

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 12 OF 1994

Baburao Naroba Bargale
Since deceased thru. Lrs.

1. Smt. Indira Baburao Bargale
Aged 70 yrs., Occu. Household,
R/o. 9Th Galli, Near Nagarpalika, Jaysingpur,
Tal. Shirol, District-Kolhapur.
2. Shri Rajendra Baburao Bargale,
Aged 50 yrs., Occu. Service,
R/o. Ajinkya Tara Housing Society,
Jaysingpur, Tal. Shirol, Dist. Kolhapur.
3. Shri Narendra Baburao Bargale,
Aged 48 yrs., Occu. Business,
R/o. 9Th Galli, Jaysingpur, Tal. Shirol,
District Kolhapur.
4. Shri Surendra Baburao Bargale
Aged 45 yrs., Occu. Business,
R/o. Ajinkyatara Housing Society,
Jaysingpur, Tal. Shirol, Dist. Kolhapur.
5. Shri Ramesh Baburao Bargale
Aged 43 yrs., Occu. Doctor,
R/o. Balaji Nagar, Dhankwadi, Pune.
6. Shri Sanjay Baburao Bargale
Aged 40 yrs., Occu. Business,
R/o. 9Th Galli, Near Nagarpalika,
Jaysingpur, Tal. Shirol, Dist. Kolhapur.

.. Appellants

Vs.

1. Shri Surendra Baburao Shetty
Since deceased thru. Lrs.
Smt. Malati Surendra Shetty
Aged 70 yrs.,
Shri Rajendra Surendra Shetty
Aged 50 yrs.,

Shri Narendra Surendra Shetty
Aged 44 yrs.,
All R/o. Galli No.9, Near Ram Mandir,
Jaysingpur.

Sou. Bharati Annaso Patil

Aged 48 yrs.,
R/o. Rajarampuri, Galli No.7,
Kolhapur.

Sou. Shobha Shrikant Bahirsheth

Aged 46 yrs.,
R/o. Gujar Kasar Galli,
Kolhapur.

Sou. Mangal Dilip Bahirsheth
Aged-Adult, R/o. Shweta Apartment,
Tarabai Park, Kolhapur.

2. Shri Suryakant Krishna Kore,
Aged 36 yrs., Occu. Idle,
R/o. Opposite Railway Station,
Jaysingpur, District – Kolhapur
(S.A. dismissed as against Respondent No.2
as per Court's order dated 15.3.2002)

.. Respondents

Mr.Tejpal Ingale a/w Mr.Vasim Samlewale & Mr.Nikhil Pawar,
for the Appellants.
Mr.K.V.Saste, for Respondents No. 1A to 1F.

CORAM : M.S.KARNIK, J.

DATE : 11th JULY, 2019

ORAL JUDGMENT :

. Heard learned Counsel for the appellants and
learned Counsel for the respondents.

2. This Court admitted this Second Appeal on the

following substantial questions of law.

i) Whether the suit was barred by the law of limitation? Whether the period of limitation commenced from the date of registration of registered Sale Deed or from the date of service of notice of eviction on the plaintiff?

(ii) Whether the impugned Sale Deed dated 23/06/1975 is illegal ?”

3. Appellants are the legal heirs of original defendant No.1. Respondent No.1 is original plaintiff. His legal heirs are on record. Respondent No.2 is the original defendant No.2. Defendant No.2 is the son of original owner - Krishna from whom the appellants as well as respondent No.1 claim to have derived interest in the suit property. For the sake of convenience, the parties are referred to as the plaintiff, defendant No.1 and defendant No.2 as per their status in the Suit.

4. This Appeal is filed at the instance of original

defendant No.1. The plaintiff filed Regular Civil Suit No. 185 of 1979 before Joint Civil Judge, Junior Division, Jaisingpur for declaration that sale deed executed on 23/06/1975 in favour of defendant No.1 is null & void on the following set of facts.

5. The suit property admeasuring 11.6 x 8.9 ft. in City Survey No. 1180 out of block No. 262 situated at Jaisingpur Town, Taluka – Shirol, District - Kolhapur originally belonged to Krishna Balwant Kore – father of defendant No.2. During his lifetime, Krishna entered into an unregistered agreement of sale dated 04/07/1973 in favour of the plaintiff. Some time in 1977, Krishna died leaving behind him his son - defendant No.2 as his legal heir.

6. Defendant No.2 executed sale deed dated 19/09/1978 in favour of plaintiff in respect of the suit property pursuant to the agreement of sale dated 04/07/1973 executed by his father during his lifetime in favour of the plaintiff. The plaintiff is in occupation of the suit property in his capacity as a

tenant. The plaintiff claims that by virtue of sale deed dated 19/09/1978, he became owner of the suit property. The plaintiff claims that it came to his knowledge upon receipt of notice dated 24/05/1978 sent by the defendant No.1 that defendant No.2's father & defendant No.2 executed sale deed dated 23/06/1975 in favour of defendant No.1.

7. It is the case of the plaintiff that during the subsistence of the agreement of sale dated 04/07/1973 executed by Krishna in his favour, neither Krishna nor defendant No.2 had any right to enter into further transaction of sale in respect of the said property. It is the plaintiff's case that in order to defeat the rights accrued in his favour, the parties (Krishna, defendant No.1 & defendant No.2) in collusion with each other executed the agreement of sale dated - February 1975 and consequent sale deed dated 23/06/1975 in favour of defendant No.1. It is claimed by the plaintiff that he got knowledge of the said sale deed dated 23/06/1975 only on 24/05/1978 upon receipt of notice sent by the defendant No.1. Since the

agreement of sale in favour of the plaintiff was prior in point of time to the execution of sale deed in favour of the defendant No.1, the plaintiff filed the Suit for declaration that sale deed dated 23/06/1975 is illegal & void.

8. Defendant No.1 contested the Suit by filing written statement. According to him, by a public notice in daily 'Rashtra Shakti' dated 09/04/1975, he had expressed his intention of purchasing the suit property and called for objection to purchase the suit property. It is only thereafter that sale deed dated 23/06/1975 was executed. The plaintiff did not take any objection despite the public notice. The agreement of sale as well as sale deed was duly signed by Krishna as well as defendant No.2 in favour of defendant No.1. As the plaintiff had knowledge of transaction, the defendant No.1 contended that Suit is not maintainable. Defendant No.1 further contended that Suit is not within limitation as the right to sue would first accrue in favour of the plaintiff on the date when the agreement dated 23/06/1975 was registered which is 23/06/1975. The

trial Court framed the following issues.

- “1. Does the Plaintiff prove that the deceased Krishna Kore had executed an agreement of sale on 4/7/1973 in respect of the suit property in his favour ?
2. Does the Plaintiff prove that the sale deed dated 23/6/1975 executed in favour of the Defendant No.1 is illegal and invalid ?
3. Does the Plaintiff prove that in case of refusing to pass the decree he will suffer from hardships ?
4. Whether the suit is within limitation ?
5. Whether the suit is maintainable ?
6. Whether the Plaintiff is entitled to the relief of declaration ?
7. What order and decree ?”
9. The plaintiff – Surendra examined himself as P.W.1 at Exhibit 70. He also examined a witness Shri Ravindra Zele as P.W.2 at Exhibit 82 to prove the agreement of sale dated 04/07/1973. On behalf of defendants, D.W.1 is examined.

Shri Purshottam Gangadhar Deshpande who was working as Bond writer and scribe to the agreement of sale as well as sale deed dated 23/06/1975 is examined as D.W.2. Annasaheb Dundappa Kore who was working in the office of Dainik Rashtrashakti in which newspaper the public notice dated 09/04/1975 was published is examined as D.W.3.

10. The trial Court, except for the issue of limitation, decided all other issues in favour of the plaintiff. The trial Court was of the opinion that the right to sue first accrued on 26/02/1975 which is the date of registered agreement of sale executed between Krishna and defendant No.1 and therefore plaintiffs Suit is not within limitation. The trial Court dismissed the Suit.

11. The plaintiff filed Appeal before the First Appellate Court. The First Appellate Court framed the following points for determination.

“1. Whether the suit was in limitation ?

2. Whether the sale deed dt. 23/6/1975 executed in favour of the Respondent-Defendant is illegal and invalid ?
3. Whether the judgment and decree resulted in dismissal is erroneous and bad in law ?
4. What order ?”

12. The Appellate Court reversed the findings of the trial Court on the point of limitation. On all other issues it concurred with findings of the trial Court. Insofar as limitation is concerned, the Appellate Court held that the Suit filed by the plaintiff is within limitation. To that extent, First Appellate Court interfered with the findings of the trial Court and consequently, allowed the Appeal & decreed the Suit. The Appellate Court declared the sale deed dated 23/06/1975 relating to the suit property as null and void.

13. Learned Counsel for the appellant – original defendant No.1 urged that the Appellate Court erred in coming to the conclusion that the Suit is within limitation. According to him, agreement of sale dated 26/02/1975 & sale deed dated

23/06/1975 are registered documents. He would invite my attention to Section 47 of the Registration Act, 1908. He would submit that in terms of Section 47, a registered document shall operate from the time when it is registered. Further he would invite my attention to Explanation I of Section 3 of the Transfer of Property Act, 1882 to contend that when by registered instrument a transaction has taken place, then any person acquiring such property or any part of, or share or interest in such property shall be deemed to have notice of such instrument as from the date of registration. He would also invite my attention to the Article 58 of the Limitation Act, 1963 to support his submission that in respect of declaration to be obtained in the nature as claimed by the plaintiff, the period of limitation would be 3 years from the date when the right to sue first accrues. He would submit that a reading of these provisions makes it clear that the limitation would start from the date when the sale deed is registered viz. from 23/06/1975. The Suit filed in the year 1979 is well beyond the period of 3 years and as such rightly dismissed by the trial Court as barred by limitation

is his contention.

14. Learned Counsel Shri Ingale would further urge that the Appellate Court committed an error in holding that the period of limitation would commence from the date of knowledge i.e. date (24/05/1978) the date on which the defendant No.1 issued notice to the plaintiff. According to him, the said notice was a notice for eviction and is wrongly construed by the Appellate Court to be the date of knowledge of transaction to hold that this would be the starting point of limitation.

15. Shri Ingale would further urge that the agreement of sale in favour of the plaintiff is unregistered whereas the defendant No.1 is claiming on the basis of a registered sale deed after due notice. He submits that on this ground itself plaintiffs suit should have been dismissed.

16. Shri Ingale further urged that defendant No.1 has taken all precautions as required in law a prudent person is

expected to take while entering into transaction with Krishna. He would submit that a public notice was duly published in the newspaper calling for objections. The plaintiff did not raise any objection despite public notice. Shri Ingale would therefore submit that as a prudent person, he has done what was required in law to inform the public at large about the transaction in respect of the suit property. Shri Ingale would further submit that there is no provision in law which requires defendant No.1 to approach the plaintiff – tenant to find out about his title in the suit property.

17. Shri Ingale would further urge that the Appellate Court was factually incorrect in observing that no cross appeal is filed by the defendant No.1. He has invited my attention to relevant portion of the record which shows that the cross objection in fact has been filed. He has further invited my attention to the evidence of the plaintiff wherein the plaintiff has said that he does not know whether the notice was published on 09/04/1975 by defendant No.1 in daily Rashtra

Shakti. He would further submit that both the Courts have erred in approaching the controversy from the point of view as to whether defendant No.1 is a bonafide purchaser. The Suit filed by the plaintiff is not for specific performance. According to him, it is only in a Suit filed for specific performance that the contention as to whether defendant No.1 is a bonafide purchaser for value without notice can be gone into. Shri Ingale would further submit that even otherwise the notice has been duly given.

18. Shri Ingale relied upon the property extract to show that even necessary changes were made in the ownership column pursuant to the execution of the sale deed on 23/06/1975. Shri Ingale would thus submit that even when defendant No.1's his name is entered in CTS survey record with effect from 17/07/1975 as owner, the plaintiff did not take any steps to institute the Suit immediately. For all these reasons, Shri Ingale would argue that upon execution of a registered sale deed in defendant No.1's favour, the right, title and interest of

the owner in respect of the suit property would get extinguished. He would thus submit that sale deed in favour of the plaintiff of the year 1978 is rendered inconsequential, as after the sale deed dated 23/06/1975, it is the defendant No.1 who has become owner of the suit property.

19. Learned Counsel Shri Saste for the respondent - original plaintiff on the other hand supported the order passed by the Appellate Court. He would submit that the Appellate Court has rightly come to the conclusion that the right to sue would first accrue when the plaintiff derived knowledge of the transaction which was only after receipt of the notice issued by the defendant No.1 to the plaintiff on 24/05/1978. Shri Saste invited my attention to the relevant provisions of Section 47 of the Registration Act and Article 58 of the Limitation Act. Shri Saste would also invite my attention to the Explanation II to Section 3 of the Transfer of Property Act and urge that the defendant No.1 is deemed to have notice of the title of the plaintiff as plaintiff is the one who is in actual possession of the

suit property. Shri Saste would invite my attention to the deposition of the defendant No.1 where he clearly admits knowledge about the plaintiff residing in the suit property in his capacity as a tenant. He would urge that the agreement of sale in his favour executed by the owner in 1973 is prior in point of time to sale deed dated 23/06/1975 in favour of defendant No.1. According to Shri Saste, on the date of agreement of sale, admittedly plaintiff was in possession and having paid part consideration, he would be entitled to protection as envisaged in Article 53A of the Transfer of Property Act. Shri Saste would submit that in any case, there was no question or cause for the plaintiff to file Suit for specific performance as under the agreement of sale of 1973, time to make payment was upto 1978 whereafter defendant No.2 executed sale deed in his favour on 19/09/78. For all these reasons, he would submit that as during the subsistence of the agreement of sale in his favour and admittedly when he is in possession of the suit property, the Appellate Court is justified in decreeing the Suit and declaring the sale deed executed between Krishna

defendant No.2 and defendant No.1 as null and void.

20. Heard learned Counsel for the parties. There is no dispute that Krishna had executed agreement of sale in favour of the plaintiff on 04/07/1973. This is an unregistered document. By virtue of said agreement, the entire consideration was to be paid in yearly installments upto 1978. Upon demise of Krishna, his legal heir – defendant No.2 executed sale deed in plaintiff's favour on 19/09/1978.

21. The registered agreement of sale which forms the basis for defendant No.1's claim was executed on 26/02/1975. The public notice in the daily newspaper was published on 09/04/1975 by the defendant No.1. Pursuant thereto, the original owner Krishna executed a registered sale deed in favour of the defendant No.1 on 23/06/1975. This document was also signed by defendant No.2. On 24/05/1978, the defendant No.1 by notice terminated the tenancy of the plaintiff and sought eviction on the basis that he has become the owner of the suit

property on the strength of registered sale deed dated 23/06/1975.

22. According to learned Counsel for the defendant No.1, right to sue would first accrue on 23/06/1975 i.e. the date on which registered sale deed is executed in favour of defendant No.1. On the other hand, according to the plaintiff he had no knowledge of the transaction and in any case, according to him the right to sue would accrue only on 24/05/1978 when the possession of the plaintiff is threatened upon issue of notice of eviction wherein there is a reference to the execution of registered sale deed of 1975 on the basis of which defendant No.1 claims to be the owner.

23. To appreciate the submissions on behalf of appellants, it would be material to reproduce Section 47 of the Registration Act, 1908 which reads thus :

“47. Time from which registered document operates.- A registered document shall operate from the time from which it would have commenced to operate if

no registration thereof had been required or made, and not from the time of its registration.”

24. It would also be material reproduce the relevant portion of Section 3 of the Transfer of Property Act which reads thus :

“Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly

entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.”

25. Further Article 58 of the Limitation Act reads thus :

Article	Description of suit	Period of limitation	Time from which period begins to run
58	To obtain any other declaration	Three years	When the right to sue first accrues.

26. Reading of Article 58 poses no difficulty in as much as to obtain any other declaration (as in present case) period of limitation prescribed is 3 years and the time from which period begins to run would be when the right to sue first accrues. Relying on Section 47 of the Registration Act learned Counsel for appellants would contend that the starting point of limitation to declare the sale deed null and void would be the date on which it is registered. Moreover, relying on Explanation I of Section 3 of the Transfer of Property Act, it is submitted that the plaintiff has deemed knowledge of the sale deed as the same is registered on 23/06/1975. It is defendant No.1's case that right to sue in favour of respondent – plaintiff would accrue on 23/06/1975 and therefore the Suit is not within limitation as rightly held by the trial Judge.

27. It is pertinent to mention that the agreement of sale executed between the plaintiff and the original owner Krishna is dated 04/07/1973. The registered document on the basis of which the defendant No.1 claims to be the owner is dated

23/06/1975. Explanation I to Section 3 of the Transfer of Property Act provides that any person acquiring share or interest in property shall be deemed to have notice of such instrument as from the date of the registration. In my opinion as agreement of sale on the basis of which plaintiff claims is executed prior in point of time to the defendant No.1's sale deed, Explanation I will have no application in such a case.

28. Let me now consider the case of plaintiff in the context of Explanation II of Section 3 of the Transfer of Property Act. Defendant No.1 in his evidence has admitted to have knowledge that the plaintiff is in occupation of the suit property in his capacity as a tenant. Even the notice dated 24/05/1978 issued by defendant No.1 speaks of termination of tenancy of the plaintiff and for handing over vacant possession of the premises by the plaintiff to defendant No.1. In terms of Explanation II of Section 3 of the Transfer of Property Act, the defendant No.1 having purchased the immovable property shall be deemed to have notice of the title, if any, of the plaintiff who

is for the time being in actual possession of the suit property. I find the argument of learned Counsel for the appellant – defendant No.1 that right to sue would first accrue from the date of the registered sale deed on 23/06/1975 as misconceived. There is nothing in Section 47 of the Registration Act which provides that limitation will commence from the date when the sale deed is registered. Section 47 only provides that the registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. Thus, Section 47 of the Registration Act does not have any bearing on the question as to when the right to sue would first accrue in the facts of the present case. Moreover, as I have already discussed, agreement of sale in favour of the plaintiff is prior in point of time to the registered sale deed of defendant No.1 and therefore Explanation I of Section 3 of the Transfer of Property Act will have no application.

29. No doubt, the defendant No.1 had issued a public

notice calling for objections. However, as the defendant No.1 was aware that it is the plaintiff who is in possession of the suit premises as a tenant, then it was imperative on his part to have made inquiry about the interest which the plaintiff has in the suit property. The contention that defendant No.1 is a bonafide purchaser for value without notice can only be stated to be rejected. In the facts of the present case mere issuance of public notice and registration of sale deed will not make the date of registration of sale deed as the starting point of limitation. It is the defendant No.1 who failed to make any enquiry as regards the interest which the plaintiff has in the suit property. The Appellate Court therefore rightly came to the conclusion that the limitation for declaring the sale deed null & void would commence from the date of knowledge i.e. 24/05/1978, the date on which defendant No.1 issued notice calling upon plaintiff to vacate the suit premises. In this notice, defendant No.1 mentioned that he became owner by virtue of sale deed of 1975 and therefore he is seeking possession by calling upon plaintiff to vacate the suit premises. I agree with the Appellate

Court that the plaintiff's suit is within limitation.

30. It is not uncommon that where a tenant is in possession of the property, that too for a long time has been using it for business purpose would always like to purchase the property getting all advantages if offered for sale. Normally the landlord or owner of the property would also be interested in selling the property to a person in possession if a reasonable price is given to avoid litigation and to have smooth transaction. In such a situation, defendant No.1 would have made inquiry with the plaintiff about the nature of his possession and title under which he is in possession. If defendant No.1 had made inquiry, the plaintiff would have certainly revealed about the agreement of sale dated 04/07/1973 being a prior transaction. If such inquiry was not made, it only means that defendant No.1 willfully abstained from making such inquiry or grossly neglected to do so. To arrive at this finding, I have relied on the observations made by Their Lordship in the case decided by the Apex Court in **R.K. Mohammed Ubaidullah and ors. Vs. Hajee**

C.Abdul Wahab (D) by Lrs. And ors. (2000) 6 Supreme Court Cases 402. It would be also material to quote paragraph 15 from the said decision of the Apex Court which reads thus :

“15. Notice is defined in Section 3 of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive. "A person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation II of said Section 3 reads:

"Explanation II - Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."

Section 3 was amended by the Amendment Act of 1929 in relation to the definition of 'notice'. The definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. For the immediate purpose Explanation-II is relevant. It states that actual possession is notice of the title of the person in possession. Prior to the amendment there had been some uncertainty because of divergent views expressed by various High Courts in relation to the actual possession as notice of title. A person may enter the property in one capacity and

having a kind of interest. But subsequently while continuing in possession of the property his capacity or interest may change. A person entering the property as tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may be some other interest is created in his favour subsequently. Hence with reference to subsequent purchaser it is essential that he should make an inquiry as to title or interest of the person in actual possession as on the date when sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property. In the case on hand defendants 2 to 4 contended that they were already aware of the nature of possession of the plaintiff over the suit property as a tenant and as such there was no need to make any inquiry. At one stage they also contended that they purchased the property after contacting the plaintiff, of course, which contention was negated by the learned trial court as well as the High court. Even otherwise the said contention is self-contradictory. In view of Section 19(b) of the Specific Relief Act and definition of “notice” given in Section 3 of the Transfer of Property Act read along with explanation II, it is rightly held by the trial court as well as by the High Court

that the Defendants 2 to 5 were not bona fide purchasers in good faith for value without notice of the original contract.”

31. In this view of the matter, in my opinion, before entering into the transaction, it was essential for defendant No.1 to make inquiry as to the title or interest of the plaintiff who was in actual possession as on the date when sale transaction was made by him. As held by the Their Lordships, actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. Defendant No.1 ought to have made an inquiry as to further interest, nature of possession and title under which the plaintiff was continuing in possession on the date of purchase of the property. Defendant No.1 contended that he was already aware of the nature of the possession of the plaintiff over the suit property as a tenant. This being the position, defendant No.1 failed to make any further inquiry from the plaintiff as to the nature of his possession and title under which the plaintiff was continuing in possession.

32. In fact, not having made any inquiry from the plaintiff about the capacity of title under which he continues to be in possession, the present case would be squarely covered by Explanation II to Section 3 of Transfer of Property Act. There is nothing on record to indicate that prior to the issuance of termination notice dated 24/05/1978, defendant No.1 had informed the plaintiff about execution of the registered sale deed dated 23/06/1975. It is not even the case of the defendant No.1 that the plaintiff had knowledge of the transaction entered into between Krishna and the plaintiff. It is for this reason that Explanation II to Section 3 assumes relevance. It states that actual possession is notice of the title of the person in possession. The plaintiff entered the property in his capacity as a tenant but subsequently by an agreement of sale agreed to purchase the suit property. As indicated earlier, the time for payment of balance consideration under the agreement was upto 1978. There is nothing on record to indicate nor is it the case of defendant No.1 that either the original owner or defendant No.2 cancelled the agreement of sale on which basis

plaintiff claims. Even the defendant No.2 executed sale deed in plaintiffs favour in 1978.

33. As rightly pointed out by learned Counsel for the plaintiff, defendant No.1 in his evidence has admitted that on 29/07/1975, the original owner Krishna made an application against defendant No.1 to the Collector, Kolhapur alleging that consideration mentioned in sale deed was not paid to Krishna by the defendant. All these aspects would support to the plaintiff's case that the sale deed was executed between Krishna and defendant No.1 only to defeat the rights accrued to the plaintiff under the agreement of sale dated 04/07/1973. The Appellate Court has also dealt with the matter in the context of Section 53A of the Transfer of Property Act in as much as the plaintiff was already in possession of the properties on the date of execution of agreement of sale. Mere issuance of a public notice is not sufficient to contend that the plaintiff had knowledge of the transaction. The date of registration of sale deed in defendant No.1's favour would not be the starting point of

limitation. The contention of defendant No.1 that he is a bonafide purchaser for value without notice deserves to be rejected. In the facts of the present case, defendant No.1 should have made inquiry as to interest or title of plaintiff who was in actual possession of the suit property.

34. I have gone through to the findings of the Courts below. The First Appellate Court for the reasons recorded in the order has rightly come to the conclusion that the Suit is within limitation. The First Appellate Court reversed the findings of trial Court on the point of limitation. All other issues have been concurrently held in favour of the plaintiff by the Courts below. I see no error in these findings of the fact recorded by the Courts below. Second Appeal is therefore dismissed.

35. The substantial questions of law framed by this Court are answered accordingly.

(M.S.KARNIK, J.)