

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

925 REVIEW APPLICATION (CIVIL) NO. 237 OF 2016
IN SA/314/2016

CHANDANMAL CHUNILAL OSWAL DIED LRS
NIRMALABAI AND ORS
VERSUS
RAVINDRA GOVARDHANDAS DISA DIED LRS ASHA AND
ORS

Shri. B.R. Waramaa, Advocate, for applicants.

CORAM: T.V. NALAWADE, J.

DATE : 6 JANUARY 2017

ORDER:

1) The application is filed for review of the order made by this Court on 19 July 2016 in Second Appeal No.314 of 2016. Second appeal filed by the present review applicant is dismissed by this Court by giving reasoned order and by observing that no substantial question of law is involved. Heard learned counsel for the review applicant.

2) Learned counsel for the applicant submitted that as per the record and particularly the property card extract there was order of prohibition made by the Sales

Tax Office in the year 1981 by which private transfer of the property was prohibited and this point ought to have been considered by this Court at the time of deciding the point of limitation in view of provision of section 15 of the Limitation Act, 1963. Learned counsel submitted that as this point is not considered, the order needs to be reviewed.

3) This Court has carefully read the decision given by this Court. Agreement of sale was made in the year 1978 and the special civil suit was filed for specific performance in the year 1991. This Court has considered the relevant clauses of the agreement and the interpretation of the agreement made by the two Courts below. There are concurrent findings on the interpretation of the agreement and the reasoning can be found in paragraphs 14 to 16 of the order of this Court. This Court has held that the plaintiff was at fault and he failed to perform his part of the contract.

4) In paragraphs 20 to 25 of the order, this Court has considered the law of limitation. It needs to be

mentioned here that in the plaint it was never contended by the plaintiff that there was prohibition due to any order made by the Sales Tax Department and the owner was prevented from alienating the property. In spite of these circumstances, learned counsel wants to make out such a case in the second appeal. Such thing cannot be allowed. Further if such point was in existence, the trial Court could have given decision and that would have been subject to the rights of the said Department. It cannot be said that decree could not have been given of specific performance of contract. Thus, there are no merits in the review application. The review application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

rs1