

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

Second Appeal No.211 of 2016
(Sau. Lilabai Shrihari Kshirsagar v. Purushottam Dattaji Dahule)

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

Shri H.S. Chitalay, Advocate for Appellant.
Shri P.P. Puri, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 6th October, 2016

The Trial Court dismissed the suit for specific performance of contract on the ground that it is barred by the law of limitation contained in Article 54 of the Limitation Act, 1963. The lower Appellate Court has concurred with this finding and, therefore, the plaintiff is before this Court in this second appeal.

On 27-4-2016, this Court passed an order as under :

*Issue notice to the respondent on the following
substantial question of law:*

*Whether both the Courts were justified in holding
that the suit for specific performance was barred by
limitation despite the fact that the same was filed on
25-1-2002 pursuant to the permission granted by the*

Collector on 28-12-2001 and in the backdrop of the admission of the defendant that such permission was necessary for selling the suit land.

Notice made returnable on 29-6-2016.

Hamdast granted.”

It is not disputed that the agreement to sell was executed on 15-6-1996, which is at Exhibit 31. The agreement to sell fixed a specific date 31-3-1997 for execution of the sale-deed. Undisputedly, the suit was filed on 25-1-2002. Once it is found that the date for execution of the sale-deed is fixed in the agreement, then in terms of Article 54 of the Limitation Act, the period of limitation starts running from such date, which, in the present case, is on 31-3-1997. The Courts below have found that the suit filed on 51-1-2002 was completely barred by the law of limitation. No substantial question of law arises out of such finding recorded by the Courts below.

Shri Chitale, the learned counsel appearing for the appellant-plaintiff, that the permission of the Collector was required to be obtained for execution of the sale-deed and it was the duty on the part of the respondent-defendant to obtain such permission or before the date fixed for execution of the

sale-deed under the agreement. He submits that the respondent-plaintiff has failed to obtain such permission, but the appellant-plaintiff obtained such permission from the Collector, Yavatmal, on 28-12-2001. The Trial Court has dealt with this aspect of the matter. It records the finding that the appellant-plaintiff did not file such document on record and there is nothing available on record to show that the permission was granted by the Collector on 28-12-2001. Be that as it may, the period of limitation, which started running from 31-3-1997 would not stand extended because of any such event. The Courts below have also recorded the finding that it was not the condition mentioned in the agreement that the respondent-defendant shall have to obtain permission on or before the date fixed for execution of the sale-deed.

Thus, no substantial question of law arises in this second appeal. The same is dismissed.

Judge.

Lanjewar

CERTIFICATE

“I certify that this Order uploaded is a true and correct copy of original signed Order.”

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