

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

SECOND APPEAL NO.24 OF 2021

- | | | | |
|----|-----------------------------------|---|--------------|
| 1. | Prakash Dnyaneshwar Nagare | } | |
| | | } | |
| 2. | Vidya Rajendra Nagare | } | |
| | Both R/o. Prashant Society, | } | |
| | Plot No.43, Kothrud, Pune-29 | } | ..Appellants |

Vs.

- | | | | |
|----|---------------------------------------|---|---------------|
| 1. | Taibai Mahadev Dhumal | } | |
| | Since Deceased through Legal Heirs | } | |
| 2. | Maruti Mahadev Dhumal | } | |
| | R/o. 29/1/21, Old Bavan Chawal | } | |
| | Kadam Road, Kala Chowky, Mumbai | } | |
| 3. | M/s.Sanjay Associates | } | |
| | A registered partnership firm | } | |
| | Office at Plot No.3, Gujrath Colony, | } | |
| | Kothrud, Pune-411 029 | } | |
| 4. | Sanjay Suresh Jape | } | |
| | R/o. Govt. Polytechnic Staff Quarters | } | |
| | Pune University Road, Pune-411016 | } | |
| 5. | Sanjay Maruti Dhumal | } | |
| | R/o. Flat No.1, Malvika Apt. | } | |
| | S.No.78, Bhusari Colony, | } | |
| | Kothrud, Pune-411 038 | } | ..Respondents |

Mr.Atul Damle, Senior Advocate a/w Mr.Kuldeep U. Nikam for the Appellants.

Mr.Yuvraj P. Narvankar a/w Mr.Adwait A. Agashe for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 25th FEBRUARY 2021

JUDGMENT :

1. This Second Appeal is heard on the following substantial question of law by consent of parties.

Whether the Courts below were justified in dismissing the suit filed by the appellants for specific performance of the contract of sale, on the ground of limitation?

2. The brief facts necessary for the disposal of the appeal may be stated thus:-

That land admeasuring 11,000 sq.ft. bearing Plot No.3 (Survey No.88/4+138+161) situated at Mauje-Kothrud, Pune which is more specifically described in the plaint happens to be the subject matter of dispute.

3. The appellants filed Special Civil Suit no.1816 of 1998 against the respondents before the learned Civil Judge Senior Division at Pune for specific performance of a contract of sale dated 18th April 1992 entered into by the respondents with the appellants.

As per the terms of the said agreement (Visar Pavati) the sale deed was to be executed after the vendors obtaining permission under The Urban Land (Ceiling and Regulation) Act, 1976 ("Ceiling Act" for short).

4. It was contended that the vendors failed to obtain necessary permission and perform their part of the contract although the appellants were all along ready and willing to perform their part.

5. It may be mentioned that the suit property was agreed to be purchased by the appellant at the rate of Rs.121 per sq.ft. and an amount of Rs.25,000/- was paid as earnest. Be that as it may the appellants issued a public notice on 03rd August 1995 calling upon objections, if any, from the public at large to the execution of the sale deed intimating that else the appellants would proceed to get the sale deed executed. The record discloses that the respondent Taibai raised an objection on 13th August 1995 contending that the said agreement of sale has been cancelled. She claimed that the agreement was sham and bogus and not binding on them.

6. The parties led oral and documentary evidence. The learned trial Court by a judgment and decree dated 04th April 2005 *inter alia* held that the suit was barred by limitation and dismissed the suit. Feeling aggrieved the appellants challenged the same before the District Judge in Civil Appeal No.174 of 2016.

7. The learned District Judge framed the following points for determination :-

Sr.No.	Points
1	Whether the suit is within limitation ?
2	Whether plaintiffs are entitled for damages and refund of earnest amount of claim ?
3	Whether it is necessary to interfere with the judgment passed by learned trial Court ?
4	What Order

8. The learned District Judge answered the point Nos.1 to 3 in the negative and by a judgment and decree dated 28th February 2020 the appeal came to be dismissed. Hence this appeal.

9. I have heard Mr.Damle, the learned Senior Advocate for the appellant and Mr.Narvankar, the learned counsel for the respondents. Perused record.

10. It is submitted by Mr.Damle the learned Senior Advocate for the appellants that although there was no specific date fixed in the agreement for execution of the Sale Deed the agreement of sale envisaged execution of the sale deed after obtaining of a permission under the Ceiling Act which was never obtained. Thus in the submission of the learned counsel, this is a case which would fall under the first part of Article 54 of the Limitation Act. It is submitted that the Courts below were in error in holding that the suit would be governed by the later part of Article 54 of the Limitation Act. On behalf of the appellant reliance is placed on the decision of the Supreme Court in *Panchanan Dhara and Others V/s. Monmatha Nath Maity (Dead) Through Lrs. & Another*¹

11. On the contrary it is submitted by the learned counsel for the respondents that the case would be governed by the later part of Article 54 inasmuch as there was no specific date fixed for the performance and by virtue of the objection raised by Taibai on 13th August 1995 the plaintiff had clear notice that specific performance was refused and therefore the suit ought to have been filed within three years thereof.

1 (2006) 5 Supreme Court Cases 340

12. He submitted that the decision in the case of *Panchanan Dhara and Ors.* is distinguishable inasmuch as in that case it was established on record that the time fixed for performance of the contract was extended by the parties.

13. On behalf of the respondent reliance is placed on the decision of the Supreme Court in *Janardhanam Prasad V/s. Ramdas*².

14. I have carefully considered the rival circumstances and the submissions made. Indisputable a suit for specific performance is governed by Article 54 of the Limitation Act which reads thus :-

Description of suit	Period of limitation	Time from which period begins to run
54 - For Specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

It can thus clearly be seen that under Article 54 the period of limitation for filing a suit for specific performance is three years. Insofar as the starting point of the limitation is concerned Article 54 envisages two distinct parts. The first part relates to a case

2 (2007) 15 Supreme Court Cases 174

where there is a specific date fixed for the performance of the contract of sale. The later part relates to a case where no such date is fixed. In such a case the suit has to be filed within three years from the time when the plaintiff had notice that the performance is refused.

15. In my considered view this is a case which is clearly governed by the later part, inasmuch as there was no specific date fixed in the agreement of sale. A bare perusal of the objection raised by Taibai on 13th August 1995 would indicate that she had disowned the agreement of sale and also claimed that the agreement of sale was cancelled. There cannot be a more explicit notice of refusal within the meaning of Article 54 of the Limitation Act. In the facts and circumstances of the present case it is not possible to accept that the suit was governed by the first part of Article 54 of the Limitation Act.

16. On behalf of the appellants reliance is placed on paragraph 27 of the decision in the case of *Panchanan Dhara & Others* which reads thus :-

“27. Performance of a contract may be dependent upon several factors including grant of permission by

the statutory authority in appropriate cases. If a certain statutory formality is required to be complied with or permission is required to be obtained, a deed of sale cannot be registered till the said requirements are complied with. In a given situation, the vendor may not be permitted to take advantage of his own wrong in not taking steps for complying the statutory provisions and then to raise a plea of limitation.”

17. The aforesaid observations have to be read in the context of the factual situation obtaining in that case. It is undisputed that in the said case there was a specific date fixed for the performance of the contract. It appears that the parties had extended the period and it was in these circumstances, held that the time to file a suit shall be deemed to start running only when the plaintiff had notice that the performance is refused. In that case on facts it was found that the performance of the contract was refused, only on 21st August 1985 and the suit was filed, soon thereafter. Thus in my considered view, the case turned on its own facts.

18. In the case of *Janardhanam Prasad* it has been held that the Court while applying the period of limitation would be first required to enquire as to whether any time was fixed for performance of agreement of sale and if it is so fixed the suit must

be filed within the period of three years failing which the same would be barred by limitation. However, where no time for performance is fixed, it is for the Courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a such a finding to see whether the suit was filed within three years thereafter (see para 12). As noticed earlier in the present case, it is more than explicit that the performance was refused on 13th August 1995 and the suit having been filed on 21st November 1998 that is beyond the period of three years from the date of refusal was clearly barred by limitation.

19. The First Appellate Court has held that the objection dated 13th August 1995 would mean that there was refusal by the defendant No.1 to obtain the permission for transfer and also for specific performance of the contract. It is in these circumstances that the First Appellate Court has held that the case would fall under the later part of the Article 54 of the Limitation Act. Thus no exception can be taken to the concurrent finding recorded by the Courts below dismissing the suit on the point of limitation. The point is answered in the affirmative. In the result the Second Appeal is dismissed with no order as to costs.

20. At this stage the learned counsel for the appellant prayed for continuation of the interim relief. It is pointed out that by way of the interim relief the respondents were directed not to create any third party interest in the suit property. A specific statement is made that the said interim relief is operating all along from the year 2006.

21. The learned counsel for the respondent has opposed the extension of the interim relief.

22. However, considering the fact that the interim relief is operating from the year 2006, the said interim relief restraining the respondents from creating third party interest in the suit property shall continue to operate for a period of eight weeks from today.

C.V. BHADANG, J.