

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 972 OF 2012

Shamrao Pandurang Bhadalakar
deceased through legal heirs **.....Appellants**

V/s.

Dattatraya Anna Mali and Ors. **....Respondents**

* * * *

Mr. P.D. Dalvi i/by. Mr. Kedar P. Lad, Advocate for the
appellants.

Mr. Rahul P. Walvekar, Advocate for respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 24th March, 2021.

P.C. :

1. Heard learned Counsel for the parties.
2. Appellants' suit for specific performance of
contract dated 13th December, 1983 was dismissed by the
trial Court on two grounds; one that, suit was barred by

limitation and another, the plaintiff was not, ready and willing, to perform his part of the contract. In appeal, the Appellate Court held, the suit was within limitation; however confirmed the finding that, the plaintiff was not ready and willing to perform his part of the contract. Aggrieved by the decree, in Regular Civil Appeal No.105/2007 dated 6th July, 2012, this Appeal is preferred.

FACTS :

3. Anna Dadu Mali, had agreed to sell the suit property, to the plaintiff vide agreement dated 13th December, 1983, of which he was a tenant and this fact is not in dispute. The agreed consideration, was Rs.5,000/- out of which the plaintiff had paid Rs.4,500/- to Anna Dadu Mali at the time of executing the agreement. The balance amount of consideration, was payable only after the requisite permissions were sought and obtained by Anna Dadu Mali. On 31st July, 1998 Anna Dadu Mali

passed away. Suit was instituted in July, 2002. Both the Courts recorded a finding of fact, that since before and after the death of vendor, no efforts were made by the plaintiff either to approach the vendor or his legal heirs in relation to the permission, which Anna Mali had agreed to obtain. Thus it is to be held that, the plaintiff remained silent for 19 years. The Courts have observed that, since the execution of the suit agreement, the vendor had neither exchanged the notices even during the lifetime of Anna or immediately after his death. From these set of facts and circumstances, the Court has inferred, that the plaintiff was not ready and willing to perform his part of the contract. This conclusion cannot be said to be, unreasonable. More so, the relief of specific performance is discretionary relief. The evidence on record shows, the Appellate Court has rendered the finding, founded on the evidence. Thus, fact-findings, were not perverse. In consideration of the facts of

the case, Appeal does not give rise to any substantial question of law. Appeal is dismissed.

4. With dismissal of the Appeal, Civil Application No.960/2017, Interim Application No. 3065/2019 and Civil Application No.918/2014 do not survive. The same are accordingly disposed of.

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(SANDEEP K. SHINDE, J.)