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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.44 OF 2016

Shantilal Baktwarmal Jain
(Since deceased, through LR's)

APPELLANTS

1. Vinodkumar Shantilal Jain,
Age – 62 years, Occ – Agriculture
2. Pramodkumar Shantilal Jain,
Age – 47 years, Occ – Household
3. Saroj Chandanmal Redasani,
Age – 49 years, Occ – Household

Appellants No.1 and 2
R/o Kakasheth Chowk, Bhadgaon,
District – Jalgaon,
No.3 R/o Akashwani Chowk,
Near Venkatesh Temple,
Jalgaon

VERSUS

1. Mana Samadhan Koli
(Since deceased through LR's)

RESPONDENTS

1. Dhana Mana Koli
(Since deceased through LR's)
 - 1A. Anusayabai Dhana Koli
Age – 65 years, Occ – Household
R/o Koliwada, Bhadgaon,
District – Jalgaon
 - 1B. Rajendra Dhana Koli
Age – 50 years, Occ – Labour
R/o Yashwant Nagar, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon
 - 1C. Pradeep Dhana Koli
Age – 38 years, Occ – Labour

R/o Yashwant Nagar, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon

- 1D. Sharad Dhana Koli,
Age – 35 years, Occ – Labour
R/o Yashwant Nagar, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon
- 1E. Kailash Dhana Koli,
Age – 30 years, Occ – Labour
R/o Yashwant Nagar, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon
- 1F. Mangala Bhivsan Koli,
Age – 53 years, Occ – Household
R/o C/o Shri Bhivsan Chindha Koli
At Ujwal Colony, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon
- 1G. Shobhabai Dnyaneshwar
(Suryawanshi) Koli,
Age – 65 years, Occ – Household
C/o Dnyaneshwar Hari Suryawanshi (Koli)
R/o Alibagh Police Head Quarter,
Raigad, Taluka – Raigad
District – Alibag

2. Laxman Mana Koli
(Since deceased through LRs)

- 2A. Indubai Laxman Koli
Age – 73 years,
- 2B. Vijay Laxman Koli
Age – 50 years, Occ – Nil

Both r/o Koliwada,
Marathi School Bhadgaon,
District – Jalgaon

- 2C. Deepak Laxman Koli
Age – 44 years, Occ – Police Constable
B. No.1022, Shani Peth Police Station,
Jalgaon

- 2D. Lalita Vasant Borse,
Age – 45 years,
R/o c/o Mulher, Taluka – Satana,
District – Nashik
- 2E. Seema Dipak Thakare,
Age – 40 years,
R/o C/o Deepak Arjun Thakre,
R/o Paras, Taluka – Balapur
District – Akola
3. Maschinder Mana Koli
Age – 69 years,
R/o Near Marathi School,
Koliwada, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon
4. Bhagwan Mana Koli
(Sicne deceased through LRs)
- 4A. Mangala Bhagwan Koli
Age – 50 years,
- 4B. Sanjay Bhagwan Koli
Age – 30 years,
- 4C. Sunil Bhagwan Koli
Age – 24 years,
- 4D. Ajay Bhagwan Koli
(Since deceased by LR Mother
respondent No.4A)
- Nos.4A to 4D r/o at Near Marathi School,
Koliwada, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon
5. Santosh Mana Koli (Wagh)
Age – 48 years,
R/o Turbe, Belapur Road,
Police Line, Building No.1
Room No.1,
District - Thane

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Mr. Dhananjay B. Thoke, Advocate for the appellants
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 23rd NOVEMBER, 2016

ORAL JUDGMENT :

1. Heard learned advocate for the appellants finally.
2. Learned advocate for the appellants vehemently contends that the primary reason for which the suit and the appeal have been dismissed, is that the suit has been held to be outside the period of limitation. He submits that while in 1972, the agreement had been reduced into writing and the plaintiff had been put in possession of the suit land till 1978, when his dispossession from the land has taken place, cause of action had arisen and in the circumstances, having regard to Article 54 of the Limitation Act, which speaks of running of period of limitation from the date mentioned in the agreement for performance or if no such date is mentioned from the date of notice of refusal, the suit ought to have been considered to be within the period of limitation. He wants to place construction that the plaintiff allegedly had been dispossessed in 1978, period of seeking specific performance started running since 1978 and the suit

having been filed in 1980, the same was within limitation. He further submits that apart from aforesaid, evidence sufficiently bears out that the document in fact had been executed and there is no proper evidence coming in rebuttal of the same. He, therefore, urges this court to indulge into his request to admit the second appeal and allow the same granting decree of specific performance of agreement executed in 1972.

3. Although, learned advocate has quite earnestly argued the case as aforesaid, perusal of the judgments rendered by the two courts, thus far, have been concurrent in giving finding about that not only the suit being outside the period of limitation, but also there is refusal to grant decree on the ground of that there cannot be said to be any execution of document of agreement of sale.

4. Succinctly stated, the case of the plaintiff – appellants is that an area of five *Are* land from survey No.33/4 situated at Bhadgaon was agreed to be sold by original defendant for a consideration of Rs.500/-, after seeking necessary permission and further that the land was adjacent to the land owned by the plaintiff. The land also has fallen apart from the land of the defendant due to intervening road. On 14th April, 1972,

possession of the land had been given to the plaintiff under the agreement and sale deed was to be executed after obtaining necessary permission and despite request, the defendant had not completed formalities for permission and had dillydallied execution of sale deed on one or the other pretext, particularly that the plaintiff has already been in possession. It is further averred that the defendant, however, in 1976-77 had forcibly took away produce grown by the plaintiff in suit land. So was the case in subsequent year and finally the plaintiff has been dispossessed in 1978. Thus, cause of action had arisen.

5. The respondents – defendants, had however, denied the averments in the plaint and execution of document.

6. Both the courts have concurred on appreciation of evidence that it cannot be said that there had been any execution of agreement of sale. The first appellate court has considered that the plaintiff had not entered the witness box instead he had sent his son, who had no personal knowledge about transaction. So was the case in respect of other witness, who purportedly deposed in support of the plaintiff. It has emerged on record that said witnesses had been working with the plaintiff.

7. Perusal of the judgments also depicts that no particulars as to nature of permission required and the authority from which permission is required has come forth. Apart from that, it emerges that in 1976-77 itself according to the plaintiffs' contention, the crop had been forcibly taken away by the defendants, which averment runs counter to the interest of the plaintiff, for that would be deemed to be a notice of refusal to go on with the performance of agreement.

8. Appreciation by courts below has not been shown to be perverse.

9. In the circumstances, the second appeal does not appear to give rise to any substantial question of law. The same, as such, stands dismissed.

10. In view of dismissal of the second appeal, the civil application does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]