

HIGH COURT OF GUJARAT

LUHAR ABDUL RAZAK SULTANBHAI

Versus

PATEL DHULABHAI RAMDAS

Date of Decision: 10 July 2008

Citation: 2008 LawSuit(Guj) 1401

Hon'ble Judges: [K S Jhaveri](#)

Case Type: Second Appeal; Civil Application

Case No: 117 of 2008; 6551 of 2008

Subject: Civil

Acts Referred:

[Code Of Civil Procedure, 1908 Sec 100](#)

Final Decision: Appeal dismissed

Advocates: [R C Jani](#)

[1] This Appeal arises out of the judgment and decree passed by the learned Presiding Officer, Fast Track Court No. 4, Gandhinagar in Regular Civil Appeal No. 146 of 2004 dated 11.01.2008 whereby, the said appeal was dismissed.

[2] The brief facts of the case are as under;

2.1 The appellant, original plaintiff, was a tenant of the property bearing City Survey No. 165 of Survey No.1515/1-3 situated near S.T. Bus-stand, Mansa on a monthly rental of Rs.30/- since the year 1972. As the respondents, original defendants, were threatening to evict the appellant from the property in question, he filed a suit being R.C.S. No. 61 of 1982 before the Civil Court, Vijapur.

2.2 However, the said suit was subsequently withdrawn as the Administrator and Partner of the defendant " Corporation had executed an agreement to sell the suit property for Rs.5,000/- on 09.06.1982 in favour of the appellant. The appellant paid Rs.1,000/- to the respondent and agreed to pay the balance amount of Rs.4,000/- at the time of execution of the registered sale deed.

2.3 However, the defendant did not execute the sale deed and filed a suit before the Civil Court, Vijapur being R.C.S. No. 200 of 1986. In the said suit, the application Exhibit " 5 for interim injunction was rejected by the trial Court and the respondents were ordered to pay an amount of Rs.50/- per month for the period from 12.09.1986 to 21.07.1987 to the appellant. On 29.07.1993 the said suit was conditionally withdrawn by the respondent with a liberty to file a fresh suit. However, the respondent did not file any suit.

2.4 Therefore, in the year 1996, the appellant filed a suit being Regular Civil Suit No. 44 of 1996 for specific performance of the Agreement to sell. The said suit came to be dismissed by the trial Court vide judgment and decree dated 30.09.2002.

2.5 Being aggrieved by the same, the appellant preferred an appeal being Regular Civil Appeal No. 146 of 2004 before the Court of learned Presiding Officer, Fast Track Court No. 4, Gandhinagar. The appellate Court, after hearing the parties and after considering the evidence on record, dismissed the appeal. Hence, this appeal.

[3] Heard learned Advocate for the appellant and perused the documents on record. None appears on behalf of the defendants. The Agreement to sell at Exhibits " 41 & 53 was executed between the parties on 09.06.1982. On perusal of the same, it is evident that the sale deed had to be executed on or before 08.06.1984, i.e. within a period of two years from the date of execution of the said Agreement. In such circumstance, if the suit was to be filed, then the same had to be filed within the stipulated time period. However, the same has not been done.

[4] Apart from that even after the completion of the date of Agreement, i.e. 08.06.1984, the appellant had not filed the suit within 12 years from the said date as the suit was filed only on 19.07.1996, meaning thereby, that the appellant had not filed the suit within 12 years from the date of expiration of the Agreement.

[5] In view of the above, I am of the view that both the Courts below were completely justified in decreeing the suit in favour of the respondents. I am in complete agreement with the concurrent findings recorded by the Courts below and hence, find no reasons to interfere in this appeal. No substantial questions of law arise within the meaning of Section 100 of the C.P.C.

[6] For the foregoing reasons, the Appeal stands dismissed. No order as to costs.