately, Gulab Bai passed away on 2nd January, 2002.

8. Thereafter, F.A. No. 399 of 2001 filed by Amar Singh and Jaswant Singh was heard by the High Court and came to be dismissed on 28th September, 2006. We are told that the decree passed by the High Court has attained finality.

9. Upon the dismissal of the aforesaid appeal, it appears that Madina Begum required Shiv Murti Prasad Pandey and Devendra Prasad Pandey to execute the sale deed but apparently they did not take any steps in this regard. On the contrary, it appears that on or about 2nd August, 2008 the land in dispute was mutated in the name of Anita Jain pursuant to a sale made in her favour by Shiv Murti Prasad Pandey and

Devendra Prasad Pandey.

10. When Madina Begum came to know of the transfer of the disputed land, she sent a notice to Shiv Murti Prasad Pandey and Devendra Prasad Pandey on 13th August, 2008 calling upon them to execute the sale deed in terms of the agreement to sell dated 3rd September, 2001 and the Will executed by Gulab Bai on 16th November, 2001. The notice was replied to by Shiv Murti Prasad Pandey and Devendra Prasad Pandey and we are told that they declined to execute the sale deed. This led to Madina Begum filing a suit, *inter alia*, for specific performance of the agreement being Suit No. 17A of 2008 (perhaps renumbered later as 41A of 2010) in the Court of the Additional District Judge, Jabalpur.

11. The defendants in the suit namely Shiv Murti Prasad Pandey and Devendra Prasad Pandey and Anita Jain filed their written statement and one of the contentions raised was that the suit was barred by limitation having been instituted more than three years beyond the date specified in the agreement to sell dated 3rd September, 2001. It was also submitted that Madina Begum had given an advance of only Rs. 90,000/- which had since been returned to her and that on 19th November, 2001 the agreement to sell between Gulab Bai and

Madina Begum was cancelled.

12. On the pleadings, one of the issues framed by the Trial Court was issue No. 8: Whether the suit is time barred?

13. The Trial Court considered the issue whether the suit filed by Madina Begum was barred by time and answered it in the negative. It was held in paragraph 38 of the decision rendered on 1st February, 2011 as follows:-

> "38. On perusal of the record it is gathered that agreement Ex. P-1 was executed on 03.09.2001 and thereafter stay has been granted by Hon'ble High Court in first appeal on 22.09.2001 but the first appeal was finally decided on 28.09.2006 vide Ex. P-5 since it was dismissed and in this manner, the stay order had become ineffective on 28.09.2006. Thereafter, the plaintiffs have sent notice to the defendants in August 2008 i.e. after two years from the date of decision in the first appeal which was dismissed on 28.09.2006 which was done within prescribed period of three years. Therefore, it cannot be said that the plaintiffs had filed the suit beyond the period of limitation with a view to harass the defendants. Thus, issues No. 8 and 9 are being answered against the defendants."

14. Even though the issue of limitation was decided in her favour, the suit filed by Madina Begum was dismissed on merits. Feeling aggrieved by the dismissal of the suit on merits Madina Begum preferred First Appeal No. 175 of 2011 in the High Court of Madhya Pradesh and that led to the impugned judgment and order dated 16th August, 2013. The Division Bench hearing the appeal did not go into the merits of the dispute between the parties but only adverted to the issue of

limitation and since it was found that the institution of the suit was barred by time (contrary to the conclusion of the Trial Court) there was no necessity of considering the merits of the case.

15. In coming to the conclusion that the suit was barred by time, the High Court considered Article 54 of Schedule 1 of the Limitation Act, 1963 (for short, "the Act"). The discussion thereon was brief and it reads as follows:-

> "Under Article 54 of the Limitation Act, the prescribed period of limitation for filing a suit of specific performance of a contract is three years and the period of three years has to be calculated based on two contingencies i.e. the date fixed for performance of the contract or if no such date is fixed, the date when the plaintiffs had notice about refusal of the performance by the defendants. In this case, admittedly, a date for performance is fixed i.e. six months from the date of execution of the contract and, therefore, as a specific period for performance is fixed, the period of limitation would be three years w.e.f. 3.03.2002 i.e. the date when the period of six months for execution of the sale-deed lapsed."

16. The High Court held that since the suit was barred by limitation, the Trial Court committed a grave error in recording a finding that the suit was within limitation.

17. The interpretation of the first part of Article 54 of Schedule 1 of the Act is no longer *res-integra*. Article 54 reads as follows:-

"54.	For specific performance of a contract	Three years	The date fixed for the performance, or, if no

			such date is fixed, when the plaintiff has notice that performance is refused."

18. In ***Ahmadsahab Abdul Mulla (2) (Dead) v. Bibijan and Ors.***[1] the following question was considered by a three judge Bench of this Court: "Whether the use of the expression "date" used in Article 54 of the Schedule to the Limitation Act, 1963 (in short "the Act") is suggestive of a specific date in the calendar?"

19. While answering this question on a reference made to the three judge Bench, this Court considered the meaning of the word "date" and "fixed" appearing in Article 54. Upon such consideration, this Court held that the expression "date fixed for the performance" is a crystallized notion. When a date is fixed it means there is a definite date fixed for doing a particular act. Therefore, there is no question of finding out the intention from other circumstances. It was reiterated that the expression "date" is definitely suggestive of a specified date in the calendar. Paragraphs 11 and 12 of the Report in this regard are of importance and they read as follows:-

> "11. The inevitable conclusion is that the expression "date fixed for the performance" is a crystallized notion. This is clear from

[1] (2009) 5 SCC 462

> the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.
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> 12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression "date" used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."

20. Quite independently and without reference to the aforesaid decision, another Bench of this Court in ***Rathnavathi and Another v. Kavita Ganashamdas***[2] came to the same conclusion. It was held in paragraph 42 of the Report that a mere reading of Article 54 would show that if the date is fixed for the performance of an agreement, then non-compliance with the agreement on the date would give a cause of action to file a suit for specific performance within three years from the date so fixed. But when no such date is fixed, the limitation of three years would begin when the plaintiff has notice that the defendant has refused the performance of the agreement. It was further held, on the facts

[2] (2015) 5 SCC 223

of the case that it did not fall in the first category of Article 54 since no date was fixed in the agreement for its performance.

21. The Clauses of the agreement for consideration in ***Rathnavathi*** were Clauses 2 and 3 and they read as follows:-

> "2. The purchaser shall pay a sum of Rs. 50,000 (Rupees fifty thousand only) as advance to the seller at the time of signing this agreement, the receipt of which the seller hereby acknowledges and the balance sale consideration amount shall be paid within 60 days from the date of expiry of lease period.
> 3. The seller covenants with the purchaser that efforts will be made with the Bangalore Development Authority for the transfer of the schedule property in favour of the purchaser after paying penalty. In case it is not possible then the time stipulated herein for the balance payment and completion of the sale transaction will be agreed mutually between the parties."

22. As far as the present appeal is concerned, the agreement between Gulab Bai and Madina Begum did not specify a calendar date as the date fixed for the performance of the agreement. Consequently, the view expressed in ***Ahmadsahab Abdul Mulla*** and ***Rathnavathi*** on the first part of Article 54 clearly applies to the facts of the case. In taking a contrary view, ignoring the absence of a specified date for the performance of the agreement and reversing the Trial Court, the High Court has fallen in error.

23. It is not necessary for us to multiply authorities on the subject particularly when the issue has been conclusively

settled by a Bench of three learned judges of this Court in ***Ahmadsahab Abdul Mulla*** and we see no reason to take a different view.

24. The second question that requires consideration is whether the High Court was right in merely deciding the issue of limitation in a first appeal filed under Section 96 of the Code of Civil Procedure without going into the merits of the case. Quite recently, in ***Vinod Kumar v. Gangadhar***[3] this Court had occasion to consider the issue whether, under Section 96 of the Code of Civil Procedure, the first appellate court ought to decide all the issues before it or not. Reference was made to a very large number of decisions rendered by this Court and it was concluded, particularly relying upon ***Madhukar v. Sangram***[4] decided by a Bench of three learned judges of this Court that sitting as a court of first appeal it is the duty of the High Court to deal with all the issues and evidence led by the parties before recording its findings.

25. In so far as the present appeal is concerned, the High Court only considered the issue of limitation and did not consider the other issues in the appeal. This was impermissible. The result is that since we do not agree with the

[3] (2015) 1 SCC 391
[4] (2001) 4 SCC 756

view taken by the High Court on the issue of limitation, there is no option but to set aside the view expressed by the High Court and following the decisions of this Court, remand the matter to the High Court to decide the remaining issues in the first appeal filed under Section 96 of the Code of Civil Procedure.

26. It is a little unfortunate that the parties have to undergo another round of litigation which could easily have been avoided if the settled legal principles laid down by this Court from time to time were followed in regard to the requirements of Section 96 of the Code of Civil Procedure. This is quite apart from the delay caused in the resolution of the dispute between the parties.

27. In view of our discussion, the appeal is allowed and the impugned judgment and order of the High Court dated 16th August, 2013 is set aside and the matter is remanded to the High Court for deciding the remaining issues in the appeal on merits.

.....J
(Madan B. Lokur)

.....J
(R.K. Agrawal)

New Delhi;
August 1, 2016