

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

SECOND APPEAL NO.422 OF 2019

Dilip s/o Domaji Warwatkar.

Vs.

Sindhu D/o Jagluji Ingole and others.

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

Court's or Judge's orders

Mr. U. P. Dable, Advocate for appellant.

Mr. S. S. Sitani, Advocate for respondent 3(i) Caveator.

CORAM : AVINASH G. GHAROTE, J.

DATE : FEBRUARY 11, 2020.

1. Heard Mr. Dable, learned counsel for the appellant.
Mr. Sitani, learned counsel for the respondent no.3 (i) on
Caveat.

2. The present second appeal, challenges the
concurrent judgments of the Trial Court dated 27.02.2017
passed in SCS No.483 of 2009 dismissing the suit for specific
performance as filed by the appellant / original plaintiff and
that of the Appellate Court dated 28.03.2019 in RCA No.41 of
2018 confirming the judgment of the Trial Court.

3. The factual matrix is as under:

The original defendant nos.1 and 2 are the owners
of field Survey No.193-A, admeasuring 1.82 HR, (4.66 Acres)
situated at Narsala, Nagpur. It is the case of the appellant /
plaintiff that the defendant nos.1 and 2 on 26.01.2000 entered

into an agreement under which they agreed to sell the above land, to the plaintiff for the total consideration of Rs.16,31,000/-, out of which it is claimed that on the date of the agreement a part consideration of Rs.2,00,000/- was paid. Rs.1,00,000/- out of the balance consideration was payable on 30.03.2000 and the balance on execution of sale deeds, which were agreed to be executed in parts of one Acre each, the first sale deed to be executed on 25.09.2000 for one Acre, the second on 25.04.2001 for one Acre, the third on 25.11.2001 for one Acre and the forth for the balance area on 25.03.2002.

4. Though the plaintiff, claims to have paid Rs.14,40,000/-, to the defendants from time to time, none of the receipts as produced before the Trial Court were proved, as a result of which, they were not exhibited, resulting in the Courts below, rendering a finding regarding non payment of consideration as claimed by the plaintiff. Even the agreement of sale dated 26.01.2000 has not been exhibited. Before the Trial Court, the plaintiff entered into the witness box (as PW-2), however, was not cross-examined by the original defendant nos.1 and 2 but was cross-examined by the defendant nos.3 and 4, who by that time had acquired title to the suit property by virtue of the sale deed dated 19.10.2007, executed by the defendant nos.1 and 2 in their favour. PW-1, the Power of Attorney Holder of the plaintiff was also examined on behalf of the plaintiff. Defendant nos.1 and 2 did not enter into the witness box. The defendant No.3

examined herself.

5. The learned Trial Court amongst findings on all the issues, in so far as the Issue No.6 as to whether the suit is barred by limitation, answered the same in the positive. It also held that the agreement was not proved and even otherwise, there was no readiness and willingness as pleaded by the plaintiff. The suit therefore, came to be dismissed.

6. The Appellate Court concurred with the findings of the Trial Court and held that the suit was barred by limitation.

7. Mr. Dable, learned counsel for the appellant/original plaintiff, takes exception to both the judgments and contends that the Courts below have erred in law in dismissing the suit on the ground of limitation. He contends that the cause of action would arise on 19.10.2007, when the defendant nos.1 and 2 executed the sale deed of the suit property in favour of the defendant nos.3 and 4 and the suit filed on 04.05.2009, would therefore be within limitation. He further contends that the first part of Article 54 of the Limitation Act would not apply for the above reason. He contends that on 18.10.2005, a notice was issued by the defendant nos.1 and 2 calling upon the plaintiff, to get the sale deed executed in his favour, and therefore the question of first part of Article 54 of the Limitation Act being attracted did not arise. He further contends that the last notice was issued

by the defendant nos.1 and 2 on 18.02.2006 calling upon the plaintiff, to get the sale deed executed and registered in his favour and therefore the suit as filed on 04.05.2009, would be within limitation.

8. Mr. Sitani, learned counsel for the respondent no.3(i) on Caveator opposes the submission and supports the findings of the Courts below.

9. In so far as the limitation is concerned, since the agreement of sale dated 26.01.2000, fixed specific dates for performance in as much as the first sale deed was to be executed and registered on 25.09.2000 the second on 25.04.2001, the third on 25.11.2001 and the last on 25.03.2002, the first part of Article 54, is clearly attracted. It is admitted that three sale deeds were executed (a) 25.09.2000 for one Acre (b) 25.04.2001 for one Acre (c) 25.11.2001 for one Acre. The last sale deed was to be executed on 25.03.2002. The suit ought to have been filed on or before 24.03.2005, which was not done. The suit therefore, was clearly on the face of it barred by limitation, having been filed on 04.05.2009.

10. Considering the alternative argument of learned counsel for the appellant, that the notice issued by the defendant nos.1 and 2, on 18.10.2005, gave rise to a cause of action, or for that matter, the last notice issued by the

defendant nos.1 and 2 on 18.02.2006 gave rise to a cause of action, the suit ought to have been filed on or before 17.02.2009 which also was not done. Thus, the suit as filed on 04.05.2009, has rightly been held by both the Courts below to be barred by limitation. In any case, considering the above dates, the sale deed dated 19.10.2007, executed by the defendant nos.1 and 2 in favour of the defendant nos.3 and 4, cannot be considered to give rise to a cause of action for filing of the suit.

11. In fact, the notices dated 18.10.2005 and 18.02.2006, issued by the defendant nos.1 and 2 calling upon the plaintiff to get the sale deed executed in his favour, and the plaintiff having not done so, clearly demonstrates absolute lack of readiness and willingness on part of the plaintiff. It is an admitted position on record, that since 26.01.2000 till 19.10.2007, there is not a single communication issued by the plaintiff to the defendant nos.1 and 2 in respect of the subject matter of the agreement dated 26.01.2000 or for that matter, to express his readiness and willingness in any manner. In fact, any plea of readiness and willingness on behalf of the plaintiff has to be demonstrated during the period 26.01.2000 to 25.03.2002, and there is nothing on record, to substantiate this plea, not even a single communication on behalf of the plaintiff.

12. The findings rendered by the Trial Court that the

plaintiff has not established payment of part consideration of Rs.14,40,000/-, as reflected from Para 27 of his judgment also cannot be faulted, for the reason that the receipts claimed to have been executed by the defendant nos.1 and 2 in favour of the plaintiff have not been proved in accordance with the requirements of the Evidence Act, as a result of which they were not exhibited at all.

13. Thus considering the matter from any angle, there is no question of law involved, much less substantial question of law. The appeal is therefore devoid of any merit and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

JUDGE