

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 689 OF 2017
A/W.
CAS/1346/2017 IN SA/689/2017**

Vasant Narayan Sabale (deceased)
through LRs. Ramdas Vasant Sabale ..Appellant

v/s.

Pratibha w/o. Murlidhar Tade ..Respondent

Mr. Nikhil Wadikar i/b. Nandu Pawar for the Appellant
None for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 6th DECEMBER, 2018.**

P.C.

1. Heard.
2. The appellant herein had filed a suit for specific performance in respect of the property bearing Gram Panchayat No. 361 situated at Mauje Mahuli, Taluka and District Satara. The said property was owned by one Murlidhar Tade, the husband and father in law of respondent nos.1 and 2 respectively.
3. On 26th February, 1990 one Shri Ramchandra Laxman Pathak

had sold part of the suit property to the appellant-plaintiff. Murlidhar Tade filed a suit No.447 of 1991 challenging the said sale deed, for demolition of house, recovery of possession and perpetual injunction. The said suit was decreed in the year 1996. The said decree was not challenged either by Ramchandra Pathak or by the applicant. The said decree has thus attained finality.

4. By agreement dated 7th June, 2004, the respondent no.1-widow of Murlidhar agreed to sell the suit property to the appellant. In terms of the said agreement, the sale deed was to be executed within six months from the date of execution of the said agreement. The records indicate that the appellant and the respondent no.1 had executed a document whereby the suit property was stated to have been sold and transferred in favour of the appellant. It is not in dispute that the said “sale deed” was not registered.

5. On 10th August, 2006 the respondent filed execution proceeding - Regular Darkhast No.99 of 2006 to execute the decree dated 12th March, 1996 passed in RCS/447/1991. Subsequent to filing of the execution application, the appellant herein filed a suit for specific performance. The appellant claimed that the decree in RCS 447 of

1991 is not executable in view of execution of agreement dated 7th June, 2004. He further claimed that he has been put in possession of the property and that he is ready and willing to execute the said sale deed. The respondents/defendants denied that the appellant/plaintiff was put in possession of the suit property. The respondent claimed that the suit was based on false documents. They also raised a plea of limitation.

6. Both the parties adduced evidence on the issues framed by the learned trial Court. Upon appreciating the evidence adduced by the respective parties, the learned trial Judge held that the suit was not filed within the prescribed period of limitation. It was further held that the respondent no.2 was not a party to the agreement for sale as well as to the “sale deed” at Exhibit 30. Hence, by judgment and decree dated 27th April 2011, the learned trial Judge dismissed the suit.

7. By the impugned judgment dated 8th March, 2017, the appellant preferred an appeal against the said order. The learned District Judge has confirmed the said finding and has dismissed the appeal. These concurrent findings have been challenged in the

present second appeal under Section 100 of CPC.

8. It is not in dispute that the agreement dated 7th June, 2004 (Exhibit 29) was not signed by the respondent no.2. The said agreement which is signed by the respondent no.1 clearly stated that the sale deed was to be executed within a period of six months from the date of the agreement. Since the time for executing the sale deed was specifically specified, the case would be covered by the first limb of Article 54 of the Limitation Act, 1963. It is not in dispute that the appellant herein had not filed the suit within the period of three years from the date of expiry of six months. Both the courts were therefore justified in holding that the suit was barred by limitation.

9. No substantial question of law is involved. The Appeal is dismissed. In view of dismissal of the appeal, Civil Application No. 1346 of 2017 does not survive and the same is also dismissed.

(ANUJA PRABHUDESSAI, J.)