

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 218 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 449 OF 2015**

Shri. Udaysinh Hamantrao JadhavAppellant
V/s.
Mandatai Bajirao Shinde (since deceased
through her Lrs)Respondents

* * * *

Mr. V.V. Thorat, Advocate for the appellant.

Mr. P. Gujar, Advocate for respondents no.1A to 1D.

CORAM : SANDEEP K. SHINDE, J.

Monday, 18th March, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. This appeal is preferred by the plaintiff whose suit for specific performance was decreed by the learned trial Judge. However, the said decree was reversed by the

learned Appellate Court in Regular Civil Appeal No. 152 of 2010 by judgment and order dated 30th September, 2014. It is against the decree in Regular Civil Appeal No. 152 of 2010 the plaintiff has preferred this Second Appeal.

3. I will refer the parties by their status in the suit.

4. It is settled law that, when time is not the essence of contract, the relief of specific performance is to be sought in a reasonable time and what could be reasonable time would depend upon the facts and circumstances of the case.

5. The learned Appellate Court dismissed the suit on the ground that the plaintiff and his predecessor did not seek enforcement of their right for a period of 26 years in aggregate.

6. The plaintiff is wife of one, Shankarrao, who vide sale-deed dated 26th March, 1979 sold the suit land to defendant no.1 for consideration of Rs.3,000/- and vide contemporaneous agreement, defendant no.1 agreed to re-convey the suit property to Shankarrao for the same amount. Later, in addition to Rs.3,000/-, Shankarrao

accepted Rs.1,000/- from defendant no.1 on 10th September, 1981 and 5th April, 1981 and acknowledgements were endorsed on the suit agreement.

7. Shankarrao died in the year 1991. During his lifetime, he did not seek for enforcement of agreement for reconveyance. After his demise, it is plaintiff's case that, Shankarrao's wife, Khashibai did not seek re-conveyance of the suit land. Khashibai died on 18th June, 1995 leaving behind the Will thereby bequeathing the properties including the suit properties to the plaintiff. The plaintiff issued a notice in July, 2005 i.e. nearly after ten years from the date of the Will and demanded specific performance.

8. It is contended by the learned Counsel for the appellant that, Shankarrao and his wife could not seek re-conveyance of the property during their lifetime may be because of financial constraints, which fact is also fortified by a fact that Shankarrao borrowed Rs.2,000/- from defendant no.1 in April, 1981. Even assuming, that Shankarrao had financial constraints and therefore he could not exercise his right and sought re-conveyance but

the fact remains that the plaintiff who is claiming under the Will of Khashibai, had not sought such rights nearly for ten years. There is no plausible explanation for such delay on the part of the plaintiff. Thus, in my view, the plaintiff has failed to seek re-conveyance, within a reasonable time.

9. The discretion exercised by the lower Appellate Court under Section 20 of the Specific Reliefs Act, thus cannot be interfered with, unless shown to be perverse. In view of this, the Appeal does not give rise to any substantial question of law. Hence, the same is dismissed.

10. In view of dismissal of the Appeal, Civil Application No. 449 of 2015 does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)