
(22) For the foregoing reasons, we find no merit in both the petitions, and dismiss the same without any order as to costs.

N. K. S.

Before S. S. Sandhawalia, C. J. and G. C. Mital, J.

SARDAR SINGH,—Appellant.

versus

Smt. DALIP KAUR and others,—Respondents.

Regular Second Appeal No. 242 of 1980.

May, 19, 1981

Limitation Act (XXXVI of 1963)—Article 97—Indian Registration Act (XVI of 1908)—Section 47—Sale deed executed—Possession of the sold land delivered to the vendee earlier on the same day—Instrument of sale registered few days later—Such possession—Whether delivered under the sale—Suit to pre-empt such sale—Period of limitation—Whether commences from the date of execution of the sale deed—First part of Article 97—Interpretation of—Sale—When complete.

Held, that a reading of the third column of Article 97 of the Limitation Act, 1963 shows that wherever the subject matter of sale admits of physical possession of whole or part of the property sold then the starting point of limitation under the first part is from the date of taking of possession of whole or part thereof and wherever either whole or part of the property sold does not admit of physical possession, then the limitation starts from the date of registration of the instrument of sale. The object to provide two different limitations for two different sets of facts is the same, namely, the notice of the sale to the pre-emptor. If whole of the sold property is already in possession of a tenant, mortgagee or a person other than the owner under some title and that person continues in possession, in spite of the sale by the owner, the only way to provide knowledge to a pre-emptor would be by a registered document because under the law the moment a document is entered in the register of the Registrar, the sale is notice to the general public and the registration of such a sale

Sardar Singh v. Smt. Dalip Kaur and others (G. C. Mital, J.)

would give the starting point of limitation for filing a suit for pre-emption. But, where the property sold or a part of it was in possession of the vendor, the moment somebody else comes in possession of that property, there is immediate notice of change of possession from the owner to a third person, giving notice to the pre-emptor to find out as to in what capacity the third person has come in possession of the same. If it is under a sale, then the limitation for pre-emption would start from the date of taking of possession. For that purpose, the first part of the Article was enacted to provide the starting point of limitation from the date of taking possession under the sale. Where a sale-deed is executed and possession of the land is also delivered on that day although before the execution of the sale deed, the pre-emptor would come to know that the vendees have come in possession of the property and he will have to find out as to when did the occupiers purchase the property. The moment this enquiry is made it would transpire that the sale deed had been executed and possession of the property had been delivered which possession would be under the sale which is sought to be impeached. Therefore, the limitation would start from the date of execution of the instrument of sale and it would be wholly immaterial whether possession is taken before the sale-deed was written or while it was being written or after it was completed and signed by the parties. In all the three eventualities the possession is being delivered under the sale which is sought to be pre-empted by the pre-emptor. In such a situation, the second part of Article 97 cannot apply because the subject-matter of the sale admitted of delivery of physical possession. (Paras 6 and 8)

Held, that the only correct way to interpret the first part of Article 97 would be to hold that the sale would be complete when the same is executed because section 47 of the Registration Act, 1908 takes back the sale to the date of the execution. (Para 9)

Regular Second appeal from the decree of the Court of Shri V. K. Jain (I), Additional District Judge, Karnal, dated the 8th day of January, 1980, affirming that of the Court of Shri B. P. Jindal, Senior Sub-Judge, Karnal, dated the 7th May, 1979, decreeing the suit of plaintiff for possession by way of pre-emption in respect of the suit land detailed in para No. 1 of the plaint and against the defendant vendees on payment of Rs. 47,650 less 1/5th pre-emption money already deposited and further ordering that the decretal amount shall be deposited by the plaintiff on or before 17th July, 1979 failing which she will stand non-suited with costs; otherwise in case the amount is deposited within the prescribed period, the parties are left to bear their own costs. The Appellate Court left the parties to bear their own costs.

R. S. Cheema, Advocate with P. N. Makani, Advocate, for the Appellant.

S. S. Rathor, Advocate, for the Respondents.

JUDGMENT

Gokal Chand Mital, J.

1. Whether for purposes of first part of article 97 of the Limitation Act, 1963, physical possession of the property sold would be deemed to have passed on the date of execution of the sale deed even if delivered earlier under the intended sale, is the sole point for consideration before us.

2. Mehar Singh sold 42 kanals 18 Marlas of agricultural land to Sardara Singh and five others for a consideration of Rs. 42,900, by a sale deed dated 1st December, 1975, which was presented for registration on 3rd December, 1975, and was entered in the book of the Registrar on 4th December, 1975. Shrimati Dalip Kaur, daughter of the vendor, filed a suit on 2nd December, 1976, to pre-empt the aforesaid sale. The vendees resisted the suit and besides denying that the plaintiff was the daughter of vendor, pleaded that the suit was barred by Limitation as possession of the property sold was taken on the day the sale deed was executed. On the contest of the parties various issues were framed, one of them being as follows:—

Whether the suit is barred by time ? O.P.D. The trial Court, by judgment and decree dated 7th May, 1979, found that the plaintiff was the daughter of the vendor and as such had a superior right of pre-emption and that possession was delivered to the vendees in anticipation of the sale and, therefore, the starting point of limitation under Part I of Article 10 of the Indian Limitation Act would be applicable and the limitation would start from the date of actual registration of the sale deed which was entered in the book of the Registrar on 4th December, 1975, and hence the suit filed on 2nd December, 1976, was within limitation. On vendees' appeal, the learned Additional District Judge, by judgment and decree dated 8th January, 1980, dismissed the same after affirming the finding of the trial Court about the plaintiff being the daughter of the vendor and decided the point of limitation against the vendees. The lower appellate Court came to the conclusion that Sardara Singh vendee stated that possession was taken before the execution of the sale deed and, therefore, placing reliance on *Bai Chander Mani v. Bhagirath* (1) held that the limitation would start from the

(1) A.I.R. 1961 Punjab 296.

Sardar Singh v. Smt. Dalip Kaur and others (G. C. Mital, J.)

date of registration of the sale deed in the book of the Registrar, which took place on 4th December, 1975, and, therefore, the suit brought on 2nd December, 1976, was within limitation. Against the aforesaid, Sardara Singh vendee has come to this Court in second appeal.

3. The second appeal came up for motion hearing before M. R. Sharma, J., on 7th May, 1980, who entertained some doubt about the correctness of *Bai Chander Mani's case* (supra) and admitted the case to D. B. after formulating the following question of law of substantial importance:—

“Whether the possession of part of land taken on the date when the sale deed is executed would be deemed to be taken under the sale for the purpose of the Punjab Pre-emption Act?”

This is how the matter has been placed before us for final decision.

4. The counsel for the appellant wanted to challenge the finding of the Courts below that the plaintiff is the daughter of the vendor. After going through the finding recorded by the Courts below in this behalf we are of the opinion that the same is well-based on the evidence and it has not been shown how the finding is vitiated. Accordingly that finding is affirmed.

5. Coming to the point of limitation, some factual position deserves to be noticed before we proceed to decide the question of law. In the written statement, it was pleaded that the possession was taken on the date of execution of the sale deed. In evidence, Sardara Singh vendee-appellant appeared and stated that out of the land sold possession of 2/3rd Killas was taken when part payment was made and of the remaining land possession was taken before the execution of the sale deed. It has also come in evidence that possession was taken in the morning while the sale deed was executed thereafter. Both the Courts below disbelieved the vendee about having obtained possession of 2/3rd Killas when part payment is alleged to have been made, in view of the clear plea taken in the written statement that possession was taken when the sale deed was executed. After rejecting this part of the statement of the vendee, they accepted the evidence to the effect that possession was

taken in the morning of 1st December, 1975, and the sale deed was executed on that date but later in the day. Since possession was obtained by the vendees on 1st December, 1975, before the actual execution of the sale deed, therefore, the Courts below came to the conclusion that when the sale deed was completed, at that moment possession was not delivered by the vendor to the vendee as possession had already been delivered earlier in the day. Thus, actual possession was not given to the vendees under the sale, and, therefore, *terminus a quo* for purposes of limitation was not taken as 1st December, 1975, but 4th December, 1975, when the sale deed was registered in the book of the Registrar. Accordingly, we proceed to decide this case on the finding recorded by the Courts below that possession was delivered by the vendor to the vendees on the morning of 1st December, 1975, and that the sale deed was executed later that very day.

6. Article 97 of the Limitation Act, 1963, which applies to the present case is as follows:—

<i>Description of suits</i>	<i>Period of limitation.</i>	<i>Time from which period beings to run.</i>
97. To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.	One Year	When the purchaser takes under the sale sought to be impeached physical possession of the whole or part of the property sold, or, where the subject-matter of the sale does not admit of physical possession of the whole or part of the property when the instrument of sale is registered.

A reading of the third column shows that wherever the subject-matter of sale admits of physical possession of whole or part of the property sold then the starting point of limitation under the first part is from the date of taking of possession of whole or part thereof

Sardar Singh v. Smt. Dalip Kaur and others (G. C. Mital, J.)

and wherever either whole or part of the property sold does not admit of physical possession, then the limitation starts from the date of registration of the instrument of sale. The object to provide two different limitations for two different sets of facts is the same, namely, notice of the sale to the pre-emptor. If whole of the sold property is already in possession of a tenant, mortgagee or a person other than the owner under some title and that person continues in possession in spite of a sale by the owner, the only way to provide knowledge to a pre-emptor would be by a registered document because under the law the moment a document is entered in the register of the Registrar, the sale is notice to the general public and the registration of such a sale would give the starting point of limitation for filing a suit for pre-emption. But, where a property sold or part of it was in possession of the vendor, the moment some body else comes in possession of that property, there is immediate notice of change of possession from the owner to a third person, giving notice to the pre-emptor to find out as to in what capacity the third person has come in possession of the same. If it is under a sale, then the limitation for pre-emption would start from the date of taking of possession. For that purpose, the first part of the article was enacted to provide the starting point of limitation from the date of taking possession under the sale. Therefore, from a reading of the entire third column there would be separate starting points of limitation under two different eventualities (See *Sukhnandan Singh vs. Jamiat Singh*, (2) and *Kashmir Singh v. Meher Chand* (3)).

7. Initially, the counsel for both the sides were agreed that the present case fell within the first part of the article but later on, as the arguments proceeded, the counsel for the plaintiff changed his stand and urged that since possession was delivered by the vendor to the prospective purchasers before the actual execution of the sale deed, although on the same day, the vendor could not deliver physical possession of the same after the sale deed was written and signed by the parties as he had already delivered physical possession to the vendees before the execution of the sale-deed and, therefore, the second part of the Article would apply in this case. The argument deserves to be closely examined.

(2) A.I.R. 1971 S.C. 1158.

(3) 1971 Ct. L.J. 169 (D.B.).

8. On the interpretation made by us above, it has to be seen on the facts of the present case whether the first part would apply or the second part. We are of the firm view that the first part would apply and not the second part. In the present case, the sale deed was executed on 1st December, 1975, and the possession was also delivered on that day although before the execution of the sale deed. The moment the pre-emptor would come to know that the vendees have come in possession of the property, he will have to find out as to when did the occupiers purchase the property. The moment this enquiry is made, it would transpire that the sale deed was executed on 1st December, 1975, in which there is a clear recital that physical possession of the property has been delivered to the vendees, which possession would be under the sale which is sought to be impeached. Therefore, the limitation would start from 1st December, 1975, and it would be wholly immaterial whether possession is taken before the sale deed was written or while it was being written by the petition writer or after it was completed and signed by the parties. In all the three eventualities the possession is being delivered under the sale which is sought to be pre-empted by the pre-emptor. On these facts, the second part of the Article cannot apply as on 1st December, 1975, the subject-matter of sale admitted of delivery of physical possession. As already pointed out, the second part applies only where the vendor is out of possession and even if he wants to deliver physical possession of whole or part of it, it is impossible for him because some body else is already in possession of the property under some colour or title either as a tenant or mortgagee, etc. Once the second part would not apply and first applies, there can be no other interpretation of the first part than the one taken by us. Under the first part, the only other possibility is where the pre-emptor is able to show that possession was not delivered by the vendor to the vendee on the date of execution of the sale deed but was delivered some time thereafter. In that eventuality, the limitation would start neither from the date of execution of the sale deed nor from the date of registration thereof but from the date when physical possession of the sold land is proved on the record to have been delivered. Therefore, if no such date is proved by the pre-emptor, it would always be the date of execution of the sale deed. Therefore, we have no doubt that in all cases where possession is delivered on the date of execution of the sale deed, whether before or during the execution thereof or soon thereafter on that day, it would be considered in law to be under the sale and the limitation would start from the execution of the sale deed.

Sardar Singh v. Smt. Dalip Kaur and others (G. C. Mital, J.)

9. The matter may be looked at from another angle. Under the first part of Article 97, the limitation starts from the date the purchaser takes under the sale sought to be impeached physical possession of the whole or part of the property sold. The first question would be as to when is the sale complete. If the sale is treated to be complete only when it is entered in the book of the Registrar, then the second question would be as to when the possession was delivered. If we agree with the contention raised by the respondent, then we will find that it will be very few cases in which the first part of Article 97 would apply and that too in those cases where possession would be delivered by the vendor to the vendee on the day the sale deed is registered in the book of the Registrar, for if possession would be delivered before that date it would not be treated under the sale. That too does not appear to be the intention of the Legislature in providing two starting point of limitation. Otherwise, only one limitation would have been provided in both the eventualities, that is, when the instrument of sale is registered. Therefore, the only correct way to interpret the first part of the article would be to hold that the sale would be complete when the same is executed because section 47 of the Registration Act takes back the sale to the date of execution. It cannot be lost sight of that the moment sale deed is executed the rights of the parties stand crystallised and that is generally the date on which the deeds are presented for registration and possession is taken by vendees. No vendee waits for taking of possession till the sale deed is actually registered in the book of the Registrar. That is why, the first part provided for taking of possession and the sale would be complete when it is executed. Section 47 of the Registration Act is in the following terms:—

“47. *Time from which registered document operates.*—A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”

In the present case, the sale deed would operate from 1st December, 1975, and delivery of possession on that date would be under the sale which is sought to be impeached and not from 4th December, 1975, where it was entered in the book of the Registrar.

10. This brings us to the consideration of *Bai Chander Mani's case (supra)*, on which reliance has been placed by the Court below

and strong reliance has been placed before us by the counsel for the plaintiff-respondent. Gurdev Singh, J., found in that case that possession of the property sold was delivered by the vendor to the vendees on 29th May, 1957, and the sale deed was executed on the following day, i.e. 30th May, 1957, wherein also a recital was made that the possession has been delivered to the vendees and the document was actually entered in the book of the Registrar on 12th June, 1957, and the suit for pre-emption filed on 10th June, 1958, was held to be within limitation, on the reasoning that since possession was delivered to the vendees a day before the execution of the sale deed, therefore, when the sale deed was executed possession could not be delivered to the vendees and as such second part of Article 10 of the Indian Limitation Act, 1908, applied to the case and not the first part. The only difference in old Article 10 and the present Article 97 is that instead of providing for delivery of whole of the property sold under the old article, the new article says that if the subject-matter of sale admits of delivery of physical possession of whole or part, then the first part of the article would apply, otherwise, the second part would apply. After referring to some decisions of the Lahore High Court, Gurdev Singh, J., was of the opinion that if in such cases the second part is not applied it would either lead to absurd results or would open doors for fraud as the parties to the sale would be successful in defeating the claim of the pre-emptor. We have gone through the entire reasoning contained in para 9 of the report. It is true that neither an oral sale nor an agreement of sale under which possession is delivered would be pre-emptible as the law clear envisages a completed sale but that would in no way defeat the right of pre-emption and would only postpone the right to such date when the sale deed is actually executed. The moment a person other than the vendor comes into possession of the property, the pre-emptor is put to notice and on enquiry if he comes to know that possession of such person is as a prospective purchaser then he will have sufficient time to find out as to when they ultimately purchase the property and therefore, the moment sale deed is executed the possession of the prospective vendor delivered earlier would become possession under the sale from the date of execution of the sale deed giving cause of action for filing of the suit as also for the limitation of one year to start. Of course, before the execution of the sale deed the suit would be pre-mature but after the sale deed is executed, it will be a completed transaction and,

Sardar Singh v. Smt. Dalip Kaur and others (G. C. Mital, J.)

therefore, this would lead neither to any absurd results nor would the parties to sale be able to defraud the pre-emptor. Otherwise, the Legislature could have made only one provision in Article 97 to start limitation from the date of registration of the instrument of sale in both the eventualities but in its wisdom it has given two starting points of limitation and, therefore, the Courts will have to give meaning to the two different starting points provided by the Legislature. We are of the firm opinion that even if possession is delivered either under an oral agreement of sale or a written-agreement of sale and the sale deed is executed later on, in law physical possession of the vendees would be considered under the sale from the date of execution of the sale deed and from no earlier date and that would provide the starting point of limitation except in cases where the pre-emptor is able to show to the satisfaction of the Court that possession was delivered thereafter and in that case the limitation would start from such proved date. Therefore, we disagree with the reasons recorded by Gurdev Singh, J., over-rule *Bai Chander Mani's case* (supra) as not laying down correct law.

11. Coming to the cases decided by the Lahore High Court, the counsel for the plaintiff-respondent frankly conceded that barring *Ram Peera v Rup Lal* (4) referred to by Gurdev Singh, J., all other cases are distinguishable and, therefore, he places reliance only on *Ram Peera v. Rup Lal* (supra). The facts of that case were, that the possession was taken on 26th October, 1914, whereas the sale deed was executed and registered on 21st December, 1914, and the suit for pre-emption was filed on 20th December, 1915. On the aforesaid facts, even on the basis of the view which we have taken above, the possession taken on 26th October, 1914, would be only under the intended sale and would become possession under the sale with effect from 21st December, 1914, when the sale deed was executed and, therefore, the suit for pre-emption was within limitation. In that case, it was sought to be argued that since possession was taken on 26th October, 1914, therefore, the limitation for pre-emption would start from that date. As already held above, the limitation for pre-emption would start from the date of execution of the sale deed even in cases where possession is delivered by the vendor to the vendee under the intended sale before the execution of the sale deed. Therefore, this decision on facts does not help the

(4) AIR 1918 Lahore 79.

plaintiff-respondent and rather supports the appellant's contention, as per the following observations:—

“The sale took place on 21st December, 1914, and the prior possession of one of the vendees on 26th October, 1914, must in law be referred for the purposes of applying the provisions of Article 10, Limitation Act, to the subsequent date on which the sale actually took place; and clearly it is from this subsequent date of the actual sale that the period of limitation prescribed by the said Article 10 begins to run against the pre-emptor.”

12. Reference may be made to a Division Bench decision of this Court in *Karam Singh Bhagwan Singh v. Gurbux Singh Ganda Singh*, (5) which supports the view taken by us above. The relevant passage reads thus;—

“On this evidence, it is not at all possible to hold that the property sold is not capable of physical possession. The only ground for holding the sold property not to be capable of physical possession by the Court below is that share in *shamilat deh* been sold. It is, however, not shown by the plaintiffs, who are the sons of the vendor himself, if any share in the *shamilat deh* was ever allotted to the vendor or vested in him in regard to the property sold. It is accordingly difficult for this Court to sustain the conclusion of the Court below on this point. Article 10, Indian Limitation Act, 1908, deals with the sale of the kinds of properties. Where the property sold admits of physical possession, then the terminus-a-quo is determined from the time the purchaser takes physical possession under the sale sought to be impeached. In cases, however, the property sold does not admit of physical possession, then the terminus-a-quo is the date of the registration of the instrument of sale. These two periods of time have relevance apparently to the knowledge of the intending pre-emptor. It is true that law of pre-emption is to be construed on its plain language and equitable considerations are wholly out of place. I have only referred to this aspect for the purpose of

Sardar Singh v. Smt. Dalip Kaur and others (G. C. Mital, J.)

pointing out that in the case in hand, the pre-emptors, being the real sons of the vendor, there can hardly be any question, on the record of this case, of their not being aware of the sale in dispute and, therefore, there can be no question of any failure of substantial justice resulting from any technical view of Article 10, assuming the view is technical. Once this finding is recorded, the suit would indisputedly be barred by time.

13. The counsel for the plaintiff-respondent then placed reliance on *Ram Saran Lall v. Mst. Domin Kuar* (6) to urge that the sale would not be complete till it is actually registered in the book of the Registrar and, therefore, even under the first part of the Article, the limitation would start not from the date of execution of the sale deed but when it was actually registered. After going through the Supreme Court decision, we find the same to be clearly distinguishable. That was a case arising under the Muhammadan Law and a provision like Article 97 did not fall for consideration in that case. As already said above Article 97, with which we are concerned, provide for two starting points of limitation, the first one being from the date of taking of possession and the other being from the date of registration. Therefore, the Supreme Court decision is of no help in deciding this case.

14. After the close of arguments but before the pronouncement of judgment, the counsel for the respondent invited our attention to *Mohan Singh v. Nirmal Singh*, (7). A reading of this decision shows that no evidence was produced by the vendees to prove as to when physical possession of the land sold was delivered to them and the recital in the sale deed about delivery of possession was not regarded as evidence to warrant conclusion that physical possession was transferred on the date of execution of the sale deed. In the present case the vendees led positive evidence on the basis of which both the Courts below gave a finding that possession was delivered by the vendor to the vendees on the day the sale deed was executed, that is, 1st of December, 1975, but earlier in the day. We have proceeded to decide the case on that finding and are not basing the decision on mere recital. Hence, this case is of no assistance in deciding the point involved before us.

(6) A.I.R. 1961 S.C. 1747.

(7) 1971 P.L.J. 27.

15. For the reasons recorded above, the limitation in the present suit started on 1st December, 1975, when the sale deed was executed as the possession would be deemed to have been delivered under the sale on that day and, therefore, the suit filed on 2nd December, 1976, is clearly beyond the period of one year and as such was barred by limitation. Accordingly, the finding of the Courts below to the contrary is reversed and issue No. 4 is decided in favour of the defendants and against the plaintiff.

16. Since the suit is held to be time barred, the appeal is allowed, the judgments and decrees of the Courts below are set aside and the plaintiff's suit is dismissed. As the suit was filed on the basis of an earlier decision of this Court, we leave the parties to bear their own costs.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. P. Goyal and J. V. Gupta JJ.

NIRANJAN KAUR,—*Petitioner.*

versus

NIBIGAN KAUR,—*Respondent.*

Civil Revision No. 1011 of 1980.

June 4, 1981.

Court Fees Act (VII of 1870)—Section 7(iv) (c) and Article 1 Schedule I—Suit for possession of land—Declaration also sought that sale deed executed by the plaintiff was obtained by fraud and therefore not binding on him—Relief for cancellation of the sale deed—Whether substantially involved in the suit—Court-fee payable on the plaint—Whether governed by Article 1, Schedule I.

Held, that it is well settled that the Court in deciding the question of court-fee should look into the allegations made in the plaint to find out what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand