

vks

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

**SECOND APPEAL NO.102 OF 2015
WITH
CIVIL APPLICATION NO.227 OF 2015
IN
SECOND APPEAL NO.102 OF 2015**

Nana Laxman Gavali	...	Appellant.
V/s.		
Motiram Hari Jadhav (decd)		
through Legal heirs	...	Respondents

Mr. U. B. Nighot with Mr. Abhay L. Patki, for Appellant.
Mr. Girish Agrawal i/by R. M. Agrawal, for respondent
Nos. 1A, 1B, and 2B.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 5th JUNE, 2018.

P.C. :

1] With consent, heard learned counsel for both the parties,
finally at the stage of admission itself.

2] The suit filed by appellant for specific performance of the
agreement, came to be partly allowed by the trial Court, rejecting his
claim for specific performance, but protected his possession over the
suit lands, under Section 53-A of the Transfer of Property Act, 1882;
at the same time dismissing the counter claim filed by respondent for
getting possession of the suit land.

3] Respondent herein challenged the said judgment and decree in Civil Appeal No.30 of 2010 and the first Appellate Court has allowed the appeal and set aside the judgment and decree of the trial Court. The first Appellate Court, has however, confirmed the finding of the trial Court that the suit for specific performance filed by the appellant was barred by limitation as despite the knowledge of the refusal by the respondent of specific performance in the year 1980 which fact was admitted by the appellant, the appellant has not filed suit for specific performance within three years therefrom. Hence, the claim for specific performance of contract was barred by law. The appellate Court, therefore dismissed the suit for specific performance of the contract and at the same time allowed the counter claim of the respondent holding that once the suit for specific performance is dismissed, then the appellant has lost his right to protect possession under Section 53-A of the Transfer of Property Act.

4] As regards the finding that the suit for specific performance is barred by limitation, both the trial Court and Appellate Court, have recorded concurrent finding, considering the clear admission given by the appellant himself in his cross examination that in the year 1980 itself he got knowledge that respondent is refusing to execute sale deed. Hence, that finding cannot be disturbed on reappreciation of evidence and therefore,

there is no substantial question of law involved in the appeal as regards the finding of the trial Court and Appellate Court that the suit for specific performance is barred by limitation.

5] As regards the case of the appellant, which was accepted by the trial Court to protect his possession under Section 53-A of the Transfer of Property Act, considering the law laid down by the Apex Court, in the case of **Revanasiddayya -vs- Gangamma @ Shashikala and anr 2018 (1) CCC 61**, that finding is rightly set aside by the appellate court. In this judgment, the Apex Court has, relying upon its earlier judgments, categorically held that “*once the suit for specific performance stands dismissed, protection under Section 53A of the Transfer of Property Act also extinguishes*”. In view thereof the Appellate Court, has rightly held that the protection granted to the appellant by the trial Court under Section 53-A of the Transfer of Property Act cannot be extended and accordingly decreed the counter claim of respondent for possession.

6] Under these circumstances, no substantial question of law is involved in the case. It is coupled with the fact that even as regards the transfer of property from one tribal to another non tribal, there is always restriction as laid down under Section 36 of the Maharashtra Land Revenue Code, 1966. Learned counsel for respondent, in this respect, has relied upon the judgment of the Hon'ble Apex Court, in

Tulshiram Adku Marape and ors -vs- State of Maharashtra,
[2011 (1) ALL MR 22], wherein it is categorically held that permission of the Collector for such transfer is strictly prohibited and cannot be upheld in law, even in respect of the transfer of land from one tribal to another tribal. Therefore, on this aspect also, there is no substantial question of law involved in this Appeal.

7] The Second Appeal, therefore, stands dismissed at the stage of admission itself.

8] In view of dismissal of Appeal, Civil Appeal No.227 of 2015 becomes infructuous and therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]