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

**SECOND APPEAL NO.366 OF 2016
WITH
CIVIL APPLICATION NO.1709 OF 2014**

Smt. Chandrabhaga Tulshiram Bhujbal
and Others

....Appellants

V/s

Sou. Parvati Raghunath Bankar
and Another

.... Respondents.

Mr. Ashok B. Tajane for the Appellants.
Ms. Nisha S. Gaikwad for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 07, 2020

P.C.:

1] This appeal is by original Defendants, who suffered decree of specific performance vide judgment and order dated 5/7/2008 passed by the Court of Civil Judge, Junior Division, Taluka Khed, District Pune, which was confirmed by the learned District Judge, Pune in Civil Appeal No.550 of 2008.

2] Heard Shri Tajane, learned Counsel for the Appellants and Ms. Gaikwad, learned Counsel for Respondents/Plaintiffs.

3] The suit in question is based on an agreement dated 12/8/1988 i.e. Exhibit-48 wherein total consideration agreed was Rs 25,000/- out of which Appellants/Defendants claimed to have acknowledged receipt of Rs 20,000/- on the date of execution of agreement of sale.

4] The defence set up by the Appellants is, the suit property being ancestral one, as reflected in the agreement-Exhibit 48, the suit claim is barred by limitation as the agreement was executed in 1988, whereas the suit claim came to be initiated in 2001 i.e. almost after a period of 13 years. There was failure on the part of Respondents/Plaintiffs to demonstrate their readiness and willingness.

5] The question of law which is sought to be agitated is, “whether both the Courts below have committed an error apparent on the face of record in not recording finding on the issue of readiness and willingness of the

Respondents/Plaintiffs in the matter of performance of their part of contract?”. The additional questions of law which are sought to be raised are, “(a) whether the suit claim is within limitation”; and “(b) whether the suit in question is bad for non-joinder of necessary parties?

6] With the assistance of Counsel for parties, I have perused the material available on record. Trial Court on the basis of pleadings of rival parties has framed issues for its consideration at Exhibit-19 and recorded findings which read as under :-

Points	Findings
1] Whether plaintiffs prove execution of agreement dated 12/8/1988 as alleged?	Yes
2] Whether plaintiff has proved they were / are ready and willing to perform their part of contract/agreement?	Yes
3] Is suit bad for non-joinder of necessary parties?	No
4] Whether defendants prove, disputed transaction is security for loan amount advanced?	No
5] Are Plaintiffs entitled to get sale deed executed from defendants?	Yes
6] Whether plaintiffs are entitled to get possession confirmed?	Yes

7] Are plaintiffs entitled in the alternative to get refund amount paid with interest?	Does not survive
8] Are defendants entitled to get compensatory Costs?	No
9] What order, decree and costs?	As per final order.

While answering the issues, Trial Court recorded finding that execution of agreement was not disputed, rather it is a proved fact. While dealing with the issue of readiness and willingness to perform the contract by present Respondents/Plaintiffs, Court appreciated evidence of Shantaram (P.W.2). While appreciating the said evidence and contents in the agreement of sale i.e. Exhibit 48, Trial Court so also lower Appellate Court recorded finding that Appellants/Defendants were duty bound to procure permission from the revenue authorities, as the property in question was notified for rehabilitation of project affected persons. The Appellants failed to comply with their part of contract i.e. failure to get permission from the competent authority for effecting transfer of property as is provided in the agreement of sale. As such, based on pleadings and evidence, it was rightly inferred that Respondents/Plaintiffs, were ready and willing to perform their part of contract. Apart from above, the

Courts below have relied on the notices issued to the legal heirs, after calling upon them to perform their part of contract i.e. execution of Sale Deed and accordingly recorded finding that the suit claim was well within limitation, as no specific period was prescribed for execution of Sale Deed.

7] The provisions of Article 54 of the Limitation Act, if taken recourse to, it can be seen that in case if agreement of sale does not prescribe any outer limit or period within which the contract is to be executed then the Court has every right to infer that time was not an essence of contract.

8] In the case in hand, both the Courts below have rightly observed that present Appellants/original Defendants failed to perform their part of contract and there was readiness and willingness on the part of Respondents/Plaintiffs to perform their part of contract.

9] Apart from above, the plea of property being joint family property, as was sought to be raised in the present proceedings is concerned but for averments to that effect in agreement for sale i.e. Exhibit 48, there is no

material evidence brought on record by the present Appellants/Defendants who have come out with such defence to establish that the property was joint family property. Once the Appellants fail to prove that the property was joint family property the interference in second appellate jurisdiction, in my opinion, does not call for.

10] In the aforesaid backdrop, no interference is warranted in the present Second Appeal. Second Appeal as such fails and the same is dismissed. In view of dismissal of Second Appeal, Civil Application No.1709 of 2014 taken out therein does not survive and the same is also disposed of.

(NITIN W. SAMBRE, J.)