AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment delivered on 29-4-2024

FA No. 31 of 2017

[Arising out of judgment and decree dated 21-10-2016 passed by the Additional District Judge, Bilaspur, in civil suit No.344-A/2014]

1. Smt. Sangeeta Agrawal Wd/o Late Shri Manoj Agrawal, Aged About 49 Years
2. Satuti Agrawal D/o Late Shri Manoj Agrawal, Aged About 26 Years
3. Mridulhari Agrawal S/o Late Shri Manoj Agrawal, Aged About 23 Years

All are R/o Old Sarkanda Bilaspur, Tahsil And District Bilaspur, CG.

---- Appellants/Plaintiffs

Versus

1. Santosh Bhimnani S/o Late Shri Ashok Bhimnani, Aged About 23 Years
2. Kamal Bhimnani S/o Late Shri Ashok Bhimnani, Aged About 22 Years
3. Simran D/o Late Shri Ashok Bhimnani, Aged About 16 Years Through The Mother Guardian ad-liten Smt. Mala, Widow Of Late Shri Ashok Bhimnani, Aged About 46 Years
4. Smt. Mala Wd/o Late Shri Ashok Bhimnani, Aged About 46 Years

Respondents No.1 to 4 are r/o Sadar Bazar Bilaspur, Tehsil And District Bilaspur, Chhattisgarh

5. State Of Chhattisgarh, Through The Collector Bilaspur, District Bilaspur, Chhattisgarh
6. Smt. Lata Kungwani W/o Bhagwan Das Kungwani, D/o Late Shri Motumal Bhimnani, aged about 53 years, R/o Arjun Nagar, Rewa, Tehsil And District Rewa

Presently Residing At Agrawal Building Onida Service Center, Sarju Bagicha, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents/Defendants

For Appellants	Mr. Sudarshan Bansal, Advocate with Mr. Harshwardhan & Mr. Devendra Patel, Advocate
For Respondents No.1 to 4 & 6	Mr. Aishwarya Pandey, Advocate
For Respondent/State	Ms Anuradha Jain, Panel Lawyer

Hon'ble Mr. Justice Goutam Bhaduri &
Hon'ble Mr. Justice Radhakishan Agrawal

CAV Judgment

Per Goutam Bhaduri, J.

1. Challenge in this appeal is to the judgment and decree dated 21-10-2016 passed by the Additional District Judge, Bilaspur, in civil suit No.344-A/2014 wherein the suit for specific performance was dismissed.

2. The legal heirs of Manoj Agrawal namely; Smt. Sangeeta Agrawal, Satuti Agrawal & Mridulhari Agrawal filed a suit for specific performance against the legal heirs of Ashok Bhimnani namely; Dinesh Bhimnani, Santosh Bhimnani, Kamal Bhimnani, Simran and Smt. Mala.

3. (i) The facts of the case, in brief, are that Ashok Bhimnani (since deceased) and Manoj Agrawal (since deceased) entered into an agreement for sale of immovable property of part of share of Ashok Bhimnani of land bearing khasra No.1190, 1205, 1207, 1208, 1209, 1210, 1211, 1212, 1216/2 and 1217 admeasuring 3.77 acres and from individual land bearing khasra No.1204 and 1218 admeasuring 0.56 acres in total 4.33 acres. The plaint allegation and agreement purport that the total sale consideration was fixed at ₹ 52.00 lacs. Out of the said sale consideration, an amount of ₹ 10.00 lacs was initially paid i.e. ₹ 8.00 lacs was in cash and ₹ 2.00 lacs was in the form of cheque dated 16-11-2006. The lands are situated at Mouza Sendri, PH No.16, RI Circle, Tahsil & District Bilaspur. It was further agreed, according to the plaint and the agreement, that out of

remaining amount an amount of ₹ 22.00 lacs would be paid by 11-1-2007 to the seller Ashok Bhimnani by the purchaser Manoj Agrawal as per convenience and rest of the amount of ₹ 20.00 lacs would be paid at the time of registration of sale deed.

(ii) According to the plaintiffs, the suit land would be demarcated and the seller on his own cost would get the partition of his own share and subsequently, the seller would also level the field at par with the adjacent land of Laxminarayan Sahu. The parties agreed that from the date of agreement i.e. 16-11-2006 up till October, 2007 the demarcation, partition, etc. would be done and it would be the duty of the seller to get the sale deed executed. The plaintiffs stated that on 21-1-2007 further an amount of ₹ 7.00 lacs was paid thereby time for execution of the agreement was extended and subsequently another agreement was executed on 14-11-2009 vide Ex.P/2 in acknowledgment of the amount received. The agreement was executed to show that an amount of ₹ 17.00 lacs was received and another ₹ 4.00 lacs in cash was received on 14-11-2009. According to the plaintiff, while execution of agreement dated 14-11-2009 the original document of the land and revenue papers were handed over to the purchaser. The plaintiff, therefore, contended that the time was extended and contract was kept alive.

(iii) The plaintiff stated that the seller was trying to sell the land, therefore, a notice was served on 25-9-2009 whereby Manoj Agrawal objected the registration and application was also filed and public notice was also issued. It is contended that the legal notice

though was served vide Ex.P/7 the trial Court ignored the same. Ashok Bhimnani, the seller, died on 25-9-2010 and after a month Manoj Agrawal, the purchaser, also died on 25-10-2010. In between legal notice was issued and public notice was also carried out making the public aware about existence of the agreement and eventually the suit was filed on 10-5-2012.

4. The defendants contended that for the personal need of their father and family, he received the amount. They had denied the execution of agreement and also denied the fact that possession of the land was handed over on 16-11-2006. Rest of the plaint allegations were denied instead it was stated that Ashok Bhimnani was ailing and was treated in different cities, therefore, there was no occasion to execute the said agreement. The legal heirs who filed the written statement strenuously denied the fact about execution of agreement or receipt of any amount. It was stated that Ashok Bhimnani was not the sole owner and his brothers & sisters were also owners and the land belonged to the father of Ashok Bhimnani namely; Motumal Bhimnani, which was received as a joint property thereby all the sisters have also right and in order to carry out the business activities only the name of Ashok Bhimnani was recorded in the revenue records. It was further stated that they were running a Brick Kiln and the execution of the agreement was denied and the money was paid in lieu of payment of bricks, which were delivered to Manoj Agrawal and no agreement of sale was ever executed.

5. The defendant No.7 (respondent No.6 herein) filed a separate written statement and contended that the suit property is in her possession and she is in possession of the suit land by virtue of a compromise decree in her favour, therefore, no suit for specific performance can be ordered for.

6. The learned trial Court on the basis of pleadings framed as many as seven issues and held that the suit is barred by time and further held that by virtue of agreement dated 16-11-2006 the physical possession of the suit property was not delivered to the purchaser *qua* the plaintiffs and further dismissed the suit for specific performance.

7. (a) Learned counsel appearing for the appellants/plaintiffs would submit that once the trial Court has found the agreement dated 16-11-2006 is proved and an amount of ₹ 17.00 lacs has been paid towards part performance of contract, this shows that erstwhile deceased seller has agreed to sell the subject land. He would further submit that the land when was subject of sale, the condition embodied in the agreement of levelling and demarcation was a condition precedent and unless it was done, there was no occasion to go further for execution of contract. He would submit that when initially an amount of ₹ 10.00 lacs was paid and further ₹ 7.00 lacs was paid subsequently this is not under challenge. The parties extended their time of agreement and consequently another agreement dated 14-11-2009 was drawn, which shows that the original *rin pustika* and revenue papers were handed over and the

trial Court has completely ignored this issue of subsequent agreement dated 14-11-2009 (Ex.P/2). He would submit that by such activity of the parties, the contract was kept alive.

(b) Learned counsel would submit that when after mutation the seller surreptitiously wanted to sell it to some one else the purchaser raised an objection before the Sub Registrar, which would show that he was ready and willing to purchase and that was followed by application (Ex.P/5) to the Tahsildar and subsequently it followed by publication of public notice on 26-9-2009 vide Ex.P/6 and further followed by legal notice (Ex.P/7) this fact has been totally ignored by the trial Court. He would submit that since both the original seller and purchaser died when the sale deed was not executed the legal notice was issued to the legal heirs and asked them to get the name mutated and further public notice was made vide Ex.P/16 and complaint was made to police and again followed by public notice vide Ex.P/19 and subsequently, the suit was filed on 10-5-2012. He would submit that agreement having been proved and has not been challenged by the seller, nothing is left out and following the conduct by publication of notice the readiness and willingness can be inferred.

(c) Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of ***Azhar Sultana v B. Rajmani and Others***[1] to submit that it was not necessary that the entire amount of consideration should be kept ready and the plaintiff

1 (2009) 17 SCC 27

must file proof in respect of it but the learned trial Court has gone on this issue against the settled principles of law. He would submit that the learned trial Court completely failed to exercise its jurisdiction wrongly to hold that the suit was barred by time whereas the conduct of the parties would show that the time was not the essence of contract as they themselves extended the period from time to time.

(d) Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of ***S. Brahmanand and Others v K.R. Muthugopal (Dead) and Others***[2] to submit that agreement to extend time need not necessarily be reduced to writing, but may be proved by oral evidence. He would submit that time not being the essence of contract the limitation would not run against the plaintiff to be non suited. To buttress his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of ***Swarnam Ramchandran (Smt.) and Another v Aravacode Chakungal Jayapalan***[3].

8. (A) Learned counsel appearing for the respondents No.1 to 4 and 6, *per contra*, would submit that the agreement dated 14-11-2009 (Ex.P/2) is forged. The same was objected while it was exhibited wherein it shows that an amount of ₹ 4.00 lacs was further paid. He would submit that from the agreement Ex.P/1 it is manifest that only an amount of ₹ 10.00 lacs was paid whereas Ex.P/2 says about receipt of ₹ 17.00 lacs, therefore, there is a massive ambiguity in such payment of consideration. He would also submit that

2 (2005) 12 SCC 764
3 (2004) 8 SCC 689

publication of notice (Ex.P/16) was made on 27-11-2010 but it do not contain the reference of Ex.P/2 which shows that an amount of ₹ 4.00 lacs was paid.

(B) Learned counsel would submit that if ₹ 4.00 lacs was paid on 14-11-2009 it was not reflected in the public notice. It shows that Ex.P/2 was forged. He would submit that Ex.P/18 served on 28-6-2011 do not reflect the payment of ₹ 4.00 lacs. It also do not contains the reference of it. He would submit that no pleading of readiness and willingness also exist. From the aforesaid fact, it would show that the plaintiff wanted to get a success on the forged document. He would submit that the impugned judgment and decree is well merited, which do not call for any interference of this Court.

9. We have heard learned counsel appearing for the parties at length and perused the record.

10. Smt. Sangeeta Agrawal (PW-1) stated that her husband had agreed to purchase total 4.33 acres of land from Ashok Bhimnani, who is the father of respondents No.1 to 3 and husband of respondent No.4. An amount of ₹ 10.00 lacs was paid i.e. ₹ 8.00 lacs by cash and ₹ 2.00 lacs by cheque. From the agreement (Ex.P/1), it is evident that 3.77 acres was jointly held by Minor Vikas, S/o Late Gokul Chand, Minor Kavita, Pramila, D/o Late Gokul Chand through mother Kousalya, W/o Late Gokul Chand, Mohan, S/o Motumal, Laxman, S/o Motumal, Ashok, S/o Motumal, Meera, D/o Motumal,

Dayavantin, D/o Motumal and Chanda, D/o Motumal. Smt. Meera, D/o Motumal, Smt. Lajvanti, D/o Motumal, Smt. Dayavanti, D/o Motumal and Smt. Chanda, D/o Motumal had given the power of attorney dated 17-4-2006 (Ex.P/3) to late Ashok Bhimnani to sell their joint property admeasuring 3.77 acres, which is shown in the agreement for the reason that they stayed at different places and Ashok Bhimnani was appointed as the power of attorney holder. Ashok Bhimnani died on 25-9-2010. With his death, in whose favour power of attorney was executed to sell the land of 3.77 acres, which is shown in the agreement as a joint holding, automatically comes to an end.

11. PW-1 Sangeeta at para 23 of her deposition admitted that in respect of the suit property along with Ashok Bhimnani others share were also included, but on the basis of power of attorney it was stated that all have consented to dispose of the property. It was admitted by the plaintiffs that those sharers have not been made party to the suit. PW-2 Sushil Agrawal too stated at para 24 of his deposition that as on 16-11-2006 the land was recorded as joint property, meaning thereby other shares were included.

12. The plaintiff filed the suit on 10-5-2012 and in such suit the sisters were not arrayed as a party. Since Ashok Bhimani, in whose favour power of attorney (Ex.P/3) was executed by his sisters, died prior to filing of the suit, his legal heirs would not inherit such power, which was conferred to him by his sisters. Even otherwise the legal heirs could not execute the sale deed in respect of property admeasuring

3.77 acres wherein shares of sisters were included. The four sisters, who executed power of attorney in favour of Ashok Bhimnani, are not before the Court except one Lata Kungwani, who was also impleaded at later stage after the Court pointed out that she is a necessary party. Admittedly, the sisters being not before the Court after death of Ashok Bhimnani their stand before the Court was necessary to adjudicate and their shares cannot be forced to be considered for specific performance of sale. The mutation of name of Ashok Bhimnani alone in revenue records would not entitle him with exclusive ownership of land as the mutation entries does not confer any title.

13. The Supreme Court in the matter of ***Union of India and Others v Vasavi Cooperative Housing Society Limited and Others***[4] held thus at paras 21 & 24 :

> 21. This Court in several judgments has held that the revenue records do not confer title. In *Corpn. of the City of Bangalore* v. *M. Papaiah* [(1989) 3 SCC 612] this Court held that: (SCC p. 615, para 5)
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> > "*5*. … It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."
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> In *Guru Amarjit Singh* v. *Rattan Chand* [(1993) 4 SCC 349] this Court has held that: (SCC p. 352, para 2)
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> > "*2*. … that entries in the Jamabandi are not proof of title."

4 (2014) 2 SCC 269

In *State of H.P.* v. *Keshav Ram* [(1996) 11 SCC 257] this Court held that: (SCC p. 259, para 5)

> "*5*. … an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."

xxx xxx xxx

> 24. We are of the view that even if the entries in the record-of-rights carry evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question. Ext. X-1 is Classer Register of 1347 Fasli which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. The plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11-12-1939 of their predecessor-in-interest, wherein, admittedly, the suit land in question has not been mentioned.

14. The learned trial Court has held that an amount of ₹ 10.00 lacs was paid to Ashok Bhimnani while the agreement (Ex.P/1) was executed on 16-11-2006 and has further held that an amount of ₹ 7.00 lacs was paid on 31-1-2007, as is evident from the Bank Statement (Ex.P/17). There is no cross appeal against this finding by the defendant. Therefore, the conduct of the parties would show that time was not the essence of contract and the finding of the learned trial Court that the suit was barred by time as specific time for performance of contract was fixed on October, 2007 by the agreement (Ex.P/1), we are not in agreement with the finding of trial Court. The agreement purports that there are certain conditions, which are embodied in the agreement about demarcation, levelling,

etc. in the agreement, therefore, reciprocal act was to be done by the seller before finally sale deed was to be executed. The intention of parties, therefore, would show that time was not the essence of the contract.

15. While evaluating whether the time was essence of contract the Supreme Court has laid down certain principles in the matter of ***Rathnavathi and Another v Kavita Ganashamdas***[5], wherein the Supreme Court reiterated the law down in ***Govind Prasad Chaturvedi v Hari Dutt Shastri***[6] and ***Gomathinayagam Pillai v Palaniswami Nadar***[7]and held thus at paras 35 and 36 :

> 35. In Govind Prasad Chaturvedi Vs. Hari Dutt Shastri, this Court placing reliance on the law laid down in Gomathinayagam Pillai, reiterated the aforesaid principle and held as under (Govind Prasad case, SCC pp.543-44, paras 5-6):
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> > "5…….It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract.
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> > 6. Apart from the normal presumption that in the case of an agreement of sale of immovable properly time is not the essence of the contract and the fact that the terms of the agreement do not unmistakably state that the time was understood to be the essence of the contract neither in the pleadings nor during the trial the respondents contended that time was of the essence of the contract."

5 (2015) 5 SCC 223
6 (1977) 2 SCC 539
7 AIR 1967 SC 868

36. Again in Chand Rani vs. Kamal Rani, this Court placing reliance on law laid down in aforementioned two cases took the same view. Similar view was taken with more elaboration on the issue in K.S. Vidyanadam v. Vairavan, wherein it was held as under (SCC pp.7&9, paras 10 & 11):

> "10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani (SCC p.528, para 25)
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> > "25....it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?) :
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> > > (1) from the express terms of the contract;
> > >
> > > (2) from the nature of the property; and

> (3) from the surrounding circumstances, for example, the object of making the contract."
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> In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades - particularly after 1973.
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> "11……Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so….."
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> The aforesaid view was upheld in K. Narendra vs. Riviera Apartments (P) Ltd.

16. Applying the well settled principles of law and for the reasons mentioned hereinabove as the time was not the essence of contract, we are of the view that the finding of the learned trial Court that the suit was barred by time as per Article 54 of the Indian Limitation Act cannot be upheld and it is accordingly set aside.

17. Now coming back to extension of time by agreement. Another agreement (Ex.P/2) is of 14-11-2009. We went through the contents of Ex.P/2. According to K.K. Tiwari (PW-3) and as per the contents of Ex.P/2, apart from ₹ 17.00 lacs another amount of ₹ 4.00 lacs was paid in cash. The defendants disputed this agreement. The agreement (Ex.P/2) purports that the original document i.e. *rin pustika* and documents of the land were handed over to the

purchaser. The plaintiff PW-1 Sangeeta in her statement do not say that on the said date the documents were handed over. She stated that the said document is in their house. Statement of PW-1 Sangeeta would further show that in initial publication of notice, the payment of ₹ 4.00 lacs apart from ₹ 17.00 lacs was not shown. In the notice Ex.P/12, which was sent by the Advocate on 13-10-2010, the payment of ₹ 4.00 lacs was not reflected. This also raises a considerable doubt inasmuch as when Manoj Agrawal had sent a notice it was confined to payment of ₹ 17.00 lacs. Omission of such huge amount of ₹ 4.00 lacs would not be as per the natural behaviour of purchaser. Likewise, in the paper publication (Ex.P/16) made by the Advocate, the amount of ₹ 4.00 lacs is also missing. In the agreement (Ex.P/2) a specific averment has been made about handing over the document of land. However, when the witness was confronted with such fact, PW-2 Sushil Agrawal stated that if they are called they would produce *rin pustika* and stated that the said document is with them.

18. In order to ascertain the authenticity of the agreement (Ex.P/2) which was claimed to be a major document, as the plaintiff assert that after payment of further 4.00 lacs the *rin pustika* was handed over to him, which would have corroborated such act to accept the document above doubt. When the documents *rin pustika* were not produced it creates a doubt. If certain documents are in possession of a party, if the same is not produced to discharge the burden, adverse inference is required to be drawn.

19. The Supreme Court in the matter of ***Ajay Kumar D. Amin v Air France***[8] held thus at para 7 :

> 7. Again, in support of the said proposition, the Commissioner for Taking Accounts rightly placed reliance upon the judgment of this Court in *Gopal Krishnaji Ketkar* v. *Mohd. Haji Latif*, wherein this Court held that under Sections 114(*g*) and 103 of the Evidence Act, 1872, a party in possession of best evidence which throws light on the issue in controversy withholding it, the Court ought to draw an adverse inference against it notwithstanding that onus of proof does not lie on him and the party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

20. Further there is no evidence on record as to evaluate the cash paid of ₹ 4.00 lacs. When the plaintiffs claim to have paid such huge amount and in alternate it is disputed, any corroborative evidence to show the amount how paid was expected to be brought to fore. In absence thereof the contentions cannot be unilaterally accepted.

21. The submission is made that even if the document Ex.P/2 is sidelined the case of the plaintiffs would be liable to succeed on the ground of first agreement dated 16-11-2006. As has been held since the time was not the essence of contract, then in such course when the actual refusal was made to execute the sale deed the suit could have been based on it. However, at the same time when another document i.e. agreement crops up is of Ex.P/2 (second agreement) and the authenticity of such document is in doubt, which speaks about payment of ₹ 4.00 lacs, without much proof of it and for want of production of original *rin pustika* the conduct of the plaintiffs also cannot be ignored as in case of specific performance apart

8 (2016) 2 SCC 566

from the agreement the overall conduct of the parties is required to be seen.

22. The Supreme Court in the matter of ***Shenbagam v K.K. Rathinavel***[9] has observed that the conduct of the parties in the suit for specific performance of the agreement would also be relevant factor.

23. Perusal of the plaint would show that the plaintiff has impleaded one Smt. Lata Kungwani as party in the suit and claimed by way of amendment in para 26(A) that the decree passed on 28-6-2011 by the Lok Adalat in civil suit No.18-A/2011 be declared void *ab initio*. The plaintiff claimed that the forged *Ikrarnama* (इकरारनामा) was executed on 19-7-2010 to defeat the agreement entered into by the erstwhile seller and purchaser. The compromise decree is filed as Ex.D/13 wherein it shows that suit was filed against the defendants by the defendant Lata Kungwani. In the said suit, a compromise decree of permanent injunction and declaration of possession by declaring the possession of Lata Kungwani was passed on 7-8-2011. The said judgment and decree of the Lok Adalat is not set aside and still holds the field.

24. Once the decree has been passed in the Lok Adalat, the aggrieved person was to challenge the award of the Lok Adalat by filing a writ petition under Article 226/227 of the Constitution of India in the High Court and that too on very limited grounds. This proposition was laid down by the Supreme Court in the matter of

9 2022 SCC OnLine SC 71

Bhargavi Constructions and Anr. v Kothakapu Muthyam Reddy and Ors[10].

25. So if the plaintiff had knowledge of said decree and the necessary amendment at para 26(A) was carried out in this respect which speaks about the fact that decree in Lok Adalat is a nullity. It would lead to show that the defendant No.7 Lata Kungwani was holding decree of Lok Adalat was impleaded as a party by an order dated 28-6-2013 and while she was made a party, the learned Court observed that since the judgment and decree is in hold in favour of Lata Kungwani, therefore, she would be a necessary party.

26. PW-2 Sushil Agrawal was confronted with the document Ex.P/21 i.e. plaint filed by Lata Kungwani against the defendants and the judgment of Lok Adalat (Ex.D/13). The simple answer in para 23 is only to the effect that he shows his ignorance about existence. Only oral statement has been made that the judgment of Lok Adalat be set aside. What are the grounds and why they want to set aside, the plaintiffs are completely silent. After the decree wherein the right has been accrued in favour of some one else by the decree of Court unless and until it is set aside the same will hold the field.

27. Perusal of the original plaint would show that Lata Kungwani was arrayed as defendant No.7, however, in the prayer clause of the plaint only the decree was sought to be executed against the defendants No.1 to 5, who are the legal heirs of Ashok Bhimnani. If certain rights have been created in favour of Lata Kungwani by

10 (2018) 13 SCC 480

document (Ex.D/13) which also purport in respect of the same suit land, a claim for specific performance was filed by Lata Kungwani wherein the decree was passed in terms of the compromise wherein it was decreed in respect of the suit property that Lata Kungwani is the owner and in possession. The decree further was to the effect that the defendants therein accepted that the plaintiff therein would be the owner of the suit property and the defendants or their associates will not interfere in respect of possession of suit property by Lata Kungwani. Therefore, in this suit for specific performance by Sangeeta and others as claimed against the defendants No.1 to 5, who are the legal heirs of Ashok Bhimnani, claiming decree for specific performance is eclipsed by the earlier judgment and decree of the Lok Adalat wherein the ownership and possession is vested with defendant No.7 Lata Kungwani, and in prayer clause no relief is claimed against her.

28. Under the circumstances, we are of the view that the judgment and decree of the trial Court in respect of dismissal of a suit for specific performance is sustained, however, other than the grounds enumerated in the judgment of the trial Court.

29. Now coming back to the fact that the trial Court also found that an amount of ₹ 17.00 lacs was paid to Ashok Bhimnani as has been held earlier the suit was not barred by time. The plaintiff paid the amount of ₹ 10.00 lacs on 16-11-2006 and ₹ 7.00 lacs on 31-1-2007. The defendants have not shown any effort to return the said amount to the plaintiffs.

30. The Supreme Court in ***India Council for Enviro-legal Action v Union of India and ors.***[11] discussed different case-laws. Few of the paras i.e. para Nos.152, 153, 154, 155 & 156 are quote below:

> 152. 'Unjust enrichment' has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.
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> 153. Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." A defendant may be liable "even when the defendant retaining the benefit is not a wrongdoer" and "even though he may have received [it] honestly in the first instance." (Schock v. Nash (732 A 2d 217) Delware 1999), 232-33.
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> 154. Unjust enrichment occurs when the defendant wrongfully secures a benefit or passively receives a benefit which would be unconscionable to retain. In the leading case of **Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd. [1942] 2 All ER 122,** Lord Wright stated the principle thus :
>
> > "....(A)ny civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."
>
> 155. Lord Denning also stated in Nelson v. Larholt, [1947] 2 All ER 751 as under:-

11 (2011) 8 SCC 161

> "…...It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular frame-work. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution, if the justice of the case so requires."
>
> 156. The above principle has been accepted in India. This Court in several cases has applied the doctrine of unjust enrichment.

31. Since the amount of ₹ 17.00 lacs is in the hold of the defendants, we are of the view that the plaintiffs have a right of restitution and they cannot be deprived of the said amount. The Supreme Court has observed that the restitution and unjust enrichment have to be viewed in two stages i.e. pre-suit and post-suit. In the pre-suit position the amount is not returned and also in the post-suit the amount is still with the defendants.

32. Under the circumstances of this case, applying the principles of justice and equity, we deem it appropriate to direct the defendants to pay an amount of ₹ 17.00 lacs to the plaintiffs along with interest at the rate of 6% per annum from 31-1-2007. Ordered accordingly.

33. In the result, the appeal is partly allowed. No order as to cost(s).

34. A decree be drawn accordingly.

Sd/- Sd/-

(Goutam Bhaduri)
Judge

(Radhakishan Agrawal)
Judge

Gowri

HEAD-NOTE

The entries in revenue record does not confer any title to the person.

राजस्व अभिलेख में प्रविष्टियाँ व्यक्ति को कोई स्वत्व प्रदान नहीं करतीं।

Adverse inference can be drawn if the party in possession of best evidence, which throws light on issue, is withholding it to be produced in the court.

यदि वह पक्षकार जिसके आधिपत्य में सर्वोत्तम साक्ष्य हैं, जो विवाद्यक पर प्रकाश डालता है, उस साक्ष्य को न्यायालय में प्रस्तुत करने से रोकता है, तब प्रतिकूल निष्कर्ष निकाला जा सकता है।