

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 792 OF 2007

Laxman Ramachandra Salavi & Ors. ... Appellants

V/s.

DinkarYashwant Dhenge & Anr. ... Respondent

.....
Mr. A. M. Kulkarni, Advocate for the Appellants.
Mr. Amit B. Borkar, Advocate for the Respondents.
.....

CORAM : R. K. DESHPANDE, J.

DATED : AUGUST 12, 2015.

P.C.

The trial Court passed a decree in Regular Civil Suit No. 208 of 1988 on 8th February, 1996 for specific performance of contract. The said decision is reversed in the Regular Civil Appeal No. 154 of 1996 by the learned District Judge and allowed the Appeal on 18th June, 2004, setting aside the judgment and decree passed by the trial Court and directing refund of earnest money of Rs.6,000/- paid by the plaintiff to the defendant along with interest @ 9% per annum. The original plaintiff is before this Court in Second Appeal.

2 The agreement to sale the suit property was entered between the parties on 16th February, 1979. The sale - deed was required to be executed within a period of three months thereafter i.e. up to 15th May, 1979, the appellant - plaintiff issued notice on 15th April, 1987, calling upon the defendant to execute the sale - deed and this notice was replied to by the defendant on 7th May, 1987, stating that the appellant has failed to get the sale - deed executed within a period of three months from the date of the agreement.

3 The trial Court recorded the findings in favour of the plaintiff but the Lower Appellate Court has reversed those findings. The Lower Appellate Court has held that the suit was barred by limitation and that the appellant - plaintiff has failed to establish his readiness and willingness to perform his part of the contract. The agreement was entered into for consideration of Rs.9,500/- out of which it is established that an amount of Rs.4,000/- was paid by way of earnest money. Thereafter, an amount of Rs.1,000/- each was paid on 22nd March, 1979 and 16th April, 1979. The stand of the appellant was that the sale - deed was required to be executed after obtaining permission of Urban Land Ceiling Authority, if required. The defendant in fact applied

for such permission on 15th May, 1979 and was informed that no such permission was required. From 1979 to 1988, the appellant - plaintiff has not taken any steps. The suit was filed on 6th January, 1988. In this background, leaving apart all the findings recorded by the Appellant Court, which is a possible view of the matter on facts, the plaintiff was not entitled to discretionary relief, as the claim was made after nine years. No substantial question of law arises. Second Appeal is dismissed.

4 In view of the order passed in Second Appeal, pending Civil Application does not survive and disposed of accordingly.

JUDGE