

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.644 of 2012
WITH
CIVIL APPLICATION NO.1161 OF 2015

Laxman Rambhau Gavhane & Ors.

..Appellants.

V/s.

Pradeep Dnyaneshwar Todkar & Ors.

..Respondents.

Mr.S.M.Gorwadkar, Senior Advocate for the appellants.

Mr.G.S.Godbole i/b. Drupad S. Patil for respondent Nos.1 to 9.

CORAM : R.K.DESHPANDE, J.

DATED : 5TH AUGUST, 2015

P.C. :-

1. The trial Court rejected the plaint under Order 7 Rule 11 of the Civil Procedure Code by an order dated 12th March, 2010 passed below Exhibit-42 in Special Civil Suit No.1625/2008. A finding is recorded that the suit is barred by law of limitation under Article 54 of the Limitation Act on the basis of the statement made in the plaint. This decision of the trial Court is reversed by the lower Appellate Court on 17th January, 2012 in Civil Appeal No.324/2010. The lower Appellate Court has remanded the matter back to the trial Court holding that the question of limitation is a mixed question law and facts which can be decided by framing the issue.

2. Mr.Gorwadkar, learned Senior Advocate counsel appearing for the appellants/defendants invited my attention to the

averments in the plaint more particularly in paragraph 4, wherein it is stated that the sale deed was required to be executed within a period of two years from the agreement to sale dated 25th March, 1975. He submits that the suit was filed in the month of August, 2008 which was clearly barred by the law of limitation.

3. It is not in dispute that the plaintiffs are in possession of the suit property on the basis of agreement dated 25th March, 1975. The relief claimed in the suit are two-fold - (1) the defendants be ordered to execute the sale deed in favour of the plaintiffs and decree of specific performance may be drawn; and (2) the defendants, their servants, agents be restrained by an order of perpetual injunction from alienating the suit property to third party in any manner. Even if the claim of the plaintiffs for specific performance is presumed to be barred by law of limitation, the relief of grant of injunction survives on the basis of undisputed possession of the plaintiffs over the suit property. Be that as it may, the lower Appellate Court has recorded a finding that the question of limitation is a question of law and facts which can be decided by framing a issue. No substantial question question of law arises. The appeal is dismissed.

4. In view of the dismissal of the appeal, the Civil Application does not survive and is also disposed of.

JUDGE