

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 295 OF 1992

Gangabai G. Patil and anr.
: V/S :
S.G. Waghmare and Ors.

.....Appellants

.....Respondents

* * * * *

Mr. Mandar Limaye, Advocate for the appellants.

Ms. Teja Katdare, Advocate for the respondents.

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

9th January, 2015.

P.C. :-

1). The appellants are the original plaintiffs, who had filed suit for specific performance of the agreement dated 25th April, 1972 executed by them with one, Dadu Keshav Kini for sale of the agricultural land at Survey no.314, H.1-B/2 situate at Alibaug. Admittedly, Dadu was an agricultural tenant in respect of the land and had become owner thereof in view of the provisions of, The Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the Act”). Consequently, for the sale of the land to the appellants to take effect, previous sanction

of the Collector was mandatory. Section 43(2) of the Act, provides that any transfer of land without prior sanction of the Collector, shall be invalid.

2). The suit filed by the appellants was in the year 1984 i.e. about 5 years after the death of Dadu. The respondents had taken a defence that, the real transaction between Dadu and the appellants was of loan and not of sale of the suit property. The trial Court rejected the defence and held that the transaction was infact of the sale of the suit property. It further held that, the appellants were ready and willing to perform their part of the contract. Despite these findings, the trial Court denied the relief of specific performance solely for the reason that sanction of the Collector under Section 43(2) of the Act had not been obtained. It granted alternate relief of refund of the amount paid by the appellants to Dadu by directing the respondents to pay Rs.3,000/- alongwith interest thereon at the rate of 9% p.a. from the date of the agreement till realisation of the amount.

3). Being aggrieved by the judgment and decree of the trial Court, both sides challenged the same by preferring appeals before the District Court. By the order impugned herein, the appeal preferred by the appellants was dismissed, whereas, the appeal preferred by the respondents allowed resulting into denial of even the alternate relief to

the appellants. The lower appellate Court held that, the appellants had failed to establish that they were ready and willing to perform their part of the contract. Further, the agreement for sale was invalid in view of Section 43 of the Act and that the suit was barred by the law of limitation.

4). The appellants then preferred the Second Appeal herein, which was admitted for the following questions as the substantial questions of law to be decided in the appeal.

“(b) Whether the Agreement Ex.33 can be said to be invalid in view of the provisions of Section 43 of the BT and AL Act ?

(c)Whether the suit is within limitation ?

(h)Whether the lower Courts were right in refusing specific performance even after holding that the real nature of transaction of document Ex.33 is nothing but an Agreement of sale ?”

5). Mr. Limaye, the learned Advocate appearing for the appellants, submits that Section 43 of the Act, can be applicable only to the transaction of sale and not to agreement to sell the property. Therefore, the Courts below ought to have granted the relief of specific performance of the agreement of sale on condition that the appellants shall obtain permission under Section 43 of the Act. In the alternative, he submits that denial of refund of purchase price paid by the appellants to Dadu

cannot be justified.

6). Section 43 of the Act, reads as follows :-

“43. Restriction on transfers of land purchased or sold under this Act.-

(1) No land purchased by a tenant under sections 32, 32F, [32I, 32O, [33C or 43ID]] or sold to any person under section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector, such sanction shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government :

. Provided that, no [such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, for raising a loan for effecting of any improvement of such land.

(2) Any transfer of land in contravention of sub-section (1) shall be invalid.]”

. The plain reading of Section 43, makes it clear that the mandatory requirement of sanction of the Collector under it, would affect only the transaction of sale and not an agreement to sell. Therefore, the question of law framed at Ground (b) quoted above, must be answered in the negative.

7). In the circumstances, when the appellants approached the Court for specific performance of the agreement to sell i.e. completion of the transaction of sale, all that they had to do was to plead specifically and thereafter establish by sufficient evidence that, they had taken the steps necessary to obtain the sanction. The only material on record as

regards the sanction is, the bald statement by witness of the plaintiffs that he had repeatedly asked Dadu to obtain necessary permission from the Collector. In the cross-examination, the witness of the appellant stated that, it was infact agreed between the appellants and Dadu that the time for execution of the sale-deed was agreed to be of one year. The time limit was not included in the agreement of sale. If that was the understanding between the parties, it was necessary for the appellants, to establish by proper evidence, that some steps had been taken by them towards obtaining sanction of the Collector under Section 43 of the Act. In the absence of specific evidence in that regard, a vague statement in the examination-in-chief of the witness of the appellants that he had repeatedly asked Dadu to obtain the sanction is not sufficient. It is to be noted that, grant of relief of specific performance is a discretionary relief and unless it is shown that, the discretion exercised is perverse and absolutely not supported by the material on record, this Court in its jurisdiction of Second Appeal under Section 100 Civil Procedure Code cannot interfere with the same.

8). As regards denial of the return of consideration paid by the appellants to Dadu, the Appellate Court, observes at para-15 that the appellants had been put in possession of the suit land by Dadu immediately after execution of the agreement of sale and that the

appellants have been taking produce from the land for 14 years. Therefore, there was no question of granting damages or interest to the appellants. This view taken by the appellate Court is also completely justified. Therefore, the question of law framed at Ground (b) above, is answered in the affirmative.

9). As regards the bar of limitation, the Appellate Court has held that since it is the appellant's own case that the transaction of sale was to be completed within one year from the date of agreement of sale, in view of Article 54 of the Limitation Act, the suit ought to have been filed within a period of 3 years from completion of one year after the agreement. Article 54 of the Limitation Act, which governs the suit for specific performance prescribes period of limitation of three years from the date fixed for performance of the contract. The suit for specific performance filed by the appellants was 12 years after the agreement and 5 years after the death of the vendor i.e. Dadu. In these facts of the case, it must be held that, even the question of limitation was correctly decided. Hence, the question of law at Ground (c) is answered in the negative.

10). For the reasons above, the Second Appeal is dismissed.