

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2473 OF 2016
IN
SUIT NO. 155 OF 2014

Abdulla N Merchant ...Plaintiff
Versus
Vithalbhai N Merchant & Ors ...Defendants

Mrs Aysha Lambay, *a/w Vikas Talreja, i/b Lambay & Co, for the Plaintiff.*
Mr Sapan Samdani, *i/b GS Manasawala, for the Defendants Nos. 1 to 10 and for the Applicants in NMS/2473/16,*

CORAM: G.S. PATEL, J
DATED: 20th April 2017

PC:-

1. This is a Motion by Defendant No. 8 under Order VII Rule 11 of the Code of Civil Procedure, 1908 raising a plea of limitation. This came to be framed by consent as a preliminary issue under Section 9A of the Code of Civil Procedure 1908 on 16th January 2017. A few days later, both sides agreed that no evidence was required.
2. The suit is for specific performance of an Agreement dated 12th March 1995. The property in question is a plot of land bearing

Survey No. 1/1716, 1714 (pt), CS No. 1/1043, 1042 (pt) of Lower Parel Division, admeasuring 690 Sq. Yards with a building on it known as “Ramibai Tadiwala Building”, Prabhadevi Road, Bombay. There are several tenants in this building. It is a ground plus two floor structure. There are 41 residential tenants. The agreement dated 12th March 1995 was between Respondents Nos. 1, 5, 6, 7 and certain other persons, some since deceased, in favour of Defendant No. 11, M/s God’s Gift Associates. The vendors at that time had also executed a Power of Attorney in favour of Parvez Suleman Lakdawala and another to jointly and severally complete various acts, deeds and things.

3. This was followed by Deed of Confirmation dated 28th November 2004. There is some dispute about whether this is a Deed of Confirmation or Deed of Declaration but for the purposes of the preliminary issue this does not matter. There was then a Sale Deed dated 27th July 2002 between the purchaser, M/s God’s Gift Associates and its partner and the Plaintiff, by which God’s Gift Associates transferred its right, title and interest in this property and under the agreement in question to the Plaintiffs. This is also a registered document. The Plaintiffs have since then been paying property taxes. According to the Plaintiffs, the original Sale Agreement dated 12th March 1995 required the Vendors to get a sub-division of the property done at their costs.

4. On 24th March 2013, the Plaintiffs called upon Defendants Nos. 1 to 10 to execute the conveyance. Despite receipt, Defendants Nos. 2 to 10 did not comply. What is surprising is that Defendant No. 1, through his Advocate’s Mr GS Manasawala’s letter dated 2nd

April 2013 wholly denied the Sale Agreement dated 12th March 1995, saying no such document was ever executed.

5. It is difficult to understand that the ground taken by Defendant No. 8 today. Mr GS Manasawala was acting for all the vendors. The denial by one of them was actually sufficient to furnish the Plaintiffs a cause of action against all of them. It is not possible for the vendors who are otherwise united to divide defences between them so that some of them accept the Sale Agreement in order to allege that the suit is out of time because there was a definite time fixed for performance of obligations by them, the Vendors, and this having passed the limitation period, no suit would lie, and for other Defendants to wholly denied that there ever existed any such agreement at all. What furnished the Plaintiffs a cause of action to demand specific performance is nothing other than Mr GS Manasawala's letter of 2nd April 2013, a copy of which is at Exhibit "E1". The first three unnumbered paragraphs of this letter read thus:

"My client is not aware about any Agreement for Sale dated 12th March 1995 alleged to have been made between my client, Shri Prakash Vithalbhai Merchant, Mrs Deviben Magan Merchant, Mrs maniben Dinesh Merchant and Shri Ramesh Maganlal Merchant as Vendors and M/s God's Gift Associates as Purchasers. My client has not sold any property to M/s God's Gift Associates nor he received any amount of from them. My client does not know whether M/s God's Gift Associates is a partnership firm or is registered partnership. My client and others are the joint owners of the property bearing Survey Nos. 1/1716 and 1714 (Part),

C.S No. 1/1043 and 1042 (Part) of Lower Parel Division admeasuring 690 sq.yds. along with a building standing thereon at Prabhadevi Road, Mumbai. If any Power of Attorney was executed in favour of Mr Parvez S Lakdawala & Anr. the same is null and void and of no effect on the death of Shri Harivandan, Shri Guanvantrai and Shri Natwarlal. They all have been joint owners and on the death of some of the joint owners the Power of Attorney has been rendered ineffective and unenforceable.

My client is also not aware of any Deed of Confirmation dated 20th November 2004 with any Sale Agreement of 12th March 1995.

Since M/s God's Gift Associates were not sold any property nor any consideration received from them or any possession of any part of the said property was ever given to M/s God's Gift Associates. It was therefore unusual for M/s God's Gift Associates without becoming the owners thereof to sell the said property to your client Shri Abdulla by any Sale Deed dated 27th July 2012. Any such Conveyance alleged to have been executed by Mr Parvez S Lakdawala in favour of Shri Abdulla cannot give any rights nor possession can be ever delivered by Mr Parvez S Lakdawala to Mr Abdulla. The property as aforesaid has been a joint family property and not sold to M/s God's Gift Associates nor they could have any right in them to sell my client's said property."

6. It is in fact this very letter that is referenced in paragraph 22 of the plaint as the limitation paragraph, which reads thus:

“As the cause of action arose in April 2013,when the Defendant No.1 replied vide letter dated 02.04.2013 denying the transaction which is at Exhibit-E1 hereto, therefore, the suit is filed within limitation.”

7. In my view, the Plaintiffs are completely correct. The denial by the Defendants or on behalf of the Defendants came only on 2nd April 2013. The suit itself was filed within a few months on 7th August 2013. It is well within time.

8. The preliminary issue is answered accordingly in favour of the Plaintiff.

9. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)