**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

2 **SECOND APPEAL NO.480 OF 2021**

Shaikh Rahim Shaikh Nanhu (Died)
Through LRs
Sk. Ajim Sk. Rahim (Died)
Through LRs
Shaikh Ajij and Others .. Appellants

Versus

Sitaram Shankar More (Died)
Through LRs
Rakhumanbai and Others .. Respondents

…

Advocate for Appellants : Mr. Umesh A. Bhadgaonkar
Advocate for Respondent Nos.1A to 1F : Mr. Anant Devakate

…

WITH

**CIVIL APPLICATION NO.6603 OF 2020**
**IN**
**SECOND APPEAL NO.480 OF 2021**

…

**CORAM : MANGESH S. PATIL, J.**

**DATE : 03-01-2022**

**PER COURT :**

Heard the learned Advocates appearing for the respective sides.

2. This is a Second Appeal filed by the original defendant being aggrieved and dissatisfied by the concurrent findings of the two

Courts below holding the original plaintiff entitled to claim specific performance of a contract to sell immovable property i.e. suit property being a 2-Are portion from land Survey No.33 of village Kannad.

3. For the sake of convenience, the parties are hereinafter referred to as per their status in Regular Civil Suit No.04 of 2001.

4. Mr. Bhadgaonkar, learned Counsel for the defendant would submit that the document of which a specific performance is being claimed was an unregistered sale-deed, which was also insufficiently stamped. Therefore, both the Courts below have grossly erred in allowing such document to be read in evidence and further directing a specific performance. He would refer to the provisions of the Maharashtra Stamp Act and the Indian Registration Act.

5. The learned Counsel for the defendant would further submit that the specific performance was being sought after the lapse of more than 18 years of the execution of the document. Apart from the fact that there was a delay in seeking such execution, even such delay ought to have been considered by the Courts below for ascertaining the factum of plaintiffs' readiness and willingness to seek

specific performance as is required by Section 16 of the Specific Relief Act. Both the Courts below have failed to consider this vital aspect and have reached an erroneous conclusion holding the plaintiff entitled to claim specific performance.

6. Learned Advocate Mr. Devakate for the plaintiff would submit that this being a Second Appeal wherein the defendant is challenging the concurrent findings of the two Courts below, the scope for this Court to cause any interference is limited. Unless there is some perversity demonstrated and the substantial question of law arising therefrom is found, this Court cannot step in and cause any interference.

7. Mr. Devakate would further submit that in fact the defendant had come with a bold defence denying execution of the agreement which was duly proved during the course of the evidence. He would further submit that the document though it was originally insufficiently stamped, was impounded and the deficit stamp was paid, regularizing the document. He would further submit that since the plaintiff was relying upon an unregistered sale-deed for claiming specific performance, it is not hit by the proviso to Section 49 of the Registration Act.

8. He would further submit that though there was a delay in seeking specific performance, the delay did not go to the root of the litigation since there is no evidence regarding any earlier refusal by the defendant to give specific performance and the period of limitation had begun to run only from the date he replied to the notice issued by the plaintiff demanding specific performance.

9. Mr. Devakate would, lastly, submit that even in respect of readiness and willingness to be demonstrated by the person claiming specific performance under Section 16 of the Specific Relief Act, going by the fact situation, in fact, the entire amount of consideration was already paid to the defendant and the possession was delivered to the plaintiff. Since there was already a substantial compliance in respect of the transfer of the property except a formal registration, both the Courts below have consciously considered this aspect and have concluded about the plaintiff having demonstrated his readiness and willingness to perform his part of contract / agreement.

10. I have carefully considered the rival submissions. Needless to state that there is a concurrent findings of the two Courts below. Going by the evidence, nothing could be demonstrated on

behalf of the defendant as to how the Courts below have erred in appreciating the evidence in the proper perspective.

11. As far as readiness and willingness of the plaintiff is concerned, the specific performance is being claimed after the lapse of 18 years from the date of execution of the agreement. However, merely because of this period, one need not get swayed away as has been rightly refused to be done by the two Courts below. Going by the nature of the document, in fact the entire amount of consideration of Rs.600/- was received by the defendant's predecessor and the possession was delivered. Going by the terms and conditions, nothing further had remained to be done at the end of the plaintiff to complete the transaction except getting the sale-deed duly registered. Since this has been rightly considered and elaborately observed by the two Courts below, I find no perversity or illegality in recording such observation of the facts.

12. So far as the aspect of registration of the document is concerned, as has been rightly pointed out by the appellate court, though the document was required to be compulsorily registered under Section 17 of the Registration Act inasmuch as it seeks to transfer an immovable property worth more than Rs.100/-, since the

plaintiff has been seeking specific performance of the transaction the case is duly covered by the proviso to Section 49 of the Registration Act, which is in the form of an exception for admissibility of a document which is required by law to be compulsorily registerable, but not registered, for claiming specific performance.

13. So far as insufficient stamping of the document is concerned, admittedly, the document was subsequently impounded. The deficit stamp duty was recovered and consequently it stood duly regularised under the provisions of the Maharashtra Stamp Act.

14. So far as the question of limitation is concerned, by virtue of Article - 54 from the Schedule to the Limitation Act, 1963, specific performance has to be claimed within three years from the date mentioned in the agreement for its performance and if no such date is mentioned, the period begins to run from the date the specific performance is refused. There is absolutely no evidence on record about the specific performance having been refused by the defendant's predecessor at any earlier point of time before he was served with a notice demanding its specific performance. If that is so, the finding of the trial Court upheld by the first appellate Court holding that the suit was perfectly within limitation cannot be said to

be erroneous or illegal.

15. No substantial question of law, in the facts and circumstances of the case arises, so that this Court can cause any interference in exercise of the powers under Section 100 of the Code of Civil Procedure. The Second Appeal is dismissed.

16. In view of disposal of the Second Appeal, nothing survives for consideration in Civil Application No.6603 of 2020 and the same stands disposed of.

**( MANGESH S. PATIL )**
**JUDGE**

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*Gajanan*