

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

SECOND APPEAL NO.169 OF 2019

(Smt. Sumitra Kisan Wadhai and others ..vs.. Shri Nilkanth Sudamji Mandekar and others)

AND

SECOND APPEAL NO.170 OF 2019

(Smt. Sumitra Kisan Wadhai and others ..vs.. Mohan Manoharrao Lad and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Smt. Swati Paunikar, Counsel for the appellants.

CORAM : ROHIT B. DEO, J.

DATED : 16-04-2019

These appeals assail the common judgment dated 19-10-2018 rendered by the Principal District Judge, Yavatmal in Regular Civil Appeal 104/2014 and Regular Civil Appeal 105/2014.

2. The appellants in Second Appeal 169/2019 brought suit for specific performance of contract bearing Regular Civil Suit 162/2008 which is dismissed by the Civil Judge (Junior Division) Ralegaon by judgment and decree dated 17-10-2014. Regular Civil Appeal 104/2014 is dismissed by the Principal District Judge, Yavatmal by judgment and decree dated 19-10-2018.

3. Second Appeal 170/2019 emanates from Regular Civil Suit 37/2009 instituted by the purchasers of the suit property for injunction, which is decreed by judgment and decree dated 17-10-2014 and Regular Civil Appeal

105/2014 is dismissed by the Principal District Judge, Yavatmal by the common judgment, as observed. In so far as the claim for specific performance is concerned, both the Courts have concurrently held that the suit is barred by limitation. Concededly, the suit agreement was executed on 29-2-1988. The suit property is agricultural land ad-measuring 20 acres and the total consideration was Rs.11,000/-. Even accepting the plaint allegations, the plaintiffs paid the defendants an amount of Rs.2,300/- till 21-4-1988. Concededly, from 21-4-1988 till the institution of the suit in 2008 i.e. 20 years after the suit agreement, no attempt was made to pay the balance consideration.

4. Smt. S.K. Paunikar, learned Counsel for the appellants would submit that since no time was stipulated for execution of the sale-deed, the suit instituted 20 years after the agreement was within limitation. The submission is that the cause of action arose only in the year 2008 when the owners of the land transferred the suit property to defendants 7 and 8. The submission is noted only for rejection. Perusal of the pleadings in paragraph 6 of the plaint would reveal that it is the case of the plaintiffs that in the year 1990 a notice was issued to the land owners to execute the sale-deed. The plaintiffs contend that they attended the office of the Sub-Registrar of document and the land owners did not turn up. The pleadings are that the land owners

avoided to execute the sale-deed from 1990. The limitation for specific performance was triggered when the refusal to perform the contract was discernible. The submission that the cause of action arose only in the year 2008 when the land owners transferred the suit property to defendants 7 and 8, cannot be countenanced.

5. Both the Courts below have concurrently recorded that the suit is beyond limitation. The Courts have further recorded a finding of fact that the plaintiffs were not ready and willing to perform their part of the contract. The findings recorded concurrently are unexceptionable.

6. In view of the findings recorded in Regular Civil Suit 162/2008, which is affirmed by the first appellate Court, and with which finding this Court concurs, the findings recorded in Regular Civil Suit 37/2009 need no interference.

7. No question of law is involved in these appeals which are dismissed with no order as to costs.

JUDGE

adgokar