

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 249 OF 2017

Shankarrao Barkuji Dupare & anr.
VS.
Manohar Sadashivrao Dupare & others

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

Court's or Judge's

Shri. R. V. Shah, Advocate for appellants.
Shri. P. R. Agrawal, Advocate for respondents No.2 to 6.

CORAM : Manish Pitale J

DATED : 20.09.2019

The appellants are the original defendants who have challenged by way of this appeal, judgment and order dated 23.08.2016 passed by the Court of District Judge, Amravati (Regular Civil Appeal No.139/2014) whereby the appellate Court has reversed the judgment and order passed by the trial Court and granted decree of specific performance in favour of the respondents (original plaintiffs).

2. The respondents approached the Court of Civil Judge Junior Division by filing Regular Civil Suit No.73/2007 on 15.11.2007 seeking a decree of specific performance in respect of agreement dated 21.04.2001. It was the contention of the respondents that consideration agreed between the parties was

Rs.40,000/- for purchase of land from the appellants and that on the date of the agreement Rs.4,000/- towards earnest money was paid. It was further contended that in terms of the agreement, the appellants were required to take permission of the Sub Divisional Officer and upon receiving such permission, sale deed was to be executed. It was further claimed by the respondents that further amounts were paid and on 21.06.2002, they paid the entire balance consideration of Rs.12,000/-. The respondents stated that they were in possession of the suit property from the date of agreement. It was further the case of the respondents that on 03.01.2007, the appellant No.1 submitted application (Exh.22) before the Sub Divisional Officer mentioning the said agreement and the fact that the entire consideration of the amount had been received and further that permission was required since the respondent were ready for execution of sale deed. Thereafter, when the appellants issued notice to the respondents claiming to be in possession of the suit property and calling upon the respondents not to disturb their possession, the respondents were prompted to file the aforesaid suit before the trial Court.

3. The appellants resisted the claim made by the respondents and denied the agreement. The appellants denied all claims made by the respondents as regards the possession, payment of consideration

and the obligation on the appellants under the said agreement.

4. The parties led oral and documentary evidence in respect of their rival contentions. The trial Court held on all issues against the respondents, giving findings that the respondents had failed to prove the agreement and that the respondents had also failed to prove that consideration amount was paid or that they had performed their part of agreement to sale. On this basis the suit was dismissed.

5. Aggrieved by the judgment and order of the trial Court, the respondents filed appeal before the appellate Court. By the impugned judgment and order, the appellate Court has reversed all the findings rendered by the trial Court and it has been found that the aforesaid agreement dated 21.04.2001 was indeed proved by the respondents and that they had paid the entire consideration amount. It was further held that the respondents had placed on record sufficient material to show that they had already performed their part of the contract and that the attempt made on behalf of the appellant to show that the agreement was nothing but a money lending transaction, could not be proved by the appellants. On this basis, the appellate Court reversed the order of the trial Court and decreed the suit in favour of the respondents.

6. The learned counsel appearing on behalf of the appellants, at the outset, contended that although a plea regarding limitation before the Courts below was not taken, since it was a pure question of law, the same was being raised. It was claimed that since there was date fixed in the agreement. The first part of Article 54 of the Limitation Act applied in the present case and that the date fixed in agreement was 21.04.2002, while the suit being filed on 15.11.2007 thereby showing that it was barred by limitation. It was further contended that the appellate Court wrongly appreciated the documentary evidence and held that the agreement was proved, particularly, when the appellant No.1 denied his signatures on the agreement.

7. It was further submitted that the application purportedly submitted before the Sub Divisional Officer (Exh.22) also could not have been relied upon while reversing the finding of the trial Court. On this basis it was submitted that question of law pertaining to limitation, perversity of findings of the appellate Court and on readiness and willingness arose in the present case.

8. On the other hand, learned counsel appearing on behalf of the respondents pointed out that the date fixed in the agreement was 21.04.2002 and on proper reading of the agreement demonstrated that it was not a date fixed for the

execution of sale deed but it was the date fixed for the appellants to apply and seek permission from the Sub Divisional Officer and further that the agreement clearly stipulated that the sale deed could be executed only after permission was received. It was submitted that therefore, there was no substance in the contention raised on behalf of the appellants, regarding limitation.

9. The learned counsel for the respondents relied upon the reasoning given by the appellate Court in the context of the agreement and the application (Exh.22) to contend that the findings were supported by evidence on record and that no substantial question of law would arise. Since the present case concerns reversal of order of trial Court by the appellate Court, this Court heard the learned counsel for the parties to examine whether any substantial question of law arose in the present case. The contentions raised on behalf of the appellants cannot be accepted, because bare a perusal of the agreement clearly shows that the date 21.04.2002, mentioned in the agreement, only related to the responsibility on the appellants to apply for permission from the Sub Divisional Officer. The agreement clearly stipulated that the sale deed would have to be executed upon receipt of permission from the Sub Divisional Officer. Therefore, it becomes clear that the date 21.04.2002 stated in the agreement cannot be said to be the date fixed for

execution of sale deed and therefore, part -I of Article 54 of the Limitation Act would not apply in the present case. The moment it is found that part-II of Article 54 would apply, it becomes clear that limitation would start from when the notice was issued by the appellants. The cause of action in the present case, as contended on behalf of the respondents, arose only when the appellants undertook some action that signified repudiation of the agreement. In this case, notice was issued by the appellants to the respondents for the first time in the year 2007, which amounted to repudiation of the agreement while the suit was filed on 15.11.2007 and the same clearly shows that the suit was filed within limitation.

10. In support of his contention on the question of limitation the learned counsel for the appellants placed reliance of judgment of Hon'ble Supreme Court in the case of **Urvashi Aggrawal vs. Kushagr Ansal [reported in 2019 AIR SC 1280]**, but a perusal of the said judgment, particularly, para 10 thereof would show that on facts the Hon'ble Supreme Court found that a specific date i.e. 31.03.1975 was fixed for performance of the agreement. The said fact clearly distinguishes the aforesaid case, dealt with by the Hon'ble Supreme Court, from the facts of the present case. As noted above, a proper reading of the clauses of the agreement in the present case would show that the date fixed as claimed by the appellants for execution

of the sale deed was in fact not the date fixed for performance of the agreement and the agreement clearly stipulated that sale deed would be executed after permission was obtained from the Sub Divisional Officer. Therefore, this Court disagrees with the submissions made on behalf of the appellant in that regard.

11. Therefore, even if the issue regarding limitation was not raised before the Courts below, this Court has considered the same on basis of material on record and it is found that the contention raised on behalf of the appellants is not sustainable.

12. As regards the other aspects regarding payment of entire consideration amount of Rs.40,000/-, including balance amount of Rs.12,000/- paid on 21.04.2001 and the very existence of the agreement, the findings rendered by the appellate Court are based on evidence and material on record and they cannot be said to be perverse.

13. As regards Exh.22 i.e. application made by the appellant No.1 before the Sub Divisional Officer, it becomes clear that appellate Court took into consideration the said document to find that the appellant No.1 himself relied upon the said agreement dated 21.04.2001 and stated that the entire consideration amount has been received and that the respondents were ready to execute the sale

deed.

14. The appreciation of the said document by the appellate Court cannot be said to be erroneous and the findings rendered in that regard cannot be said to be perverse.

15. Therefore, on perusal of the material on record, it becomes clear that although the present case concerns reversal of the order of the trial Court and grant of decree by the appellate Court in favour of the respondents, no substantial question of law arises in this appeal for exercise of jurisdiction by this Court. Accordingly, the appeal is dismissed. No order as to costs.

JUDGE

KOLHE