

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

**SECOND APPEAL NO. 579 OF 2018
WITH
CIVIL APPLICATION NO. 1345 OF 2018**

Govind Rangnath Chopade and others	... Appellants
Versus	
Dnyaneshwar Audumber Belkar (Sutar) and others	... Respondents

.....
Mr. Shriram S. Chaudhary for Applicants.
.....

CORAM : SANDEEP K. SHINDE, J.

DATE : 29th JANUARY, 2019.

P. C.:

1. Heard learned Counsel for the appellants. The respondent's suit for specific performance was decreed by the learned trial Court and decree was confirmed in Regular Civil Appeal No. 155 of 2013 by the Court of District Judge-3, Pandharpur, District Solapur vide judgment and order dated 31st July, 2018. It is against this decree the defendants have preferred this Second Appeal.

2. Defendants' father executed registered agreement in favour of the plaintiff on 14th October, 1991 and agreed to sell the subject

land for consideration of Rs.57,000/-. Rs.50,000/- were paid at the time of execution of the agreement (suit agreement) and balance amount was payable after obtaining the requisite permission. Class of the subject land was of a 'new tenure' and the agreement contemplates that the sale-deed would be executed after obtaining permission from the authorities concerned. That the evidence on record shows that permission was obtained from the revenue authorities by the plaintiff and immediately thereafter he called upon the defendants to execute the sale-deed upon accepting the balance consideration. That, since the respondents did not execute the sale-deed, the suit was filed as aforesaid.

3. Learned Counsel appearing for the appellants has raised two points;

- (i) That there were no pleadings of readiness and willingness in the plaint in terms of Section 16(1)(c) of the Specific Relief Act, 1963;
- (ii) The suit was barred by limitation.

4. I have gone through the judgments of both the Courts. The plaintiff had paid Rs.50,000/- at the time of execution of the contract and after obtaining permission from the authorities,

called upon the respondents to accept balance consideration. He pleaded so in the plaint.

On the contrary, it is defendants' case that Suit Agreement was not Agreement to Sale, but mortgaged by conditional sale and their father during his lifetime had paid the entire amount to the plaintiff. This defence was not accepted for want of material particulars and obviously for want of evidence. Thus, considering the pleadings of the parties and the evidence on record, I hold that the plaintiff proved the fact, that he was ready and willing to perform the suit contract on his part.

5. So far as the issue of limitation is concerned, it may be stated that soon after obtaining the permission the plaintiff had called upon the defendants to execute the sale-deed by accepting the balance consideration. The defendants refused and in fact denied the suit contract by setting up a defence that their father had executed the mortgage by conditional sale. Vide notice reply the defendants refused to perform the part of their contract and thus suit was filed immediately in September, 2007. I thus hold the suit was within limitation in terms of Article 54 of the Limitation Act.

6. It may also be stated that father of defendants had executed possession receipt and the finding is recorded by the Courts below that the possession of the subject property was handed over to the plaintiff upon executing the agreement to sale.

7. That for the reasons stated hereinabove, the appeal does not give rise to any substantial question of law. The appeal is therefore dismissed. In view of dismissal of appeal, civil application does not survive and the same is disposed of.

(SANDEEP K. SHINDE, J.)