

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

Second Appeal No.472 of 2014

(Smt. Lata s/o Babanrao Thakare and others v. Shri Shankar s/o Sadhuji Masram)

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

Court's or Judge's orders

Shri S.A. Chaudhari, Advocate for Appellants.
Shri G.G. Modak, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Date : 20th June, 2016

The Trial Court dismissed Regular Civil Suit No.108 of 2006 for grant of specific performance of contract on 28-7-2010. The lower Appellate Court has allowed Regular Civil Appeal No.205 of 2010 on 1-10-2013. The decree for specific performance has been passed. Hence, the original defendants are before this Court in this second appeal.

The Trial Court dismissed the suit on the ground that it was barred by law of limitation, i.e. Article 54 of the Limitation Act. The lower Appellate Court has reversed this finding and passed a decree for specific performance of contract. The lower Appellate Court has set aside the finding of the Trial Court that the suit was barred by law of limitation and it is held that the suit was within a period of limitation and accordingly the matter has been considered on merits, and the decree for specific performance has been passed. The only point raised in this second appeal is about the bar of limitation.

The agreement was executed between the parties on 26-4-1994 and the sale-deed was required to be executed before the harvesting season of 1995. Thereafter, the time for execution of sale-deed was extended by agreement and the defendants were required to obtain permission of the Collector to transfer the suit property prior to 30-4-2000.

Shri Chaudhari, the learned counsel appearing for the appellants, submits that the Trial Court has rightly held that the limitation at any rate would start running from 30-4-2000 and the suit being filed on 6-2-2006 was barred by law of limitation. He does not dispute that the agreement nowhere fixes the date for execution of the sale-deed. What is relevant for deciding the question of limitation is that the plaintiff issued a notice dated 23-2-2004 at Exhibit 34 calling upon the defendants to execute the sale-deed by accepting the balance amount of consideration. One of the defendants replied to it on 18-5-2004 at Exhibit 38 denying the claim for execution of the sale-deed. In such a situation, even if we take the date of 23-2-2004 as refusal on the part of the defendants to perform their part of contract, the suit filed by the plaintiff on 6-2-2006 would be perfectly within a period of limitation. The contention that the period of limitation would start running from 30-4-2000, since the defendants had not obtained the permission till that date, cannot be accepted to hold that the suit was barred by law of limitation.

No substantial question of law arises for consideration. The second appeal is dismissed.

Judge.

Lanjewar