

Thursday, 15th January, 2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.218 OF 1992

1). Namdev Genu Kadam and Ors.

.....Appellants
(Orig. Plaintiffs)

: V/S :

Shankar Yeshwantrao Babar & Ors.

.....Respondents
(Orig. Defendants)

* * * * *

Mr. Anilkumar Patil, Advocate for the appellants.

Respondent and Advocate absent.

Coram :- Smt. R.P. SondurBaldota, J.

15th January, 2015.

P.C. :-

1). The appellant is the original plaintiff, who had on 30th November, 1978 filed Regular Civil Suit No. 187 of 1978 for re-conveyance of the suit property pursuant to the agreement dated 13th April, 1956 between the father of the appellants and the father of the respondents. According to the appellants, as per the agreement the respondents and their father were to re-convey the land on payment of Rs.500/- in the Indian month of Chaitra in any year. The appellants had approached the respondents and their father on several occasions for re-

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conveyance of the property and on each occasion, they had merely promised to reconvey the property, but did not actually reconvey the same.

2). The respondents contested the suit by denying the agreement. They also claimed that the suit was barred by the law of limitation and that the appellants were not ready and willing to perform their part of the contract.

3). By its judgment and order dated 24th July, 1997 the trial Court decreed the suit and directed the respondents to deliver possession of the suit land to the appellants. Being aggrieved by the judgment and decree, the respondents preferred Regular Civil Appeal No. 414 of 1987 to the District Court. By the order dated 3rd October, 1999 the District Court allowed the appeal and dismissed the suit.

4). The lower appellate Court was of the opinion that, the appellants have failed to prove the contract of reconveyance and also that the suit was barred by the law of limitation. It opined that, admittedly contract of reconveyance is an independent contract between the parties which was required to be sufficiently proved. The contract of reconveyance was between the father of the parties to the proceedings. The witness of the appellants in his deposition stated that, the appellant's father was the owner of the suit land, i.e. the land at Survey no.201/1. At the relevant time, he was in need of money. Therefore, on

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13th April, 1957 he executed sale-deed of the suit land in favour of the father of the respondents for the consideration of Rs.500/-. On the same day, the father of the respondents executed document of reconveyance of the suit land in favour of the father of the appellants on return of the amount of Rs.500/-. Father of the appellants died in the year 1974. Father of the respondents had died before that. As such, both were unavailable for proving the document. The witness stated that, he was present at the time of execution of the agreement. It was written by the Bond writer, Shankar Barge and attested by Shankar Kadam and Dnyanu Chavan. But, the appellants did not examine the scribe and the witnesses, who were the material witnesses in the facts of the case. The appellants also did not offer any explanation for not examining the material witnesses. Father of the appellants died 18 years after execution of the document of reconveyance. The suit was filed 13 years thereafter. Therefore, it was necessary for the appellants to establish the contract of reconveyance by leading appropriate evidence and it was not sufficient to merely produce the document. The Appellate Court therefore rightly held that, the appellants had failed to establish the agreement of reconveyance.

5). The Appeal Court also noted that, in the plaint, the appellants did not state anywhere about the efforts taken by them for performance of their part of the contract. The witness of the appellant,

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had in his cross-examination, admitted that he had complained about refusal to re-convey the property by the respondent and his father to the Consolidation Authority in the year 1970 and also later in the year 1978. Undisputedly, the suit is governed by Article-54 of the Limitation Act, which requires the suit to be filed within a period of 3 years from the date of knowledge of refusal to comply with the agreement. In view of admission of the appellant that, he had complained to the Consolidation Authority in the year 1970 that the respondents and their father were not ready to handover the land to the appellants, the knowledge of refusal was prior to the year 1970. Consequently, the suit filed by the appellants in the year 1978 was hopelessly barred by the law of limitation. The assertion of the trial Court that, at the time of the complaint made by the appellant to the Consolidation Officer, the respondents were not present, is not correct. What is required to be noted, is the knowledge of the appellant as regards the refusal to perform the agreement and not knowledge of the complaint by the respondents. The Appeal Court noted that, the appellant had first complained about it in the year 1968-69. Therefore, the period of limitation started running from the year 1970 and the suit as filed was not within the period of limitation. This view taken by the lower appellate Court being a correct view, the decision by it of allowing the appeal and setting aside the order of the trial Court is the correct order.

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6). The appeal was admitted on 14th July, 1992 on the grounds stated at para-1 of the memo of appeal as substantial questions of law. Para-1 contains all the grounds of objection to the decision. They are eight in number. All the grounds, except for ground no.(e) which is about bar of limitation, are the objections either to the findings of fact or on appreciation of evidence by the appellate Court. It is already seen above that, the suit is hopelessly barred by the law of limitation. Hence, the Second Appeal is dismissed.

(SMT. R.P. SONDURBALDOTA, J)