

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CIVIL APPLICATION NO.831 OF 2015

IN

SECOND APPEAL NO.235 OF 2012

(Smt. C. Padmawati Naidu and others ..vs.. Friends Co-operative Housing Society Limited, Nagpur
and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.G. Bhangde, Senior Advocate assisted by Shri V.V. Bhangde,
Advocate for the appellants,
Shri S.M. Patrikar, Advocate for the respondent No.1,
Shri S.M. Bhagde, AGP for the respondent No.3.

CORAM : Z.A. HAQ, J.

DATED : 29-09-2015

For the reasons stated in the application, the appellants are permitted to amend the memorandum of second appeal.

Civil Application is allowed.

Second Appeal No.235 of 2012.

Heard Shri M.G. Bhangde, learned Senior Advocate assisted by Shri V.V. Bhangde, Advocate for the appellants, Shri S.M. Patrikar, learned Advocate for the respondent No.1 and Shri S.M. Bhagde, learned Assistant Government Pleader for the respondent No.3.

The following substantial questions of law arise for consideration :

(i) Whether the civil suit filed by the respondent No.1-plaintiff was maintainable having been filed after three years of cancellation of the agreement dated

30-01-1975 ? (the appellants had given the notice dated 12-07-1982 (Exhibit No.82) terminating the agreement dated 30-01-1975 and the civil suit was filed on 30-12-1985)

(ii) Whether the civil suit was maintainable having been filed beyond the period prescribed by Article 54 of the Limitation Act, 1963 ?

(iii) The respondent No.1-plaintiff having not sought decree for declaration that the cancellation of agreement dated 30-01-1975 was illegal, whether the civil suit praying for decree for specific performance of the agreement was maintainable ?

(Please refer to judgment given in the case of *I.S. Sikandar (dead) by LRs. vs. K. Subramani and others* reported in (2013) 15 SCC 27.

Admit.

Shri S.M. Partikar, learned Advocate waives notice for the respondent No.1.

Shri S.M. Bhagde, learned Assistant Government Pleader waives notice for the respondent No.3.

Civil Application No.830 of 2015.

Heard.

Considering the facts of the case and admitted position that the sale-deed has not been executed pursuant to the impugned judgment and decree and the

appellants are in possession of the suit property, there shall be stay to the effect, operation and execution of the impugned decree, during the pendency of the second appeal. The appellants shall not create any third party right or interest in the suit property and shall not part with the possession of the suit property.

Civil Application is allowed in the above terms.

JUDGE

pma