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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.337 OF 2022**

Sangitabai Vasant Navsar

...Appellant

Versus

Sitaram Dhondu Jadhav

...Respondent

- Mr. Jayendra Dadaji Khairnar, for the Appellant.

**CORAM : MADHAV J. JAMDAR, J.**

**DATE : 19<sup>th</sup> JUNE 2023**

**P.C. :**

1. Heard Mr. Khairnar, learned counsel appearing for the Appellant. The Appellant is original plaintiff. The Appellant is challenging the legality and validity of the judgment and decree dated 17<sup>th</sup> September 2016 passed by the learned Joint Civil Judge, Junior Division, Satana, Tal. Malegaon, Dist. Nashik in Reg. Civil Suit No.57 of 2014 as well as the Judgment and Decree dated 5<sup>th</sup> April 2021 passed by the learned District Judge - 2, Malegaon in Reg. Civil Appeal No.181 of 2016.

2. It is the contention of Mr. Khairnar, learned counsel appearing for the Appellant that the learned trial Court has decided the issue of limitation by framing the same as preliminary issue. He submitted

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that under Order XIV Rule 2 where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. He submitted that the issue which has been framed as preliminary issue is of limitation which is a mixed question of fact and law and therefore, the same cannot be determined as issue of law and therefore, the trial is vitiated.

3. To substantiate his contention, he relied on the judgment of the Supreme Court in the matter of *Ramesh V. Desai & Ors. Vs. Bipin Vadilal Mehta and Ors.*<sup>1</sup> He also relied on the judgment of the Supreme Court in the matter of *Hareendran and Ors. Vs. Sukumaran and Ors.*<sup>2</sup>

4. Mr. Khairnar, learned counsel appearing for the Appellant is right in contending that the limitation is mixed question of law and fact and therefore, the same cannot be decided as preliminary issue.

However, in the facts and circumstances of this case, the said

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1. 2006(6) SCC 639

2. 2018(14) SCC 187

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substantial question of law is not relevant.

5. Before considering the substantial question of law raised by Mr. Khairnar, learned counsel appearing for the Appellant, it is relevant to note the factual position. The factual position shows that the suit has been filed on 23<sup>rd</sup> April 2014 for the specific performance of the agreement dated 6<sup>th</sup> June 1994. The said agreement was executed in favour of the plaintiff by the mother of the defendant. Suit for specific performance was filed after about 20 years. Both the Courts have concurrently held that the suit is barred by limitation.

6. It is significant to note that in this case the learned Trial Court framed all the issues on the basis of pleadings of the parties. On the application of the defendants issue of limitation has been taken to be decided as preliminary issue by the learned Trial Court invoking power under Order XIV Rule 2 of the Civil Procedure Code, 1908. The Appellant i.e. original plaintiff accepted the order passed by the learned Trial Court and acted upon the same and laid the evidence. The plaintiff's witness is cross-examined at length and on the basis of the evidence on record both the Courts have concurrently found that the suit is barred by law of limitation. Therefore, the question raised by Mr. Khairnar, learned counsel that the learned Trial Court should

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not have framed the issue of limitation under Order XIV Rule 2 of CPC cannot be considered at this stage of the proceeding.

7. In this particular case, the issue of limitation is decided by giving complete opportunity to the plaintiff who has laid the evidence and the plaintiff has been extensively cross-examined. The plaintiff is raising the contention at the stage of Second Appeal after participating in the Trial. It is significant to note that perusal of the Judgment of the learned First Appellate Court shows that this contention is not even raised before the learned First Appellate Court. It is significant to note that before the learned First Appellate Court the contention raised is that the finding of the learned Trial Court that the suit is barred by limitation is not correct and various contentions raised to support the same. It is very clear that before the learned First Appellate Court contention is not raised that the issue of limitation should not have been decided as the preliminary issue.

8. The decision on which Mr. Khairnar has relied in the case of **Ramesh B. Desai & Ors.** (supra) is regarding Company Petition wherein Company Application was filed to dismiss the Company Petition as barred by law of limitation. The said decision will have no application to the present case. In the case of **Hareendran and Ors.**

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(supra), the objection to the said course of action was immediately taken and not at the stage of the Second Appeal. Therefore, said decision will also not apply to the present case.

9. As far as merits of the case on the point of limitation, both the Courts have relied on the condition regarding performance of contract in the suit agreement dated 6<sup>th</sup> June 1994. The said condition reads as under :-

“येणेप्रमाणे जमीन तुम्हास आज रोजी क्षेत्र लाखास १००,०००/—  
विक्रीचा सौदा निश्चित केला आहे इसाराचे चाळीस हजार ४०,०००/—  
घरी घेतले ते पावलेत बाकी रुपये साठ हजार ३१ मार्च १९९५ रोजी अगर  
आत घेउन खरेदीखत समाईक खर्चाने लिहून नोंदून देईल”.

(Empahsis added)

Thus, it is clear that the time for performance of the contract was fixed as on or before 31<sup>st</sup> March 1995.

10. As per Article 54 of the Limitation Act, three years' period is provided for specific performance of contract and the time from which the period begins to run is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that the performance is refused. In the present case, the agreement specifically fixes the date for performance as on or before

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31<sup>st</sup> March 1995. Therefore, both the Courts are right in observing that the suit filed after about 20 years on 23<sup>rd</sup> April 2014 for specific performance of agreement dated 6<sup>th</sup> June 1994 is barred by limitation.

**11.** It is also admitted by the plaintiff in the evidence that since last 15 to 20 years relations between the plaintiff and the defendants are strained and therefore, there was no question of execution of sale deed. This also clearly shows that assuming that no time is fixed for performance of the contract the plaintiff has notice at least prior to 15 years of filing the suit that the performance is refused. Thus, the suit filed seeking specific performance in 2014 of the agreement of the year 1994 is barred by limitation.

**12.** Therefore, there is no substance in the substantial question of law raised by the Appellant. Accordingly, Second Appeal is dismissed, however, with no order as to costs.

**[MADHAV J. JAMDAR, J.]**