

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

Second Appeal No.225 of 2014
(Kamlabai Dault Kukade v. Ambadas Domaji Pandagade and others)

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and Registrar's order

Shri M.P. Karia, Advocate for Appellant.
Shri P.R. Agrawal, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.
Date : 18th July, 2016

The Trial Court partly decreed Special Civil Suit No.486 of 1998 for specific performance of contract. The relief of specific performance was refused, but the refund of consideration of Rs.55,000/- along with interest at the rate of 6% per annum has been granted. This decision of the Trial Court rendered on 25-4-2005 was the subject-matter by the original plaintiff in Regular Civil Suit No.25 of 1995 seeking specific performance of contract.

Regular Civil Suit No.136 of 2000 was filed by the appellant herein for partition, separate possession and injunction. The said suit was dismissed by the Trial Court on 1-11-2002. Regular Civil Appeal No.20 of 2003 was preferred by the plaintiff in the said suit.

Both the appeals have been decided by the common judgment and order dated 29-9-2011 passed by the lower Appellate Court. The dismissal of the suit filed by the present appellant, i.e. Regular Civil Appeal No.136 of 2000, has been maintained, whereas the decree for specific performance of contract has been passed in Special Civil Suit No.486 of 1998.

Shri Karia, the learned counsel appearing for the appellant, has urged that the initial agreement dated 14-3-1995 and the subsequent agreement for extension of time dated 31-12-1995 have not been proved. He has further urged that the original documents were not placed on record. It is also the contention raised that the suit for specific performance of contract was barred by the law of limitation, as contained in Article 54 of the Limitation Act.

With the assistance of the learned counsels appearing for the parties, I have gone through the judgments and orders passed by both the Courts below. The execution of two agreements dated 14-3-1995 and 31-12-1995 has not been disputed. The stand of the appellant was that the agreement to sell was a nominal transaction executed in security of loan. The Courts below have concurrently held that this stand has not been established. It is not the case that any substantial question of law arises out of such findings recorded by the Courts below. The

documents at Exhibits 32 and 35 are the original documents and the execution of the same, has not been disputed. The time to execute the sale-deed was extended by an agreement at Exhibit 35 up to 31-12-1995. The suit for specific performance of contract was filed on 28-12-1998. It was thus within a period of three years from the date fixed for execution of the sale under the agreement at Exhibit 35.

Thus, no substantial question of law arises for consideration. The second appeal is dismissed.

Judge.

Lanjewar

CERTIFICATE

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P.D. Lanjewar,
PS to Hon'ble Judge