

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

SECOND APPEAL NO. 273 OF 2012
WITH
CIVIL APPLICATION NO. 5907 OF 2012

Late Pitambar Sona Chaudhari
(Through LRs)

1. Shri. Digambar Pitambar
Chaudhari and Ors.

....Appellants.

Versus

1. Late Shaligram Nanaji Patil
(Through LRs)
- 1A. Shri. Krishna Shaligram Patil
and Ors.

....Respondents.

Mr. M.M. Bhokarika, Advocate for appellants.

CORAM : T.V. NALAWADE, J.
DATED : 30th September, 2015.

ORDER :

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 167/1985 which was pending in the Court of Civil Judge, Junior Division, Jalgaon and also the judgment and order of Regular Civil Appeal No. 297/1992 which was pending in the Court of District Judge-2, Jalgaon. Heard the learned counsel for plaintiff.

2) The suit was filed by appellant for specific

performance of contract of sale of agricultural land bearing Gat No. 85, admeasuring 8 Acres 29 Guntas situated at village Awar, Tahsil Jalgaon, District Jalgaon. It is the case of plaintiff that under the written agreement dated 14.4.1969, defendant No. 1 and father of defendant Nos. 2 and 3 agreed to sell this property to him for consideration of Rs. 18,000/-. It is contended that on the date of transaction earnest money of Rs. 5,000/- was given and the remaining consideration of Rs. 13,000/- was to be given before Sub-Registrar at the time of execution of sale deed. It is contended that as it was *Inam* land, permission was required to be obtained for selling the land and there was no order of regrant and so, the sale deed was not executed immediately.

3) It is the case of plaintiff that from 1956-57, the land was in his possession as tenant of defendants and so, his possession was continued under the agreement. It is contended that under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 he has become deemed purchaser, but fraud was played against him and it was represented to him that the land was to be sold to him in any way under the agreement and so, he gave statement in favour of defendants before the Tenancy Court.

4) It is the case of plaintiff that the sale deed was not executed by the defendants, but they filed the proceeding for taking possession before the Tenancy Court in the year 1985 and then the plaintiff realized that he was deceived. It is contended that under the order of Tahsildar, Tenancy Court, defendants tried to take possession, but plaintiff did not hand over the possession to defendants. He prayed for specific relief of specific performance of the aforesaid contract and he also prayed for relief of injunction. During pendency of the proceeding, some portion of the property was sold to the defendant No. 5 and so, he was added in the suit and prayer was made to set aside the sale deed.

5) The defendant Nos. 1 and 2 filed written statement and they contested the matter. They contended that litigation had started between plaintiff and defendants from the year 1958 and in the tenancy proceeding, which was filed by plaintiff, plaintiff had refused to purchase the land and so, the proceeding was closed in the year 1963. It is contended that then in a proceeding filed under section 32 (p) of Tenancy Act, the plaintiff gave statement in favour of defendants that he wanted to surrender the land and so, the order was made by Tenancy Court in favour of defendants. It is contended that when Tenancy Court

gave notice for handing over the possession, plaintiff created dispute.

6) It is the case of defendants that when such litigation was pending, it is not possible that defendants had agreed to sell the land to plaintiff. It is contended that no such agreement was made and the so called agreement does not bear signature of defendant No. 1. It is contended that defendant No. 4 is also owner of the property, but contentions of the plaintiff do not show that defendant No. 4 was party to the agreement.

7) It is the case of defendants that to challenge the notice given by Tenancy Court in the year 1970 for handing over the possession, appeal was filed by appellant, but he failed in getting the order of setting aside. It is contended that plaintiff then filed Regular Civil Suit No. 502/1975 for declaration that he was still tenant, but ultimately he failed in that proceeding also. It is contended that after decision of the aforesaid matter, the possession was taken as per the order made by the Tenancy Court by the defendants.

8) In view of the aforesaid pleadings, issues were framed by the Trial Court. Both the sides gave evidence. The so

called document of agreement was produced as Exh. 70 and one witness was examined by plaintiff to prove this document.

9) The Courts below have held that plaintiff failed to prove that there was agreement between him and few defendants for selling the suit property to plaintiff. The Courts below have considered the litigation which was going on between the parties and the Courts below have held that the suit was time barred.

10) When the suit was filed for relief of specific performance and injunction, under the provisions of Specific Relief Act and when no relief was claimed in respect of so called rights of plaintiff under the Bombay Tenancy and Agricultural Lands Act, in the present proceeding, the learned counsel for appellants tried to submit that those rights are still there and they need to be considered and protected. Many reported cases were cited by making submission that as it was *Inam* property, after regrant, the plaintiff again becomes entitled to purchase the property under the provisions of Tenancy Act.

11) Copies of the proceedings which were filed before the Tenancy Court are on record. Submissions and rival

contentions show that plaintiff had refused to purchase the suit property under the provisions of Tenancy Act and then in a proceeding, he had given statement that he wanted to surrender the land. The orders made in those proceedings have become final. The aforesaid contentions of the plaintiff cannot be considered by Civil Court. In the suit filed for relief of specific performance, the plaintiff is required to prove that there was such agreement, he was ready and willing to perform his part of agreement, his suit is within limitation and he is entitled to get the discretionary relief of specific performance of contract.

12) Both the Courts below have come to the conclusion that plaintiff has failed to prove the execution of the aforesaid document, Exh. 70. The discussion shows that this document was never used by plaintiff in the proceedings which were prosecuted by him before Tenancy Court and also in Civil Court. Thus, the document which was allegedly executed in the year 1969 was first time used in the suit in the year 1985 and that too when plaintiff failed in those civil and tenancy proceedings. The witness examined by plaintiff for proving execution is his relative.

13) The provision of section 67 of Evidence Act shows

that burden was on the plaintiff to prove that the document was executed though by few defendants. In view of the definition of 'proved' given in section 3 of Evidence Act, the proof needs to be to the satisfaction of the Court though the execution can be proved in many ways. In view of the facts and circumstances of the present matter, the Courts below have held that execution is not proved. It is a finding on fact and so, there is no scope to interfere on this point in the finding given by the Courts below.

14) When the document was allegedly made in the year 1969, the suit came to be filed in the year 1985. From the aforesaid record, it can be said that the dispute started atleast from the year 1970 even if it is accepted that the plaintiff had given statement in favour of defendants before Tenancy Court in the past. Plaintiff took the matters up to the Supreme Court which were started in the year 1970. It can be said that plaintiff ought to have presumed that defendants were not ready to execute the sale deed. Article 54 of Limitation Act is applicable in such a case and it was necessary for plaintiff to file suit within three years from the date of refusal on the part of the defendants. The evidence given shows that even notices were published by plaintiff though record of notices was not produced before the Trial Court. Thus, many years prior to the date of the

suit, plaintiff had realized that defendants were not ready to execute the sale deed. In view of these circumstances, both the Courts below have held that the suit was not filed within limitation, within three years from the date of cause of action.

15) The learned counsel for plaintiff placed reliance on many reported cases which are as follows :-

(i) AIR 2008 SUPREME COURT 380 [Boodireddy Chandraiah and Ors. Vs. Arigela Laxmi and Anr.],

(ii) 2000 (1) Bom.C.R. 303 [Baburao Anant Dhage and Ors. Vs. Jagannath Gopala Karale],

(iii) 2004 (3) Bom.C.R. 350 [Bapu Parasu Kaikadi (Dead) by L.Rs. Vs. Babu (Dead) through L.Rs.],

(iv) 2006 (2) Bom.C.R. 117 [Dayandeo Ganpat Jadhav Vs. Madhav Vithal Bhaskar & Ors.],

(v) AIR 2001 SUPREME COURT 3994 [Balchandra Anantrao Rakvi and Ors. Vs. Ramchandra Tukaram (Dead) by L.Rs. and Anr.],

(vi) 2010 (4) Bom.C.R. 384 [Hafizabi Kasam Patel Vs. Sitaram Khushal Patil since deceased, by L.Rs. & Ors.],

(vii) 2006 (1) Bom.C.R. 17 [Dattu Gundu Parit Vs. Javahar Nanchand Shah],

(viii) 2005 (1) Bom.C.R. 533 [Shantabai Dada Koli Vs. Bhujgonda Adagonda Patil & Ors.],

(ix) 2003 (1) Bom.C.R. 3 [Keshav Ganesh Bedekar, since deceased through L.Rs. Vs. Gopinath Krishna Salunke, since deceased through L.Rs.],

(x) 1998 (2) Bom.C.R. 635 [Vishnu Sitaram Patil Vs. Gopal Avaba Asurlekar, since deceased by his heirs and ors.],

(xi) 1990 (0) BCI 47 [Dinkar Bhausaheb Deshmukh Vs. Mahadeo Tukaram Mohite, since deceased through L.Rs. & Ors.],

(xii) AIR 1979 BOMBAY 247 [Dattu Dnyanu Pdalkar Vs. Hari Natha Patil and Anr.],

(xiii) AIR 1973 BOMBAY 152 (V 60 C 40) [Laxmibai Kisanrao Tamhane and Ors. Vs. Smt. Trivenibai],

(xiv) AIR 1969 SUPREME COURT 439 [Musamia Imam Haider Bax Razvi Vs. Rabari Govindbhai Ratnabhai and Ors.].

In the case of **Boodireddy Chandraiah and Ors.** cited *supra*, the Apex Court has laid down that the question of interpretation of document gives rise to question of law if there is wrong application of principle of law in construing the document. There is no dispute over this proposition. When the execution itself is not proved, there was no question of construction of document. Point of construction of document is not at all involved in the present matter. All other matters are with regard to the effects of provisions of special legislation like Tenancy Act, Maharashtra Land Revenue Code, Transfer of Property Act etc. Considering

the jurisdiction of the Civil Court, it is not possible to consider the submissions made in respect of rights of the plaintiff under the Tenancy Act. This Court holds that there is nothing on the record on the basis of which substantial question of law can be formulated in the present matter.

16) In the result, appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/