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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 360 OF 2013**

**WITH**

**CIVIL APPLICATION NO. 1821 OF 2012**

**WITH**

**CIVIL APPLICATION NO. 73 OF 2015**

Shri Krishna Laxman Karpe

(Since deceased through his legal heirs)

1A.Godabai Krishna Karpe and others

.. Appellants

Vs.

Bhikoba Parbati Sakpal

(Since deceased through his legal heirs)

1a) Shri Balkrushan Bhikoba Sakpal and others

.. Respondents

Mr.Sanjeev P.Kadam, Advocate for the Appellans.

Mr.Ajinkya Palav a/w Ms.Pratibha Shelke i/b Mr.P.J.Thorat,  
Advocates for Respondents.

**CORAM : R. G. KETKAR, J.**

**DATE : 13<sup>th</sup> APRIL, 2015**

**P.C. :**

. Heard Mr.Sanjeev P.Kadam, learned Counsel for the appellants and Mr.Ajinkya Palav, learned Counsel for the respondents No. 1a to 1e at length.

2. By this appeal under section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the original defendants have challenged the judgment and decree dated 14/06/2011 passed by the learned District Judge-3, Satara in Regular Civil Appeal No. 79 of 2008. By that order, the learned District Judge allowed the appeal preferred by the original plaintiff – Bhikoba Parbati Sapkal, since deceased, and quashed and set aside the judgment and decree dated

04/07/2005 passed by the learned 2<sup>nd</sup> Joint Civil Judge, Junior Division, Wai in Regular Civil Suit No. 90 of 2001. The learned District Judge decreed the suit and directed the original defendant Krishna Laxman Karpe, since deceased, to execute registered sale deed of the suit property by accepting remaining consideration Rs.25,000/- within 3 months from the date of the decree. If the defendant failed to execute the registered sale deed within the aforesaid period, the plaintiff- Bhikoba has right to deposit the amount of Rs.25,000/- in the Court and get the registered sale deed executed through the Court.

3. In support of this appeal, Mr.Kadam submitted that on 20/05/1987, defendant – Krishna executed agreement of sale in favour of plaintiff - Bhikoba. The defendant was to apply for permission and after obtaining the permission, was to intimate the plaintiff about obtaining such permission. The defendant was to execute the registered sale deed within one month from the receipt of the permission so obtained.

4. Mr.Kadam submitted that Bhikoba instituted suit for specific performance of contract on 25/06/1997. Pending that suit, he instituted Regular Civil Suit No. 97 of 1998. In paragraph 5 of that suit, plaintiff – Bhikoba alleged that he was put in possession in the year 1989 and since then, he is personally cultivating the suit land. Mr.Kadam submitted that thus, plaintiff was aware of

obtaining permission by the defendant in the year 1989 and in pursuance thereof, he was put in possession. However, suit is instituted in the year 1997. The learned trial Judge, therefore, rightly dismissed the suit on the ground that it is barred by limitation. However, the learned District Judge committed error in holding that suit is not barred by limitation. He, therefore, submitted that appeal requires consideration as it involves substantial question of law.

5. On the other hand, Mr.Palav supported the impugned order. He submitted that the learned trial Judge decided all the issues in favour of the plaintiff. However, he dismissed the suit only on the ground that it is barred by limitation. He invited my attention to paragraphs 12 & 13 of the District Court's judgment and submitted that the learned District Judge held that cause of action to institute the suit accrued on 23/05/1997 and the suit filed on 25/06/1997 was well within limitation.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the trial Court's judgment shows that the learned trial Court dismissed the suit only on the ground that suit is barred by limitation. As against this, the learned District Judge observed in paragraph 12 that as per the terms and conditions of agreement of sale, it was the defendant to intimate in writing to the

plaintiff about permission granted by the Competent Authority. In the Written Statement, the defendant nowhere pleaded that he intimated in writing to the plaintiff about obtaining such permission. The learned District Judge noted that the Sub-Divisional Officer granted permission to the defendant on 06/02/1989. It was further observed that there is no evidence on record to show that defendant gave intimation in writing to the plaintiff.

7. In paragraph 13, the learned District Judge referred to Article 54 of the Limitation Act which prescribes period of 3 years for filing suit for specific performance. As per that Article, time begins to run from the date fixed for specific performance of contract and if, no such date is fixed when the plaintiff has notice that performance is refused. The learned District Judge noted that from the terms and conditions of the agreement between the parties, no date was fixed for performance of contract. The plaintiff issued notice to defendant on 14/05/1997 calling upon him to execute the sale deed. On 23/05/1997, defendant by sending reply, denied the said transaction. The learned District Judge, therefore, held that cause of action for filing the suit for specific performance accrued to the plaintiff on 23/05/1997 and the suit instituted by him on 25/06/1997 was well within limitation. I, therefore, do not find that the learned District Judge committed any error in arriving at that conclusion.

8. Mr.Kadam submitted that in paragraph 5 of plaint of Regular Civil Suit No. 97 of 1998, plaintiff – Bhikoba contended that he was put in possession in the year 1989 after obtaining permission from the Competent Authority. Fair reading of paragraph 5 of the plaint does not show that plaintiff- Bhikoba asserted about obtaining permission in the year 1989 and thereafter put him in possession. That apart, during the course of hearing, Mr.Kadam fairly stated that plaintiff has deposited the balance consideration and the sale deed was also executed. In the light of above discussion, in my opinion, no question of law, much less any substantial question of law arises in this appeal. Hence, appeal fails and the same is dismissed.

9. In view of dismissal of the appeal, Civil Application No.1821 of 2012 for stay and Civil Application No. 73 of 2015 for injunction do not survive and the same are disposed of accordingly.

**(R. G. KETKAR, J.)**