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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2102 OF 2015

Shri Shivaji Gunda Aamne

Since deceased by Lrs.

1. Smt. Shalan Shivaji Aamne and others ... Petitioners

Vs.

Vinkar Utpadak Sahakari Mandal Ltd. ... Respondent

Mr. Tejpal S. Ingale, Advocate for Petitioners.

CORAM : R. G. KETKAR, J.

DATE : 19th AUGUST, 2015

P.C. :

. Heard Mr. Tejpal Ingale, learned Counsel for the petitioners at length.

2. By this Petition under Section 227 of the Constitution of India, petitioners hereinafter referred to as disputants have challenged the judgment and order dated 21/12/2010 passed by the learned Judge, Co-operative Court No. 1, Sangli in Co-op. Case No. 823 of 2000 as also the judgment and order dated 29/11/2014 passed by the learned Member, Maharashtra State Co-operative Appellate Court (Mumbai) Bench, Pune in Appeal No. 9 of 2011. By these orders, the Courts below dismissed the dispute filed by Shivaji Gunda Aamne, since deceased, under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'). The dispute was

instituted against the respondent for specific performance of contract by directing the respondent to execute registered sale deed in favour of the disputants.

3. In support of this Petition, Mr.Ingale strenuously contended that on 16/01/1968, respondent-Society executed document and agreed to sell plot admeasuring 48 feet east-west and 33 feet north-south roughly admeasuring 1 and ½ gunthas. The disputants were put in possession of the said plot in the year 1968 only. He submitted that respondent-Society did not lead any evidence though in the written statement, it came out with the case that on 14/11/1989, resolution was passed by the Society calling upon disputants to pay balance amount within one year and get the sale deed executed. The Society did not produce copy of that resolution on record. The Society did not produce any evidence to indicate that the agreement entered into by and between the disputants and the Society was cancelled. He submitted that Article 54 of the Limitation Act, 1963 lays down that for a suit specific performance of a contract, period of limitation prescribed is 3 years and time from which the period begins to run is the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. Mr.Ingale submitted that in the first place, no date was fixed for performance as also secondly, performance was not refused. He, therefore, submitted that the

Courts below committed error in dismissing the dispute on the ground that it is barred by limitation. In support of his submissions, Mr.Ingale relied upon following decisions.

- i) Ramchandra Krushnarao Pitale Vs. Scientific Co-operative Housing Society Ltd., 2010(1) Mh.L.J. as also
- ii) Agya Rani Dua Vs. Vidyagauri J.Tripathi, 2007(3) Mh.L.J. 480.

4. I have considered the submissions advanced by Mr.Ingale. I have also perused the material on record. It is not in dispute and rather it is evident from paragraph 2 of the dispute that disputants came with the case that on 16/01/1968, document was executed with the seal and stamp of the Society wherein Society agreed to sell plot in favour of the disputants. Perusal of the dispute indicates that disputants issued notice on 12/01/2000 to the Society calling upon it to execute the sale deed. In other words, no steps were taken by the disputants between 16/01/1968 and 12/01/2000 by calling upon the Society to execute the sale deed. Section 46 of the Indian Contract Act, 1872 reads thus :

46. Time for performance of promise, where no application is to be made and no time is specified: -
 Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.
 Explanation – The question “what is a reasonable time” is, in each particular case, a question of fact.”

5. Perusal of Section 46 shows that if no time for performance is specified, the engagement must be performed within

a reasonable time. The explanation thereto lays down that the question “ what is a reasonable time” in each particular case is a question of fact.

6. In view thereof, the moot question is whether in the present case, disputants have approached the Court within a reasonable time. Having regard to the fact that the disputants claim that Society agreed to sell the plot in the year 1968 and dispute is instituted only in the year 2000, in my opinion, by no stretch of imagination, period of 32 years can be said to be a reasonable time.

7. In the case of *Ankush Bali Sabale & others Vs. Waman Kesu Sabale & another* in **Second Appeal No. 232 of 1981** decided on 24/08/1987, (Coram: R.A.Jahagirdar, J), Bali Sabale – father of the defendants had executed an agreement of sale on 28/08/1950. The total consideration fixed was Rs.600/-. Bali expired on 12/12/1972 leaving behind appellants-defendants as his legal representatives. By notice dated 11/08/1976, respondents-plaintiffs called upon the defendants to execute the sale deed. As there was no compliance, they instituted suit for specific performance. In paragraph 6, it was observed that one cannot also imagine how after the silver jubilee of the agreement was over, the plaintiffs could come to the Court and ask for specific performance of the agreement of sale at a price which had been fixed at the time of the agreement. This was patently prejudicial to the interest of the defendants. It

need not even be alleged or proved. An agreement of this type must be performed within a reasonable time.

8. In the case of *Laxman Kesu Sabale Vs. Waman Kesu Sabale and others* **1995(1) ALL MR 83**, the suit was instituted on 23/10/1981. In that case, plaintiff No.1 had executed sale deed on 16/01/1951 in favour of Kesu Dhondi Sabale, the grandfather of defendants No. 2 to 6 & 8 for a consideration of Rs.700/- and handed over possession of the land along with the sale deed. On the same day, Kesu Dhondi Sabale agreed to reconvey the suit property with possession in favour of plaintiff No.1 for amount of Rs.700/- to be paid by plaintiff No.1. Kesu had two sons Maruti and Laxman. Maruti expired in the year 1961 leaving behind his widow defendant No.1 and his two sons defendants No.2 & 3. Kesu expired in 1963. By notice dated 11/08/1981, plaintiffs called upon defendants to reconvey the property as per the agreement dated 16/01/1951 at Exhibit 41. Since the defendants failed to comply the said notice, they instituted suit for specific performance of contract.

9. In paragraph 9, the only question that fell for consideration was whether the suit instituted by plaintiffs on 23/10/1981 was within limitation or not. After considering section 46 of the Indian Contract Act 1872, it was observed that plaintiff No.1 had to call upon the defendants to reconvey the property within a reasonable time. In deposition, plaintiff No.1 stated that

during the lifetime of Maruti, he had asked Maruti to reconvey the suit property. Maruti expired in 1961. It was held that the conduct of the plaintiffs in not insisting upon Maruti or his successor to reconvey the suit property as per Exhibit 41 for about 20 years showed that virtually plaintiff had abandoned the claim of reconveyance. Failure on the part of the plaintiffs to press upon the claim of reconveyance till the efflux of 20 years is definitely beyond limitation, unreasonable and therefore, the suit for specific performance, if allowed, the same is bound to result in great prejudice to the defendants. This was a fit case wherein decree of specific performance should be refused, more particularly, under section 20 of the Specific Reliefs Act, 1963.

10. In my opinion, the very fact that disputants have approached the Court in the year 2000 amounts to abandonment of their rights to claim relief of specific performance. The Courts below after appreciating the evidence on record, have concurrently held that the dispute instituted by disputants is barred by limitation as also disputants are not ready and willing to perform their part of contract. The very fact that agreement of sale was executed on 16/01/1968 and the dispute is instituted in the year 2000 is reflective of the fact that disputants are not ready and willing to perform their part of contract and virtually abandoned their claim for relief of specific performance. Reliance place by Mr.Ingale on the

decisions in the cases of **Ramchandra Krushnarao Pitale** (*supra*) & **Agya Rani Dua** (*supra*) does not advance the case of disputants as in those cases, the Court considered Article 54 of the Limitation Act.

11. In the light of the above discussion, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)