

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)**

SECOND APPEAL NO. 119 of 2014

(Smt. Aruna Dattatraya Itai vrs. Smt. Sushilabai Basappa
Chanshetti and ors)

Mr. Nitin P. Dalvi, Advocate for appellant
Shri Anand S. Kulkarni, Advocate, for respondents.

**CORAM : R.K.Deshpande, J.
DATED : 09th JUNE, 2015.**

P.C.

The trial Court dismissed the suit for specific performance of the contract on the ground that it is barred by limitation. The appellate Court has maintained the decision of the trial Court and the appeal has been dismissed. Hence, the original plaintiff is before this Court in second appeal.

The agreement is dated 28.10.1987. The plaintiff issued the first notice on 28.01.1998, calling upon the defendant to execute the sale deed within a period of 7 days. The second notice was issued on 02.11.1998. Both the notices have not been replied to by the defendant-owner of the property. On 18.09.2001, the defendant sold the suit property in favour of other defendants. The plaintiff, therefore, filed the Special Civil Suit on 08.11.2001 seeking specific performance of the agreement dated 28.10.1987 and also for a declaration that the sale deed dated 18.09.2001 in favour of the other defendants is not binding upon her. This factual position has not been disputed.

The contention of the learned counsel for the

appellant is that the trial Court has relied upon the notice dated 28.01.1998 to hold that the period of limitation in terms of Article 54 of the Limitation Act starts running from that date and therefore, it has been held that the suit filed on 08.11.2001 was barred by limitation, as it was beyond the period of three years. He submits that the limitation should have been calculated from the second notice dated 02.11.1998, which calls upon the defendant to execute the sale deed within a period of 7 days. Therefore, after expiry of 7 days, if the limitation is counted, the suit filed on 08.11.2001 would be within limitation.

Merely because the property was sold by the defendant-owner to the other defendants would not furnish a cause of action for filing a suit for specific performance of contract based on the agreement dated 28.10.1987. May be that the agreement contains a clause regarding execution of sale deed upon obtaining permission from the Urban Land Ceiling Authorities, but that would not have any material bearing on the controversy involved in the present case. In terms of Article 54 of the Limitation Act, the limitation would start running from the date of refusal to perform the contract pursuant to the first notice dated 28.01.1998 and undisputedly, the suit filed on 08.11.2001 would be beyond the period of limitation. Unless the appellant removes this hurdle in the way, the question of challenging the sale deed dated 18.09.2001 would be of no consequence. Though the appellant-plaintiff was put in possession of the property on 09.03.1989, it was not a

case covered by Section 53-A of the Transfer of Property Act. No substantial question of law arises. The second appeal is dismissed.

(R.K.DESHPANDE, J.)

Rvjalit