

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

**SECOND APPEAL NO.566 OF 2015
along with
CIVIL APPLICATION NO.1250 OF 2015
in
SECOND APPEAL NO.566 OF 2015**

Dinkar Rama Mohite .. Appellant

Vs.

Dadu Dattu Yadav (since deceased)
through his legal heirs

1(a). Prakash Dadu Yadav & Ors. .. Respondents

Mr.Manoj Patil for the appellant.

Mr.P.D.Dalvi for the respondent nos.1(a) to 1(c) and 1(e) to 1(g).

CORAM : R.D. DHANUKA, J.

DATE : 6th January 2016

P.C.

. By this second appeal, the appellant (original plaintiff) has impugned the judgment dated 30th June 2015 passed by the Lower Appellate Court allowing the appeal filed by the respondents (original defendants) and was pleased to set aside the original judgment and decree dated 19th November 2011 passed by the learned trial Judge granting specific performance in favour of the plaintiff.

2. It is not in dispute that the parties had entered into an Agreement to Sale dated 29th August 1974. The plaintiff had made certain part payments under the said agreement to the defendants. The plaintiff filed a suit for specific performance in the month of January 1991. The suit for specific performance filed by the plaintiff was resisted by the defendants by filing their written statement. Both the parties led oral

evidence before the learned trial Judge. Learned trial Judge framed several issues. Learned trial Judge held that the plaintiff had proved that the defendants had agreed to sell the suit property by a deed dated 29th August 1974 and also that the plaintiff had agreed to perform his part of the obligations. Learned trial Judge further held that the suit was within limitation and that the plaintiff was entitled to the suit property. The said judgment and decree dated 19th October 2011 passed by the learned trial Judge was impugned by the original defendants before the Lower Appellate Court by filing a Regular Civil Appeal No.382 of 2011. The Lower Appellate Court delivered the judgment on 30th June 2015 allowing the said appeal filed by the original defendants.

3. Learned counsel appearing for the appellant invited my attention to some of the findings rendered by the learned trial Judge and also by the Lower Appellate Court. It is submitted by the learned counsel for the appellant that under the said sale agreement entered into between the parties, the respondents were under an obligation to obtain permission from the competent authority and only after obtaining such permission, the sale deed was required to be executed within two months from the date of obtaining such permission. He submits that the respondents never informed the appellant about such permission whether having been obtained by the respondents or not or whether such permission was required to be obtained or not.

4. It is submitted that in view of failure of the respondents to obtain such permission and/or in view of failure to inform the appellant that no such permission was required, the limitation to file a suit for specific performance did not commence. It is submitted by the learned

counsel for the appellant (original plaintiff) that the appellant had also made certain part payments in respect of the sale agreement to the respondents and the appellant was always ready and willing to perform his part of the obligations. He submits that though the trial Judge has appreciated the oral evidence led by both the parties and rendered various findings of facts in favour of the appellant, the Lower Appellate Court has reversed those findings without appreciating the oral evidence led by both the parties.

5. Learned counsel appearing for the respondents (original defendants) invited my attention to the findings rendered by the Lower Appellate Court and more particularly on the issue of limitation. He submits that admittedly the sale agreement was executed on 29th August 1974 whereas, the suit was filed on 31st January 1991. He also invited my attention to the findings of the Lower Appellate Court and more particularly paragraphs 22 and 25 thereof. He submits that even if the case of the appellant would have been accepted that he had requested the respondents to execute the sale deed after 11 months from the date of the sale agreement and had from time to time called upon the defendants to execute the sale deed, cause of action had arisen even at that stage. In his alternate submission, he submits that for the purpose of decree for specific performance, the appellant had to prove his readiness and willingness to perform his part of the obligations all throughout. He submits that the Lower Appellate Court was thus right in rendering the finding of fact that the appellant was not ready and willing to perform his part of the obligations all throughout. The reliance is also placed on Section 16 (c) of the Specific Relief Act, 1963 in support of his submission.

6. There is no dispute that the agreement was executed on 29th August 1974. The suit was admittedly filed on 31st January 1991. The initial onus in so far as the issue of limitation is concerned was on the appellant which the appellant failed to discharge.

7. A perusal of the judgment of the trial Court which was passed in favour of the appellant itself indicates that it was the case of the appellant (original plaintiff) that he had requested the respondents to execute the sale deed after 11 months from the date of the sale agreement. It is also his case that from time to time, he had requested the respondents to execute a sale deed. In my view, the correspondence does not extend the period of limitation. It was not the case of the appellant before the trial Court that the respondents had agreed to execute the sale deed but did not execute. Even if the appellant had requested the respondents from time to time to execute the sale deed and if the respondents had not executed the sale deed, cause of action for filing the suit for specific performance was already commenced before three years much prior to the date of filing of the suit on 31st January 1991.

8. In my view, even if it was an obligation of the respondents to obtain permission from the competent authority, the respondents had not obtained such permission and had committed a breach of the terms of the sale agreement, cause of action in that event had arisen even from such date. In my view, the appellant could not prove before the trial Court as well as the Lower Appellate Court as to how the limitation was extended during the period between 1974 till 1988 before which the suit for specific performance was required to be filed. In my view, the Lower Appellate Court is right in rendering a finding that the suit was barred

by law of limitation. Such finding is rendered by the Lower Appellate Court after considering the documentary as well as oral evidence led by the both the parties. I do not find any perversity in the finding rendered by the Lower Appellate Court. In my view, the appellant has failed to prove before both the Courts below that the appellant was ready and willing to perform his part of the obligations. The trial Court has thus erred in passing the decree which, in my view, is rightly reversed by the Lower Appellate Court. There is no substantial question of law arises in this appeal. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the second appeal, civil application does not survive and the same is accordingly dismissed. No order as to costs.

9. At the request of the learned counsel for the appellant, the respondents shall not create any third party rights in respect of the suit property for a period of four weeks from today.

R.D. DHANUKA, J.