

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 527 OF 2001
WITH
CIVIL APPLICATION NO. 7274 OF 2001
WITH
CIVIL APPLICATION NO. 10995 OF 2015

1. Bandu s/o. Maroti, Age 43 years,
Occu : Agriculture, R/o. Galegaon,
Taluka Biloli, Dist. Nanded.
2. Namdeo s/o. Maroti, Age 40 years,
Occu. Agriculture, R/o. Galegaon,
Taluka Biloli, Dist. Nanded.
3. Govind s/o. Maroti, Age 21 years,
Occu. Agriculture, R/o. Galegaon,
Taluka Biloli, Dist. Nanded.
4. Rukhminibai w/o. Maroti,
Age 58 years, Occu. Agriculture,
R/o. Galegaon, Taluka Biloli,
Dist. Nanded.

**....Appellants.
(Ori. Plaintiffs)**

Versus

1. Maroti s/o. Govindrao Naik,
Age 50 years, Occu. Agriculture,
R/o. Galegaon, Tq. Biloli,
Dist. Nanded.
2. Gangabai w/o. Mahajan,
Age 55 years, Occu. Household
and Agril., R/o. Galegaon,
Taluka Biloli, Dist. Nanded.

**....Respondents.
(Ori. Defendants)**

Mr. A.G. Godhamgaonkar, Advocate for appellants.

Mr. U.B. Bilolikar, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.
DATED : 4th September, 2015.

JUDGMENT :

1) The appeal is filed against judgment and order of Regular Civil Appeal No. 134/1994, which was pending in the Court of Additional District Judge, Biloli and also against judgment and decree of Regular Civil Suit No. 16/1993, which was pending in the Court of Civil Judge, Junior Division, Biloli. The suit filed by present appellants for relief of specific performance of contract is dismissed by the trial Court and the decision is confirmed by the first appellate Court. Both the sides are heard.

2) This Court (other Hon'ble Judge) admitted appeal on 29.4.2004. It appears that due to oversight, specific substantial questions of law were not formulated. The prayer clause of the appeal also shows that appellant has prayed for relief of only remanding the matter to the trial Court for recording more evidence. On the basis of the contentions made in the appeal memo and the grounds, it can be said that appellant now wants to show that he was living in joint family with Mahajan and the agreement in question was made by Mahajan for the benefit of joint Hindu family. The appellant also wants to show that the entries made in the revenue record are not in consonance with

the factual position. Thus, at the most, the substantial question of law can be, "as to whether the Courts below have failed to consider the material available on the record and that has laid to the wrong inference ?"

3) Plaintiff - Maroti and deceased Mahajan were real brothers *interse*. Defendant No. 1 is main contesting party and he is the owner of agricultural land bearing Survey No. 11/C (Old Survey No. 11, Hissa No. 4) admeasuring 3 Acres 36 Guntas situated at village Galegaon, District Biloli. It is the case of plaintiff - Maroti that his brother Rama had sold the suit land to defendant No. 1 in the year 1976 for consideration of Rs. 6,000/- under registered sale deed. It is contended that plaintiff and his brother Mahajan decided to purchase this property from defendant No. 1 as this property was initially belonging to their family. It is contended that they had negotiations with defendant No. 1 and then defendant No. 1 executed agreement on a stamp paper and agreed to sell the property for consideration of Rs. 16,000/-. It is contended that since the date of agreement, plaintiff - Maroti has been in possession of the suit property.

4) It is contended by the plaintiff that though he was elder brother, he got the agreement executed in the name of

Mahajan, but the property was to be purchased for the benefit of the joint family. It is contended that after the death of Mahajan, plaintiff was taking care of his family, but as widow of Mahajan has some misunderstanding against him, she is required to be made a defendant in the suit.

5) It is the case of plaintiff that some work of consolidation of land was to be done and due to that, sale deed could not be executed immediately. It is contended that on the basis of sale deed executed by Rama, the name of defendant No. 1 - Maroti Naik was entered in the revenue record of the land and plaintiff has grievance against that entry also as plaintiff has been in possession of the land. In the past, plaintiff had filed suit for injunction simplicitor, but it was withdrawn and then suit for specific performance of contract, the present suit, came to be filed. It is contended that as defendant No. 1 has avoided to execute the sale deed, such suit is required to be filed. It is contended that no time limit was fixed for performance of contract and so, the suit for respect of agreement dated 6.6.1977 is within limitation. Relief of specific performance was claimed and relief of injunction was also claimed.

6) Defendant No. 2 filed consent written statement.

7) Defendant No. 1 contested the suit by filing written statement. He contended that he became absolute owner when he purchased suit property from Rama, brother of plaintiff. Some contentions made with regard to changes made in revenue record due to implementation of consolidation scheme are not disputed by defendant No. 1, but he has denied that this was hurdle in execution of sale deed. He has contended that the suit is hopelessly barred by law of limitation.

8) It is the case of defendant No. 1 that plaintiff has no legal right to get the relief of specific performance of contract. He has contended that from the date of purchase made by him from Rama, he has been in possession and on the date of suit also, he was in possession and the possession was never handed over to Mahajan. It is contended that the document which was executed in favour of Mahajan was not real agreement of sale and it was nominal document. It is contended that no consideration was passed from plaintiff to defendant No. 1.

9) Issues were framed by the trial Court on the basis of aforesaid pleadings. Both the sides gave evidence. The trial Court has held that plaintiff has failed to prove that there was

agreement to sell the property to the plaintiff. The trial Court has held that the property was initially owned by Rama, brother of plaintiff and it was his absolute property and so, it is held that plaintiff has no *locus-standi*, no right to get the relief of specific performance of contract. It is held that if at all there was agreement, it was between Mahajan and defendant No. 1. It is also held that the suit is also not tenable in view of the provisions of Limitation Act.

10) The trial Court has considered circumstance that even after the sale transaction, which was between Rama and defendant No. 1, the name of Rama was continued in revenue record and he was shown as owner even at the time of implementation of Prevention of Fragmentation and Consolidation of Holdings Act. The trial Court has, however, held that when the record was corrected, the name of defendant No. 1 was then entered and he was in possession of the land. The 7/12 extract shows that on the date of suit, defendant No. 1 was in possession.

11) The execution of agreement of sale is not seriously disputed and this document at Exh. 50 shows that defendant No. 1 had agreed to sell the suit property to Mahajan for

consideration of Rs. 16,000/-. In the document, it was mentioned that possession was given to Mahajan and after getting necessary permission from Government Office, the sale deed was to be executed. The document was executed on 6.6.1977. There is no specific mention as to why the permission of revenue authority was necessary for execution of sale deed. This point is important as the Courts below have held that the suit is not within limitation. At Exh. 51, there is the receipt of amount issued by defendant No. 1 in favour of Mahajan and its contents are consistent with the contents of the agreement at Exh. 50.

12) When the agreement was made with Mahajan in 1977, plaintiff - Maroti gave notice to defendant No. 1 on 14.1.1993 to ask him to execute the sale deed. The suit came to be filed in the year 1993. It appears that a proceeding was started before revenue authority when effect was given to sale deed executed by Rama in favour of defendant No. 1 and the name of defendant No. 1 was entered in to revenue record of the suit land including in crop cultivation column. The revenue authority has decided the dispute in favour of defendant No. 1.

13) The learned counsel for defendant No. 1 submitted that there was no privity of contract between plaintiff and

defendant No. 1 and there is nothing on the record to prove that on the date of the agreement, plaintiff and Mahajan were living in joint family and for the benefit of joint family, the agreement was made. He submitted that when Rama, other brother of plaintiff had executed the sale deed in favour of defendant No. 1 by representing himself as absolute owner, there was no question of treating that in the past, the suit property was joint family property of plaintiff and his two brothers. He submitted that in the pleadings itself, plaintiff has admitted that he was elder to Mahajan. In that case, plaintiff could have got executed the agreement in his favour as Karta, if at all he was Karta, but that was not done. The learned counsel for defendant No. 1 then submitted that in view of the facts and circumstances of this case and provisions of section 15 of the Specific Relief Act and also the provisions of Contract Act, it needs to be presumed that plaintiff has no *locus-standi* to file the suit for specific performance of contract.

14) There is much force in the submissions made on law points and also on factual points by the learned counsel for respondent, original defendant No. 1. There is no record at all produced by the plaintiff to show that when the property was sold by Rama, it was belonging to joint family of Rama and his

two brothers. No reason is given as to why Mahajan did not file suit for specific performance during his lifetime. In view of the position of law mentioned in section 15 and provisions of Contract Act, relating to privity of contract, the consent written statement of defendant No. 2, the widow of Mahajan, is not sufficient for giving the relief of specific performance in favour of plaintiff. She is not examined as a witness and so, there are all possibilities against the plaintiff.

15) When the recording of evidence was started, plaintiff - Maroti was dead and so, his legal heirs gave evidence. The evidence of legal heirs and witnesses on the document cannot go beyond the contents of document and importance needs to be given to the contents of the document. Even if the contents of the documents are accepted as they are, they show that the agreement was between defendant No. 1 and Mahajan. Plaintiff - Maroti had no concern with this agreement. The witness of plaintiff namely Hanmant has specifically admitted that Rama was absolute owner of the property when he sold the property to defendant No. 1. Defendant No. 1 has examined himself to give evidence in rebuttal and his evidence is consistent with the pleadings. Nothing is brought on the record during his cross examination to create the probability in favour

of plaintiff. He has denied that he had handed over the possession of the property to Mahajan or to the plaintiff under the aforesaid agreement. One more circumstance is brought on the record by examining a witness by defendant i.e. in respect of registration of crime against the plaintiff when some untoward incident had taken place in the suit field and report was given by defendant No. 1.

16) From the agreement, it can be said that time was not fixed. In such a case, the provision of section 46 of the Contract Act need to be applied and it can be said that it was necessary to file suit for specific performance by Mahajan within reasonable time. There are circumstances like not entering the name of defendant No. 1 for many years on the basis of sale deed executed in his favour by Rama and it can be said that plaintiff tried to misuse that circumstance. Now the decision of the revenue authority is also supporting the case of defendant No. 1. This Court holds that plaintiff has no *locus-standi* to file such suit and no relief could have been given in favour of plaintiff. In view of these circumstances and the position of law, it was not necessary even to consider the law of limitation though this point also goes against the promisee.

17) The learned counsel for appellants placed reliance on the case reported as **AIR 2001 SUPREME COURT 965 [Santosh Hazari Vs. Purushottam Tiwari (Dead) by Lrs.]**. He submitted that the first appellate Court did not formulate the specific points for consideration and so, the matter needs to be remanded back. This submission is not at all acceptable. In the case cited supra, the Apex Court has discussed the provisions of sections 100 of Civil Procedure Code and the observations show that unless and until substantial question of law is involved, the appeal cannot be heard by the High Court. Thus, formulation of substantial question of law is condition precedent for hearing of appeal on merits, for admission of the appeal. There cannot be dispute over this proposition. Though the other Hon'ble Judge of this Court, who admitted appeal, has not formulated the substantial questions of law, the points raised by the learned counsel for appellants, which are quoted above are considered by this Court as substantial questions of law. The plaintiff has failed to prove the *locus-standi* for the suit and the plaintiff has also failed to prove the ground of limitation. Most of the points involved were questions of facts and both the Courts below have given concurrent findings against the plaintiff. On the point of *locus-standi*, law is well settled and there is specific provision. It is not possible to interfere in the decision given by the Courts

below. The points are answered against the appellants.

18) In the result, the appeal is dismissed. Civil Applications are disposed of.

[T.V. NALAWADE, J.]

SSC/