**IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**
**NAGPUR BENCH : NAGPUR**
**Second Appeal No. 23 of 2017**
**[Ramdas Govinda Wagde (dead) through L.Rs. & others Vs. Praveenkumar Lilapat Bansal & another]**

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
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Mr. Avinash Gharote Adv., for the appellants.
Mr. M.G. Bhangde, Senior Adv., with Mr. R.M. Bhangde, Adv., for respondent nos. 1 and 2.

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**CORAM : A. S. CHANDURKAR, J.**

**DATE : 04th August, 2017**

**01.** This appeal under Section 100 of the Code of Civil Procedure, 1908, is preferred by the original defendants who are aggrieved by the decree for specific performance passed by the trial Court that has been affirmed by the first appellate Court.

**02.** Facts giving rise to the Second Appeal are that it is the case of the respondents – original plaintiffs who are brothers that the defendant no.1 – Ramdas and his brother Eknath had entered into Agreements of Sale on 16th October, 1998 for sale of land from Survey No. 39. Each agreement was in relation to land admeasuring 1 hectare 21 Are. One agreement was in favour of plaintiff no.1 and the other in favour of plaintiff no.2. According to the plaintiffs, the land in question was Occupancy

Class-II land which was agreed to be sold for a consideration of Rs.45,000-00 per acre. A sum of Rs.10,000-00 was paid on 16th October, 1998. On 17th October, 1998, a further sum of Rs.80,000-00 was paid, Rs.40,000/- each to both the brothers. Further payments were also made on 3rd January, 1999 and 24th January, 1999. It is the further case that as the entire payment could not be made by 30th June, 1999, a further amount of Rs. 70,000-00 was agreed to be paid by extending the period for executing the sale-deeds by one year. Payments were also made on 1st March, 2000 and 8th June, 2000. These payments were acknowledged by the brothers and their sons. Though the plaintiffs were ready to perform their part of the contract, the defendants avoided to execute the sale-deeds on the ground that the land was not converted from Class-II to Class-I. In February, 2005, the plaintiffs learnt that the defendants were intending to alienate the suit property and, therefore, suit was filed for specific performance of the agreements. By amending the plaint, the prayer for possession was also made on the ground that the possession was forcibly taken by the defendants after the order came to be passed on the temporary injunction application.

**03.** In the Written Statement, execution of both the agreements was not disputed. It was denied that the said agreements were for a valuable consideration of Rs.45,000-00 per acre. Payment of Rs.10,000-00 to the defendant no.1 and his brother on 16th October, 1998 was admitted. The other payments were denied by stating that their signatures were obtained on the stamp paper. The plea regarding extension of time by a period of one year to complete the transaction was also denied. It was, thus, stated that the plaintiffs were not ready and willing to perform their part of the agreements.

**04.** The trial Court after considering the evidence on record held both the agreements to be duly proved. By holding that the plaintiffs were ready and willing to perform their part of the agreements, the suit came to be decreed. The appeal filed by the defendants was also dismissed. Hence the Second Appeal.

**05.** Shri A. Y. Gharote, learned Counsel for the Defendants made the following submissions:-

**[a]** A single suit seeking relief of specific performance of two separate agreements both dated 16th October, 1998 was not maintainable. The plaint did not answer the requirements of Order-I, Rule 1 of the Code of Civil Procedure, 1908. Both the agreements being for different pieces of land, it was necessary for each plaintiff to have pleaded and proved his readiness and willingness to perform his part of the agreement independently. The plaintiff no.1 had alone deposed in the suit though he was not a party to the agreement entered into with plaintiff no.2.

**[b]** The suit was barred by limitation in view of provisions of the first part of Article 54 of the Limitation Act, 1963 [for short, "the said Act"]. As per the agreements at Exhs.48 and 49, the sale-deeds were to be executed on 30th June, 1999. Even if the plea that the period for executing the sale-deeds was extended by a period of one year is accepted, the suit that was filed on 24th February, 2005 was barred by limitation.

**[c]** The document at Exh.50 and its contents have been wrongly held to have been proved by the plaintiffs. Only the entries at Sr. Nos. 1 and 2 on the said stamp paper were admitted by the defendants. The other entries were disputed and contents of these entries were not proved by the plaintiffs. Even the manner in which these entries were taken rendered the document doubtful.

**[d]** That, both the Courts erroneously exercised discretion in favour of the plaintiffs by granting a decree of specific performance. The plaintiffs had not approached the Court with clean hands, inasmuch as initially it was pleaded that possession had been delivered to the plaintiffs on the date of the agreement. The trial Court had recorded a finding that the plaintiffs were not in possession. The plaintiffs having come up with a false plea regarding possession were, therefore, not entitled for any decree.

**[e]** The conversion of land from Class-II to Class-I cannot be the basis for extending the time to complete the contract. The suit could have even otherwise been filed and the decree if passed could have been made subject to obtaining such permission. The title of the defendants was not imperfect and the aspect of conversion of the land was not connected with its title.

In support of his submissions, learned counsel placed reliance on the decisions in **[1] <u>Rajeshwari Vs. Puran Indoria</u>** [ (2005) 7 SCC 60], **[2] <u>Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi</u>** [ (2009) 3 SCC 287], **[3] <u>Man Kaur (deceased by Lrs.) Vs. Hartar Singh Sangha</u>** [ 2010 AIR SCW 6198] and **[4] <u>D. R. Rathna Murthy Vs. Ramappa</u>** [(2011) 1 SCC 158]. It was, therefore, submitted that these aspects give rise to substantial questions of law.

**06.** Per contra, Shri M.G. Bhangde, learned Senior Counsel for the plaintiffs, supported the decree. He made the following submissions:-

**[a]** The suit of the present nature was tenable and there was no legal provision barring filing of such suit. No plea in that regard was raised in the Written Statement. Under the provisions of Order-I, Rule 1 (b) of the Code of Civil Procedure, 1908, such suit was maintainable. No prejudice was pointed out on account of filing such suit.

**[b]** The suit was filed within limitation and the limitation as prescribed by the second part of Article 54 of the said Act would be applicable. As per the agreements, there was no fixed date for executing the sale-deed and it was merely stated that the transaction was to be completed between 16th October, 1998 and 30th June, 1999. In absence of there being any fixed date for executing the sale-deed, the suit was rightly filed after the plaintiffs got notice of the refusal on the part of the defendants to perform their part of the agreement. In that regard, learned Senior Counsel placed reliance on the decisions in **Ahmadsahab Abdul Mulla (2) (Dead) by proposed LRS. Vs. Bibijan & others**

[ (2009) 5 SCC 462] and **<u>Madina Begum & another Vs. Shiv Murti Prasad Pandey & others</u>** [ (2016) 15 SCC 322].

**[c]** The document at Exh.50 had been duly proved. In the Written Statement, it was admitted that a sum of Rs. 10,000-00 had been duly paid on 16th October, 1998. Entry Nos. 1 and 2 were also admitted with regard to payment of Rs.40,000-00. The witness examined on behalf of the defendants below Exh.65 was defendant no.7 who admitted the signatures of his father and uncle after 30th June, 1999, but it was stated that they had only put their signatures therein without receiving any amount. Ramdas who was a signatory to the agreement had not been examined for denying his signature on Exh.50. Adverse inference was, therefore, rightly drawn by both the Courts.

**[d]** It was submitted that both the Courts rightly exercised discretion in favour of the plaintiffs. The entire consideration had been duly proved to have been paid to the defendants. The sale-deeds could not be executed as the land was not converted. Though the period of completing the transaction was extended by one year, the defendants accepted balance consideration even after 30th June, 2000. It was admitted by DW 7 that till the filing of the suit, neither his father nor uncle had issued any notice to the plaintiffs informing them that the suit land was converted to Class-I. The averment with regard to possession being with the plaintiffs when the suit was filed was not very relevant as the plaint was amended after the application for temporary injunction was decided and it was pleaded that the plaintiffs had been dispossessed. A specific prayer for possession was also made.

**[e]** The suit lands were converted in the year 2005 which was admitted by DW 7. On such conversion, the defendants got a marketable title and in view of provisions of Section 13 (1) of the Specific Relief Act, 1963, the defendants were bound to complete the transaction of sale.

It was, therefore, submitted that no substantial questions of law arise for consideration.

**07.** I have heard the learned counsel for the parties at length and I have also perused the relevant material relied upon by them.

**08.** In so far as nature of the suit is concerned, it is to be noted that both the agreements are dated 16th October, 1998. The parties who had agreed to sell the respective lands were the two brothers – Ramdas and Eknath. The respective lands were agreed to be purchased by the plaintiffs who were also brothers. Each agreement was for land admeasuring 1 hectare 21 Are from the same Khasra number. Considering the provisions of Order-I, Rule 1 (b) of the Code, I do not find that there is any legal impediment in filing of such suit seeking specific performance of the two agreements in question. The defendants did not object to the filing of such suit and if such a plea would have been raised in the Written Statement, same could have been contested by the plaintiffs. No prejudice has been pointed out by the defendants at the trial of the suit. Hence, I do not find that the plaintiffs were barred by any legal provision from filing the suit of the present nature.

**09.** As per the Agreements at Exhs.48 and 49, the lands in question were agreed to be sold for Rs.45,000/- per acre each.. Though the agreements mention the consideration of Rs. 45,000/-, the plaintiffs state that rate was Rs.45,000/- per acre. This has also been denied by the defendant. Be that as it may, the agreements stipulate that the sale-deeds were to be executed in the period from 16th October, 1998 to 30th June, 1999. In the light of this stipulation in the agreements, the question is whether the limitation would be governed by the first portion of Article 54 of the said Act, namely that a date has been fixed for the performance or by the latter part of Article 54 which applies when no such date is fixed and the plaintiffs have notice that performance is refused. In *Ahmadsahab Abdul Mulla* [supra], while answering the reference made as to whether the use of the expression "date" in Article 54 is suggestive of a specific date in the calendar, the Honourable Supreme Court held that the expression "date fixed for the performance" in the first part of Article 54 is a crystallized notion. It is suggestive of a specified date in the calendar. This position has been reiterated in *Madina Begum & another* [supra]. Facts of said case indicate that the transaction was to be completed within a period of six months from the date of the agreement. It was held by the Honourable Supreme Court that the agreement did not specify a calendar date as the date fixed for performance and, therefore, the matter was governed by the latter part of Article 54 of the said Act.

As noted above, in the present case, the sale-deed was to be executed in the period between 16th October, 1998 to 30th June, 1999. Considering the aforesaid decisions, it is clear that the matter would be governed by the latter part of the provisions of Article 54 of the Limitation Act, 1963. On that count, the submission that the suit was barred by limitation by relying upon the first part of Article 54 of the said Act cannot be accepted. On getting knowledge of the defendants' intention to alienate the suit property in the first week of February, 2005, the suit filed immediately was within limitation.

**10.** In so far as the document at Exh.50 is concerned, the same is a stamp paper which indicates payments made to Ramdas and his brother. It is also signed by uncle – Indrapal, son of Ramdas. In the Written Statement, these payments were denied. The deposition of DW 7 at Exh.65 indicates that in his cross-examination when he was confronted with the document at Exh.50, he identified two signatures for the payments of Rs.40,000-00 each to his father and uncle. These entries are dated 17th October, 1998. He stated that he had no knowledge about the other signatures on Exh.50. He, however, stated that when he had asked his father and uncle as to why they received payment after 30th June, 1999, they had replied that they had only put their signatures and they had not received any amount. It is relevant to note that Ramdas was defendant no.1 in the suit, Indrapal was defendant no.2 and the sons of Eknath were also arrayed as defendants. None of them entered the witness box to deny either their signatures or the receipt of the amounts stated therein. Though it is true that the entries at Exh.50 are not made in sequence, there is no cross-examination on that aspect. I find that the Courts were, therefore, justified in drawing an adverse inference against the defendants in that regard.

Moreover, PW 1 at Exh.54 has stated that the payments were made in the presence of various defendants who had put their signatures on the said document. I, therefore, find that the stand that Exh.50 and its contents were not duly proved cannot be accepted.

**11.** As far as readiness and willingness to perform their part of the contract is concerned, the evidence on record indicates that initially on 16th October, 1998, amount of Rs. 10,000-00 came to be paid to both the brothers. On the next day, further amount of Rs.40,000/- each was also paid. On 3rd January, 1999, amount of Rs. 1,00,000/- was paid and on 24th January, 1999, amount of Rs.50,000/- came to be paid. After extending the period of the agreements, further payments of Rs.50,000-00 plus Rs.50,000-00 were made on 1st March, 2000 and 8th June, 2000. Thus, entire consideration of Rs.3,40,000-00 was duly paid to the defendants. It has then come on record that the execution of the sale-deed was delayed as, according to the defendants, the land was not converted from Class-II to Class-I. It was admitted by DW 7 that unless the land was converted, it could not be sold. The land was converted into Class-I in 2005. The said witness further admitted that the defendants never tried to return the amount received by them from the plaintiffs.

**12.** In *Rajeshwari* [supra], it was held that the right to specific performance of an agreement for sale of immovable property raises questions of substantial importance between the parties as to whether a case for grant of a decree has been made out. Though an order in exercise of discretion may not involve a substantial question of law, the question whether the Court could, in law, exercise discretion for granting a decree of specific performance could be a question of law that affects the rights of the parties. If the facts of the present case are viewed in the aforesaid legal backdrop and considering the nature of evidence on record, I do not find that the Courts committed an error in exercising discretion in favour of plaintiffs.

**13.** Though it is true that if a finding of fact is arrived at by taking into consideration inadmissible evidence or by excluding relevant admissible evidence, the same may give rise to a question of law as held in *Narendra Gopal Vidyarthi* [supra], same is not the case in hand. The execution of the agreements not being in dispute and the payment of entire consideration also being duly proved, I do not find that there has been acceptance of any inadmissible evidence. Similarly, as held in *D.R. Rathna Murthy* [supra], evidence can be re-appreciated to consider whether any finding has been recorded in a perverse manner. After examining the material in the light of aforesaid law, I do not find that either any question of perversity or consideration of inadmissible evidence has resulted in passing the decree for specific performance.

**14.** Thus, on consideration of the entire material on record, I am satisfied that the Courts have rightly decreed the suit for specific performance. The appeal does not give rise to any substantial question of law to warrant any interdiction under Section 100 of the Civil Procedure Code, 1908. The appeal is, therefore, dismissed, leaving the parties to bear their own costs.

**15.** At this stage, learned counsel for the appellants prays that the execution proceedings filed by the respondents be stayed to enable the appellants to take appropriate steps in the matter.

**16.** The decree passed in favour of the respondents shall not be executed for a period of six weeks from today.

**Judge**

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