



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.5315 OF 2010**

**HAZARI LAL (DEAD) THR. LRS.**

**... Appellant(s)**

***VERSUS***

**RAMESH KUMAR & OTHERS**

**... Respondent(s)**

**J U D G M E N T**

**RAJESH BINDAL, J.**

1. The defendant has filed the present appeal impugning the judgment of the High Court<sup>1</sup> whereby the Second Appeal<sup>2</sup> filed by the appellant herein was dismissed.

2. The suit<sup>3</sup> filed by the respondents for specific performance of agreement to sell was decreed by the Trial Court<sup>4</sup> vide judgment

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<sup>1</sup> High Court of Judicature at Allahabad

<sup>2</sup> Second Appeal No. 96 of 2010

<sup>3</sup> O.S. No.327 of 1999

<sup>4</sup> Civil Judge (Senior Division), Allahabad

dated 09.04.2007. The order was upheld in First Appeal and the Second Appeal.

3. Learned counsel for the appellant submitted that the appellant purchased House Nos. 259 and 260 from the owners thereof vide registered sale deed dated 06.07.1999. Thereafter, the respondents filed a civil suit in July 1999, praying for specific performance of agreement to sell dated 24.09.1986 executed by the vendors-defendants No. 1 to 4, in favour of the respondents and challenging the sale deed dated 06.07.1999 executed in favour of the appellant. In terms of the agreement to sell allegedly executed by the vendors in favour of the respondents, three properties bearing House Nos. 258, 259 and 260, situated at Sadar Bazar, Allahabad were agreed to be sold to the respondents for a total sale consideration of ₹55,000/-. Earnest money of ₹5,000/- was paid. It was agreed that the sale deed will be registered after getting permission from the Ceiling Department. The vendee was to be informed by the vendors after getting permission from the Ceiling Department. Six months' time was granted for getting the sale deed registered on payment of balance sale consideration after information of permission is given. The contention is that no permission as such was required for getting the sale deed registered from the Ceiling Department and in fact the

vendors had never applied for that. As the vendee, namely, Mewa Lal (predecessor-in-interest of the respondents) had failed to get the sale deed registered in more than twelve years or take any action against the vendor to comply with the terms of agreement, the vendors sold House Nos. 259 and 260 to the appellant vide registered sale deed dated 06.07.1999. The appellant claimed he was tenant in the aforesaid two houses.

4. He further submitted that no permission was required from the Ceiling Department. None was taken by the vendor even at the time of getting the sale deed registered in favour of the appellant after the family division. To ensure title of the vendor, the appellant had even got the title verification of the property for the last twelve years through his counsel. Immediately after the sale deed for House Nos. 259 and 260 was registered in favour of the appellant, the successors-in-interest of the vendee- late Mewa Lal, filed a civil suit seeking enforcement of agreement to sell dated 24.09.1986 and challenging the sale deed dated 06.07.1999 regarding House Nos. 259 and 260 in favour of the appellant. He further submitted that draft sale deed was prepared with reference to House No. 258 in favour of Ramesh Kumar son of late Mewa Lal on 8.7.1999, however the same was not registered. He submitted that certificate of title verification of the property in dispute by the

counsel was wrongly rejected by the courts below on the plea taken by him regarding he being the *bona fide* purchaser of the property. Mr. Ashok Kumar Gupta, Advocate who had conducted the title verification, appeared as DW-3. In fact, House Nos. 259 and 260 were sold to the appellant because he was tenant in those houses. The respondents had not been able to prove their possession in those two houses. Finally after decreeing the suit, the Trial Court held that there would be relationship of landlord and tenant between the respondents and the appellant. He further submitted that there was huge delay in filing the suit for specific performance of the agreement to sell dated 24.09.1986 as the same was filed in July 1999, especially when no permission was required from the Ceiling Department and the predecessor-in-interest of the respondents, who was the vendee to agreement to sell had not taken any steps to enforce the agreement or press upon the vendor to take steps for getting the permission of the Ceiling Department, which in fact was not required. The order was upheld by the first appellate court. Even the High Court failed to appreciate the legal arguments raised by the appellant. The appeal was dismissed by a short order.

5. On the other hand, learned counsel for the respondents submitted that there is no error in the judgments and decrees passed

by the courts below. The agreement to sell dated 24.09.1986 executed by the vendors in favour of the predecessor-in-interest of the respondents was well within the knowledge of the appellant and despite that he got the sale deed registered with reference to two houses bearing Nos. 259 and 260. He has not been able to prove on record that there was proper verification of the title of the vendor and there is no error in the judgment and decree passed by the Trial Court, as upheld upto the High Court. There was no delay in filing of the suit as it was to be filed within six months from the date intimation regarding permission from Ceiling Department was given. The same was never conveyed. However, the counsel had no answer to the argument of the appellant that no such permission was required.

6. Heard learned counsel for the parties and perused the record.

7. The facts of the case, as are available on record, are that there was an agreement to sell dated 24.09.1986 executed in favour of Mewa Lal predecessor -in-interest of the respondents, who expired on 28.7.1998. One of the term in the agreement to sell provided that the sale deed will be registered within six months from the date the vendor informs the vendee about the permission taken from the Ceiling Department for the property in question. Total sale consideration

agreed was ₹56,000/-, out of which only ₹5,000/- were paid as earnest money. The claim sought to be made by the predecessor-in-interest of the respondents was that he was in possession of the three houses agreed to be sold to him. However, the Trail Court in its judgment found the claim to be not tenable. Rather, it found that House Nos. 259 and 260 were in possession of the appellant and his predecessor-in-interest for a long time. Further, the fact remains that for enforcement of the agreement to sell dated 24.09.1986, civil suit was filed in July 1999 after the sale deed pertaining to two houses bearing Nos. 259 and 260 was registered on 6.7.1999 leaving only House No. 258 which was in possession of the deceased-Mewa Lal. It was for a total sale consideration of ₹86,000/-.

8. The argument raised by learned counsel for the appellant that no permission as such was required from the Ceiling Department was not refuted by learned counsel for respondents No. 1 to 10. The fact also remains that in case such a permission was required, and vendors had not taken any steps within reasonable period after execution of agreement to sell on 24.09.1986, the vendee should have taken remedial measures and not waited for thirteen long years. Another undisputed fact remains that even at the time of getting the sale deed of House Nos. 259 and 260 registered in his favour, no such

permission was obtained by the Vendor, hence action for enforcement of agreement to sell dated 24.09.1986 should have been taken within limitation from that date instead of waiting indefinitely by paying a meagre amount of ₹5,000/- as earnest money out of total sale consideration of ₹55,000/-. The aforesaid inaction on the part of the vendee during his life time for a period of twelve years certainly goes against him considered in the light of the fact that the civil suit was filed in July, 1999 after the sale deed for two houses bearing Nos. 259 and 260, which were in possession of the appellant was registered. The vendors in their stand had even disputed readiness and willingness of the plaintiffs to get the sale deed registered. DW1-Prem Prakash in his examination-in-chief and cross-examination had categorically stated that he had never applied to seek permission from the Ceiling Department to sell the property. Even at that stage, the plaintiffs had not put any specific question to DW1 that permission, in fact, was required.

9. In view of our aforesaid discussion, the judgments and decrees passed by the courts below enforcing the agreement to sell dated 24.09.1986 in a civil suit filed in July, 1999 cannot be legally sustained. The same are, accordingly, set aside. The suit filed by the respondents is dismissed.

10. The appeal is accordingly disposed of.

.....J  
(VIKRAM NATH)

.....J  
(RAJESH BINDAL)

New Delhi  
October 04, 2023.