

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

**SECOND APPEAL NO.51 OF 2022
WITH
INTERIM APPLICATION NO.397 OF 2022
IN
SECOND APPEAL NO.51 OF 2022**

Subhash Nathmal Pallod .. Appellant
Versus
Babu Baban Sakhare & Ors. .. Respondents

Mr. Mandar Limaye a/w. Mr. S. C.Wakankar for the Appellant.
Mr. Vishwanath S. Talkute for the Respondent Nos. 1 to 3.

CORAM : NITIN W. SAMBRE, J.

DATED : 11th NOVEMBER, 2022

P.C.:

1. Based on the agreement of sale Exhibit-53 dated 26/07/2002, the appellant / plaintiff initiated suit for Specific Performance through Special Civil Suit No. 1052 of 2006 which was dismissed on 19/12/2017. The first appeal preferred by the appellant being RCA No. 58 of 2018 was also dismissed on 17/12/2021. As such, this second appeal.
2. The fact necessary for deciding the appeal are as under.
3. The suit property i.e. agricultural land which was owned by the respondents/defendants was agreed to be sold through an

unregistered agreement of sale Exhibit-53 dated 26/07/2002 for a total consideration of Rs.54,86,500/-. As against the aforesaid consideration an amount of Rs.1,11,000/- was paid as earnest money. The sale deed was to be executed within a period of 11 months from the date of the agreement of sale with a rider that the respondents shall carry out appropriate measurements and if so required shall obtain permissions from the competent authority before the execution of the sale deed i.e. 11 months of the agreement of sale.

4. It appears that since the sale deed was not executed and third party issued a notice in relation to the transaction of the suit property, the appellant initiated suit for specific performance. Both the Courts have held that the suit was not within the limitation, and the appellant herein was not ready and willing to perform his part of contract. As such, this second appeal.

5. While inviting attention of this Court to the recitals in the agreement of sale Exhibit-53 dated 26/07/2002 and the evidence of the plaintiff which is recorded at Exhibit-50, learned counsel for the appellant would urge that the appellant has appropriately established not only his readiness and willingness but the fact that the suit was barred by limitation is also incorrect.

6. According to him, the appellant has specifically pleaded about his readiness and willingness and has also stood by such stand in his evidence. As such, he would urge that the necessary ingredients qua readiness and willingness of the appellant to perform his part of the contract can be inferred.

7. That being so, he would urge that the findings recorded by the Courts below that the suit is barred by limitation and also the necessary ingredients pursuant to the provisions of section 16(c) of the Specific Reliefs Act are not satisfied ought not to have been inferred. He would urge that both the Courts below as such, committed an error of law, which warrants interference.

8. Learned counsel for the respondents Mr. Talkute would support the judgment impugned as according to him, in view of admissions given by the appellant in cross examination, the failure of the appellant to establish that he was armed with the balance consideration on the date of filing of the suit has rightly prompted both the Courts below to infer that the appellant has failed to establish his case of readiness and willingness.

9. I have considered the rival submissions.

10. Admittedly, based on agreement of sale dated 26/07/2002 Exhibit-53, sale deed was to be executed within a period of 11

months from the date of the agreement of sale. The suit was presented by the appellant on 21/07/2006. The appellant in his cross examination has admitted that within a period of six months from the date of execution of the agreement of sale, the respondents/defendants has denied to carry out the measurements as can be inferred/noticed from his evidence. Such fact apparently appears to have given the first cause of action to the appellant to prefer the suit.

11. As such, in any case, the suit ought to have been preferred by the appellant within period of three years from the expiry of period of six months of the execution of the agreement of sale dated 26/07/2002 i.e. from 25/01/2003 i.e by 24th /25th of January, 2005. Admittedly the suit is filed beyond the period of limitation of three years as prescribed, as the same was initiated by the appellant on 21/07/2006. Both the Courts below were justified in recording the findings that the suit for specific performance preferred by the appellant is barred by limitation.

12. Apart from above, Mr. Limaye was justified in claiming that the appellant while examining himself has specifically deposed about his readiness and willingness. He is also justified in claiming that the sale deed was to be executed within a period of 11

months. However, if we appreciate the evidence of the appellant / plaintiff, what can be noticed is, but for the bald / baseless statement in the form of the pleadings and evidence, the appellant has not justified his claim that on the date of filing of the suit he was armed with the balance consideration of Rs.43,00,000/- and odd. As such, both the Courts below were justified in recording the findings that the appellant was not ready and willing to perform his part of contract.

13. From the pleadings and evidence it can be analyzed that the appellant has failed to established the necessary ingredients of Section 16(c) of the Specific Relief Act.

14. The present second appeal which is against concurrent findings, in my opinion *sans* substantial question of law and as such, stands dismissed.

15. The pending applications also stands rejected.

16. Mr. Limaye, learned counsel for the appellant submits that the interim injunction which is in operation throughout the pendency of the suit, first appeal and present second appeal be continued for a period of eight weeks, which prayer is strongly opposed by Mr. Talkute, learned counsel for the respondents as according to him all the three Courts have held against the

appellant on merit.

17. There appears to be substance in the submissions of Mr. Talkute. This Court has already held that the appellant was not ready and willing to perform his part of contract and the suit claim was beyond limitation.

18. That being so, prayer for continuation of the ad-interim relief stands refused.

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(NITIN W. SAMBRE, J.)