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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.411 OF 2011
WITH
CIVIL APPLIATION NO.5087 OF 2006
IN
SECOND APPEAL NO.411 OF 2011**

Noorkhan s/o Dildarkhan Pathan,
Age: 57 years, Occ: Agri.,
R/o. Tandulja, Tq. & Dist. Latur. ..APPELLANT

VERSUS

Janardhan s/o Raghunath Bhise,
Age: 67 years, Occ: Agri.,
R/o. Tandulja, Tq. & Dist. Latur. ..RESPONDENT

Mrs J.P. Reddy, Advocate h/f Mr M.P. Gude, Advocate
for appellant;
Mr S.S. Manale, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 14th SEPTEMBER, 2017

ORAL ORDER :

The respondent-plaintiff filed Regular Civil Suit No. 262 of 2000 in the Court of 2nd Joint Civil Judge, Junior Division, Latur for specific performance of contract and perpetual injunction, which came to be decreed vide judgment and decree dated 28th August, 2002, confirmed in

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Regular Civil Appeal No. 183 of 2002 decided by 29th September, 2005. As such, this second appeal by original defendant.

2. By the impugned judgment and decree, present appellant was directed by the Court below that he shall execute sale deed upon accepting balance consideration of Rs.4500/- upon getting N.A. permission. It is further directed to the present appellant that he shall apply to the competent authority for N.A. permission if required for execution of the sale instrument and shall secure same at his own costs. The present appellant is further restrained from interfering and obstructing possession of the respondent-plaintiff over the suit property.

3. In case, present appellant failed to apply for permission if required within reasonable time after appeal period is over, it is declared that present respondent-plaintiff will be at liberty to complete transaction in accordance with law through

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Nazir of the Court.

4. The lower appellate Court confirmed the said decree.

5. Taking shelter of Section 27 of the Specific Relief Act, learned Counsel for the appellant-defendant submits that the Courts below have committed an error apparent on the face of record by not taking recourse to Section 27 of the Specific Relief Act. According to her, present appellant has performed his part of contract by putting respondent in possession of the suit property, however, the suit property in question comes into jurisdiction of Command Area Development Authority, N.A. permission was not granted. According to her, the claim should have been adjusted pursuant to the provisions of Section 27 of the Specific Relief Act.

6. The next submission is made that the suit is not within limitation, as agreement Exhibit-28

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was executed on 7th December, 1984, whereas the suit in question was filed by the present respondent for specific performance of contract on 5th May, 2000.

7. Learned Counsel for the appellant, in addition, would urge that since the time was not essence of the contract, the suit for specific performance of contract ought not to have been decreed.

8. Per contra, learned Counsel for the respondent submits that there are concurrent findings recorded against the present appellant. According to him, the issue as regards limitation is considered in the backdrop of Article 54 of the Limitation Act. He would urge that since the present respondent was admittedly put into possession of the property, the issue of limitation is also answered in favour of respondent. It is further claimed that it is only upon, present appellant obtaining N.A. permission, was duty bound

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to execute sale deed and as such, plea that suit is not within limitation and time was not essence of the contract is rightly rejected by the Courts below.

9. Considered rival submissions. It is required to be noted that present appellant is not refusing to perform his part of contract for execution of the sale deed but for want of N.A. permission. In such eventuality, having considered the claim in the back drop of Section 54 of the Limitation Act, both the Courts below have rightly appreciated the claim and held that the claim of respondent is well within limitation. Apart from above, it is required to be noted that the plea of present appellant that the respondent has voluntarily surrendered 5 Guntha land out of 6 Guntha, which was agreed to be sold to him under agreement (Exhibit-28), speaks of his admission that there exist agreement of sale.

10. Apart from above, the possession of the

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present respondent over the suit property was very much established upon examining PW-2 Ashok, who is also a witness to the agreement (Exhibit-28). Considering readiness and willingness of the respondent to perform his part of contract and the fact that N.A. permission was not obtained by the present appellant till date, the claim that time was not essence of the contract is rightly considered in favour of the respondent.

11. The Court below then considered long settled possession of the present respondent pursuant to the agreement of sale (Exhibit-28) has extended benefit of Section 53A of the Transfer of Property Act and has rightly passed the order of injunction.

12. In the wake of above, no interference is warranted in the second appeal which is against concurrent findings. The appeal, as such, fails and stands dismissed.

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13. In the light of dismissal of the second appeal, civil application also stands disposed of.

(NITIN W. SAMBRE, J.)

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