

**(2017) 12 RAJ CK 0018**  
**RAJASTHAN HIGH COURT**  
**Case No:** 64 of 2006

Rameshwar s/o Bagrawat Ram

APPELLANT

Vs

Devi Lal s/o Nikooo Ram

RESPONDENT

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**Date of Decision:** Dec. 7, 2017

**Acts Referred:**

- Code of Civil Procedure, 1908, Section 96 - Appeal from original decree

**Hon'ble Judges:** Virendra Kumar Mathur

**Bench:** SINGLE BENCH

**Advocate:** Trilok Joshi, Vishal Singhal, S.L. Jain, N.L. Joshi, Kirti Joshi

**Final Decision:** Dismissed

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**Judgement**

1. This Civil First Appeal under sec.96 CPC has been filed against judgment & decree dated 06.01.2006 passed by Additional District Judge, Raisinghnagar, District Sri Ganganagar in Civil Suit No.83/1996 ( Rameshwar & others v. Devi Lal & others ), by which suit of the plaintiffs for specific performance of the agreements was dismissed.

2. Briefly stated, plaintiff-appellants filed a suit for specific performance of agreements to sale dated 01.06.1987 and 13.08.1987 on 06.04.1996 against defendant-respondents No.1 to

3. An agreement was entered into for sale of 24 bighas agriculture land situated in chak 22-NP, which was agreed to be sold by the respondents for total consideration of Rs.2,10,000/-. A sum of Rs.1,25,000/- was paid to the aforementioned respondents on the date of the agreement itself i.e. on 01.06.1987 and a further sum of Rs.35,000/- was agreed to be paid in the month of December 1987 while the remaining amount of Rs.50,000/- was to be paid at the time of registration of sale

deed. The executants of the agreement after execution of agreement for sale dated 01.06.1987 handed over possession of the land in question, along with turn of water, to plaintiff-appellants in part performance of the agreement, which has continued to remain with the appellants till date. The respondents also agreed to take steps for obtaining sanction for sale of the land as well as execution of sale deed in favour of plaintiffs.

4. It was also contended that Rs.35,000/-, which was to be paid in December 1987, was paid on 13.08.1987 and on that, a further agreement dated 13.08.1987 was executed by the aforementioned respondents, in which reference of earlier agreement dated 01.06.1987 was also given.

5. The plaintiffs further averred that they are always ready and willing to perform their part of the agreement but the respondents went on postponing execution of sale deed, in spite of requirement of obtaining sanction having been dispensed with by the State Government and ultimately, on 10.03.1996 respondents refused to execute sale deed in favour of appellants and then the appellants filed aforesaid suit for specific performance of agreement to sale dated 01.06.1987 and 13.08.1987. The respondents No.1 and 3 submitted their written statement on 22.10.1999 while respondent No.2 submitted his separate written statement on the same day. Respondents No.4 & 5 were impleaded subsequently on their application and they also submitted their separate written statement on 22.10.1999.

6. Respondent No.2 in his written statement denied averments made by the plaintiffs regarding execution of agreements for sale dated 01.06.1987 and 13.08.1987 and also raised plea that on the date of alleged agreement, he was minor and as such, same were void and hence, no right accrued to plaintiffs against him in relation to said agreements regarding his share in the land. Similarly, defendants No.4 & 5 denied their signatures on the agreements. All the respondents also raised plea that the suit was barred by limitation.

7. On the basis of pleadings of parties, the trial court framed 13 issues and after trial passed judgment & decree dated 06.01.2006 whereby the suit was dismissed.

8. Being aggrieved by the judgment & decree dated 06.01.2006, the appellants preferred this appeal with the contentions that the trial court while deciding issues No.1 & 5 against the plaintiffs has erroneously held that the plaintiffs have neither been able to prove execution of agreement for sale dated 01.06.1987 nor payment of consideration of Rs.1,25,000/- as earnest money out of total consideration of Rs.2,10,000/-. The trial court also erroneously held that sum of Rs.35,000/-, which was to be paid by the plaintiffs in December 1987, was actually not paid on 13.08.1987 as alleged by the plaintiffs nor any fresh agreement was executed by defendants No.1 to 3 giving reference to earlier agreement dated 01.06.1987 and the evidence of PW1 Rameshwar Lal has been misconstrued by the trial court. As a matter of fact, the trial court failed to read statement of plaintiffs' witness

Rameshwar Lal along with his examination-in-chief, which was made by way of submission of affidavit. In view of evidence of plaintiff Rameshwar, witness Hanuman Ram and evidence of Dilip Kaushik son of Chandra Prakash the scribe of the document, issues No.1 & 5 should have been decided by the trial court in favour of plaintiffs and against the respondents.

9. It was also contended that the trial court has again committed illegality in deciding issues No.6, 11 & 12 against the plaintiffs and in favour of respondent-defendants on the basis of findings on issues No. 1 & 5 and the same deserve to be decided against defendants. It was further contended that the trial court committed grave illegality in deciding issue No.7 against the plaintiffs and in favour of respondent-defendants. It was contended that the trial court again committed illegality in deciding issue No.10 by holding that the respondent No.2 was not bound by the agreement even if he had put signature on the same for the reason that he was minor at the time of execution of said agreement for sale. It was further contended that the trial court has committed illegality in deciding issue No.9, which related to point of limitation and no reasons have been given by the trial court as to how the suit filed by plaintiffs was barred by limitation. It has also been contended that the trial court has committed illegality in deciding issue No.3 in coming to finding that the plaintiffs have not been able to prove that they were always ready & willing to perform their part of the agreement.

10. In the context of contentions raised by the appellants, perused pleadings and evidence placed on record.

11. Learned trial court decided issues No.1 and 5 to 12 together stating that all these issues are inter-related. The burden of proving issues No.1 & 5 was on plaintiffs, burden of proving issue No.6 was on defendants No.1 & 3, burden to prove issues No.7 & 11 was on defendants No.4 & 5, burden to prove issues No.10 & 12 was on defendant No.2 and burden of proving issues No.8 & 9 was on all the defendants.

12. So far as question of execution of agreement Ex.1 dated 01.06.1987 and Ex.2 dated 13.08.1987 is concerned, PW1 Rameshwar stated that an agreement for sale of 24 bighas land at the rate of Rs.8750/- per bigha for total sum amounting to Rs.2,10,000/- was executed on 01.06.1987. This witness further stated that on 01.06.1987 defendants Devi Lal, Gulab Chand and Dalip Kumar executed the agreement and received Rs.1,25,000/-. This witness further stated that on 13.08.1987 Rs.35,000/- were received in cash and agreement Ex.2 was executed. He has not stated that on 13.08.1987, which defendants executed the agreement. Defendants No.4 & 5 have not signed Exhibits 1 & 2.

13. So far as defendant No.2 is concerned, it has come in evidence that date of birth of Gulab Chand was 30.06.1972 and on the date of execution of Exs.1 & 2, he was minor and therefore, agreement is not valid so far as defendant No.2 is concerned.

14. The witness PW1 Rameshwar has further stated that on Exhibits 1 & 2 Devi Lal, Gulab Chand and Dalip Singh put thumb impression. This witness has further in his cross-examination stated that at the time of execution of agreement, he was not present and writing of the agreement was done by his father and his father paid advance money of Rs.1,25,000/-, which he brought from "vk

15. It is important to note that PW1 in his examination-in-chief stated that he himself and plaintiff Om Prakash paid advance the money and no reference of his father was made. There is material contradiction in the statement of PW1 in the examination-in-chief and his cross-examination. According to his cross-examination, he was not present at the time of execution of agreement nor money was paid by him and plaintiff Om Prakash. Instead, he deposed that advance money was paid by his father and his father did not appear in witness.

16. PW1 in his examination-in-chief also stated that the agreement was verified by Notary Public on the next day when it was written but in his cross-examination, he stated that he does not know who purchased stamps nor does he know when the agreement was verified by Notary. Under these circumstances, the trial court disbelieved the evidence of PW1.

17. PW2 Hanuman in his cross-examination stated that Bagdawat Ram paid money to Devi Lal but in his examination-in- chief he had stated that defendants received from plaintiff Rs.1,25,000/- as advance. This witness has further stated that on 13.08.1987, defendant Seller has received from Purchaser Rs.35,000/- before Banwari Lal in cash. However, in the cross- examination, he stated that only Bagdawat Ram paid Rs.1,25,000/- to Devi Lal. This witness in his cross-examination has nowhere stated that other defendants No.2 & 3 also received advance money whereas in his examination-in-chief, he had stated that all defendants were paid advance money.

18. The trial court has minutely discussed the evidence led by PW1 and PW2 and came to conclusion that from the evidence of PW1 and PW2, it is not proved that defendants No.1, 2 & 3 executed Exhibits 1 & 2 in favour of plaintiffs and the plaintiffs paid Rs.1,25,000/- and Rs.35,000/- as advance.

19. PW3 Dalip Kaushik is son of Deed-writer Chandra Prakash. This witness stated in his evidence that Chandra Prakash is his father, who is Deed-writer, now he is 85 years of age and his vision & hearing is weak and that is why he has left the work of Deed-writer. This witness stated that agreements Exhibits 1 & 2 bear his father's signatures. "Arji-nawis" Chandra Prakash, who is father of PW3, who prepared documents Exhibits 1 & 2, did not appear in witness to prove the documents. PW3 has nowhere stated that his father is not in a condition to given statement in evidence before the court nor any medical certificate was produced, from which it can be inferred that he is not in a position to appear for evidence before the court.

20. DW1 Devi Lal in his statement denied execution of the agreement and receiving of advance money of Rs.1,25,000/- and Rs.35,000/- and stated that the land was handed over to Bagdawat Ram on contract and during that period, he received cash for which pro-note was written and that money was adjusted from revenue due against land given on contract. PW1 in his statement denied the fact of receiving land on contract but PW2 in his cross-examination admitted that before execution of agreement, land in dispute was handed over by Devi Lal to Bagdawat Ram on contract and documents were placed on record in this connection as Exhibits A1 to A9.

21. DW3 Tara Chand also stated in his statement that on 27.01.1987, 15 bighas land was given on contract for one year to father of plaintiff Bagdawat Ram and Devi Lal received Rs.10,000/- from Bagdawat Ram and executed pro-note receipt.

This witness has categorically stated that defendant Devi Lal generally gives his land to Bagdawat Ram, father of plaintiff Rameshwar, for cultivation. He has not heard that Devi Lal has sold his agriculture land to plaintiff Rameshwar, Om Prakash, Bagdawat Ram or any other person. DW2 Nirmala DEvi in her statement has refused her signature and thumb impression of her sister and stated that agreements Exhibits 1 & 2 were forged and also stated that for taking possession, a suit was filed before Deputy Collector, Raisinghnagar against plaintiffs. This witness has categorically stated that she and her sister relinquished their share in favour of their brothers and denied that there was any consent for execution of agreements Exhibits 1 & 2.

22. There was admittedly no signatures of defendants No.4 and 5. DW4 Gulab Chand, who is defendant No.2, in his statement stated that his land is 6.02 bighas and the plaintiffs had no right to sale it. He has refused execution of agreement as well as receipt of advance money and stated that those documents are forged and also admitted that a suit was filed before Deputy Collector, Raisinghnagar. Admittedly, defendant No.2 was minor when agreements Exhibits 1 & 2 were said to be executed.

23. Thus, the trial court after elaborate discussion has rightly came to conclusion that execution of agreements Exhibits 1 & 2 was not proved.

24. So far as limitation is concerned, as per agreement Ex.1 dated 01.06.1987 permission for registration of document was to be obtained within one month. Admittedly, the condition of permission from State Government was waived. After removal of the condition, registration of sale deed was to be performed within one month from May 1991. PW1 has nowhere stated that after removal of the condition they gave notice to defendants for registration of sale deed nor anything has been stated that after removal of condition in the month of April 1991, all steps have been taken by plaintiffs before filing of the suit. From the averments made in Exhibits 1 & 2, it is evident that after removal of the condition of obtaining permission in the

month of April 1991, sale deed is to be executed within one month and time was essence of the contract.

25. PW1 in his statement nowhere stated that after removal of the condition any step has been taken for execution of sale deed. PW1 in his statement further stated that it is true that for the purpose of registry they have not given documents relating to domicile, voter-list, ration card etc whereas liability to give such documents was on plaintiffs. PW1 in his statement only stated that on 10.03.1996, defendants refused to execute sale deed and on that basis they alleged that the suit was within limitation.

26. In the present case, after removal of condition of permission to sale from State Government, sale deed was to be executed and registered within one month from April 1991 and according to Article 154 of Limitation Act, limitation of 3 years starts from that day whereas the present suit was filed on 16.08.1996. The trial court has rightly observed that the suit was barred by limitation. The trial court after discussing all evidence placed on record has rightly decided this issue.

27. So far as contentions raised in respect of issue No.2 are concerned, the trial court has rightly discussed evidence of PW1 and PW2 and came to conclusion that the plaintiffs failed to prove that on disputed land their possession and turn of water continued from date of execution of Exhibits 1 & 2.

28. So far as issue No.3 is concerned, this issue was related to readiness & willingness. In this case, date of agreement of Ex.1 was 01.06.1987 and Ex.2 was 13.08.1987 and admittedly after removal of the condition for obtaining permission from the Government for sale, in the month of April 1991, nothing had been done by plaintiffs before filing of the suit nor any notice was served for execution of sale deed. PW1 in his cross-examination admitted that for registration of sale deed, he has not given domicile certificate, voter card, ration card to Devi Lal. In this way, he has not fulfilled the condition required for execution of sale deed. The trial court has rightly inferred that the plaintiffs were not at all ready and willing to perform their part of the contract.

29. There is no ground of interference in the judgment & decree passed by the trial court. The appeal is dismissed.