

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

**SECOND APPEAL NO.46 OF 2016
along with
CIVIL APPLICATION NO.72 OF 2016**

Balkrishna Waman Bhintade (Bhosale) .. Appellant/Applicant

Vs.

Madhavrao Laxmanrao Bhosale (since deceased)

1A. Anusaya Madhavrao Bhosale & Ors. .. Respondents

Mr.Karan S. Thorat for the Appellant/Applicant.

Mr.Manmath Athalye for the Respondent No.1B.

CORAM : R.D. DHANUKA, J.

DATE : 13th December 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant no.1) has impugned the judgment and decree dated 6th June 2015 passed by the learned District Judge-2, Satara dismissing the Regular Civil Appeal Nos.146 of 2010 and 154 of 2010 and upholding the judgment and decree dated 13th April 2010 passed by the learned Civil Judge, Junior Division, Wai in Regular Civil Suit No.37 of 2003.

2. The original plaintiffs (respondents herein) filed a suit for specific performance of the agreement for sale dated 1st February 1983 against the defendant nos.1 and 2 in respect of the suit property bearing Gat Nos.3288/1 and 3288/2 at village Bavdhan, Taluka Wai. The defendant no.1 had accepted part payment and executed the said agreement of sale in favour of the plaintiff's son. According to the said agreement for sale, the balance amount was to be paid to the defendant

no.1 after the defendant no.1 would have obtained the necessary permission from the competent authority at the time of execution of the sale deed.

3. On 13th November 2003, the plaintiffs intimated the defendant no.1 to execute sale deed on 22nd January 2003 and showed his readiness and willingness to purchase the suit property.

4. On or about 7th November 1979, the defendant no.1 had executed power of attorney in favour of the plaintiffs. Pursuant to the said power of attorney, the plaintiffs were cultivating the land of the defendant no.1. It is not in dispute that the agreement for sale dated 1st February 1983 was not registered. Since the defendant no.1 failed to execute the sale deed and did not obtain any permission from the competent authority, the plaintiffs filed a suit for specific performance in the Court of the learned Civil Judge, Junior Division, Wai. The suit was resisted by the defendant no.1 by filing a written statement.

5. It was the case of the defendant no.1 that the plaintiffs had obtained various signatures of the defendant no.1 on various blank documents and no such agreement for sale was executed by the defendant no.1.

6. The learned trial Judge framed nine issues. After considering the oral and documentary evidence led by the parties, the learned trial Judge held that the defendant no.1 had agreed to sell the suit property to the plaintiffs for consideration of Rs.35,000/- and the plaintiffs had paid earnest amount Rs.5,000/- and Rs.20,000/- to the defendant no.1.

Balance amount of Rs.10,000/- was to be paid at the time of execution of sale deed and upon the defendant no.1 obtaining permission from the competent authority for selling the suit property. The learned trial Judge also held that the plaintiffs were in possession of the suit property as per agreement for sale dated 1st February 1983 and were ready and willing to perform their part of contract under the agreement for sale.

7. The defendant no.1 filed Regular Civil Appeal No.146 of 2010 impugning the said judgment and decree. The first appellate Court formulated ten points for determination and after considering the oral and documentary evidence dismissed the said appeal filed by the defendant no.1.

8. Learned counsel appearing for the appellant (original defendant no.1) submits that the agreement for sale was not registered. He submits that as per the power of attorney dated 7th November 1979 which was admittedly executed by him in favour of the plaintiffs, there was no reference to the agreement for sale. It is submitted by the learned counsel that in the suit bearing No.210 of 1981 in which the plaintiffs as well as the defendant no.1 were parties, the plaintiffs in the written statement had admitted that they were in possession of the suit property as agents of the defendant no.1 and were cultivating the said land. He submits that in the said written statement, it was not the case of the plaintiffs that any agreement of sale was executed by the defendant no.1 in favour of the plaintiffs. He submits that since the defendant no.1 was staying in Madhya Pradesh, he could not obtain permission from the competent authority. He submits that the suit was hopelessly barred by

law of limitation and thus no decree for specific performance could have been granted by the two Courts below.

9. Learned counsel appearing for the original plaintiffs, on the other hand, submits that power of attorney was executed on 7th November 1979 whereas, the agreement for sale which was the subject matter of the suit was executed by the defendant no.1 on 1st February 1983 and thus there was no question of referring to any agreement for sale of 1983 in the power of attorney executed on 7th November 1979.

10. It is submitted by the learned counsel that the suit of 1981 was filed by the father of the defendant no.1 thereby impugning the transaction between the plaintiffs and the defendant no.1. On the date of filing of the written statement, there was no agreement for sale dated 1st February 1983 entered into between the parties and at that point of time the plaintiffs were only acting as agents of the defendant no.1 and were cultivating the suit land. There was thus no question of referring to the agreement for sale dated 1st February 1983 in the written statement.

11. In so far as the issue of limitation is concerned, it is submitted by the learned counsel that the substantial part of the consideration was already paid by the plaintiffs to the defendant no.1. The balance amount of Rs.10,000/- was to be paid only upon the defendant no.1 obtaining necessary permission from the competent authority and at the time of execution of sale deed. Since the defendant no.1 did not obtain permission from the competent authority and did not execute the sale deed, the limitation for filing the suit for specific performance did not commence. He submits that both the Courts have

considered the issue of limitation at a great length and has rightly rejected the plea of limitation. He submits that though the agreement for sale was not registered, since the said agreement of sale was subject to the execution of sale deed, the same was not required to be registered. He submits that the suit was filed for specific performance and for collateral purposes, the agreement of sale could be relied upon and was admissible in evidence.

12. There is no dispute that the defendant no.1 has executed power of attorney in favour of the plaintiffs. The defendant no.1 has been residing in Madhya Pradesh. The plaintiffs all throughout had been in possession of the suit property. The plaintiffs had paid various amounts to the defendant no.1 under the agreement for sale dated 1st February 1983. It is not disputed that the defendant no.1 did not obtain necessary permission from the competent authority till the date of filing of suit for specific performance. I am not inclined to accept the submission of the learned counsel for the defendant no.1 that the signatures of the defendant no.1 were obtained by the plaintiffs on various blank documents. It is not in dispute that the defendant no.1 did not file any suit for cancellation of the documents which were signed by the defendant no.1. Both the Courts below considered the oral and documentary evidence and rendered a finding that agreement for sale dated 1st February 1983 was executed by and between the parties and various payments were made by the plaintiffs to the defendant no.1 under the said agreement.

13. In so far as the issue of limitation raised by the defendant no.1 is concerned, since under the said agreement of sale, execution of

the sale deed was depending upon the prior permission from the competent authority and the balance payment was to be made at the time of execution of sale deed and since the defendant no.1 did not obtain any permission from the competent authority, the limitation in my view, did not commence. Both the Courts have considered the issue of limitation at a great length in the judgments and decrees. There is thus no substance in this submission of the learned counsel for the defendant no.1.

14. In so far as the submission of the learned counsel that in the power of attorney dated 7th November 1979, there was no reference to agreement for sale is concerned, since agreement of sale was executed on 1st February 1983, question of referring the said agreement for sale in the power of attorney which was executed on 7th November 1979 did not arise.

15. In so far as the submission of the learned counsel for the defendant no.1 that in the written statement filed in the suit of 1981 by the plaintiffs stating that they were in possession of the suit property as agents of the defendant no.1 and there was no reference to the agreement for sale in the written statement and thus the decree passed in the said suit would amount to estoppel against the defendant no.1 is concerned, it is not disputed that the plaintiffs had filed written statement in the said suit prior to 1st February 1983. Since there was no agreement for sale in favour of the plaintiffs on the date of filing of the said written statement, the question of referring to the agreement of sale dated 1st February 1983 in the written statement did not arise. In my view, there is thus no question of estoppel on this ground raised by the defendant no.1.

16. In so far as the registration of the agreement for sale is concerned, the suit was filed for specific performance. The said unregistered documents could be relied upon in a suit for specific performance in view of proviso to Section 49 of the Registration Act, 1908. There is thus no substance in this submission of the learned counsel for the defendant no.1.

17. A perusal of the two judgments and decrees clearly indicates that both the Courts below have considered the entire evidence and pleadings led by both the parties. The findings recorded by the two Courts below being concurrent and not being perverse cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908.

18. The appeal is devoid of merit. No substantial question of law arises in this second appeal. Both the judgments and decrees passed by the two Courts below are well reasoned judgments and decrees. I do not find any infirmity with the findings rendered by the two Courts below.

19. Second appeal is accordingly dismissed. In view of dismissal of the second appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.