

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

SECOND APPEAL NO. 307 OF 2021

Smt. Pushpa Wd/o. Punjabrao Pissude and ors.

...VERSUS...

Smt. Kalpanabai W/o. Sureshrao Jilhare and anr.

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

Court's or Judge's order

Shri U.A.Gosavi, Advocate for appellants.

Shri S.M.Ghare, Advocate for respondent no. 1.

CORAM : SMT. M. S. JAWALKAR, J.

DATE : 20th DECEMBER, 2022

Heard the learned counsel for both the parties.

2. The notices were issued to the respondents on 21/10/2022,
on the following substantial questions of law:-

“(i) Whether findings of the Lower Appellate Court regarding the suit being within limitation cannot be said to be sustainable in law more particularly in absence of pleading in that regard?

(ii) Whether the evidence led upon the document at Exh. 27 i.e. notice dated 10/11/2007 and reliance placed over it by the Lower Appellate Court is sustainable in law when there was no pleading in that plaint in that regard?

(iii) Whether first part of Article 54 of the Limitation Act was applicable in the present case when date was fixed for performance?

(iv) Whether in the facts and circumstances of the case, it can be said that the document at Exh. 26 was proved more particularly when it did not bear

signature of the plaintiff and no independent witness was examined to corroborate the same?

(v) Whether the course adopted by the Lower Appellate Court about scrutinizing the pleadings of the original defendant as stated in para 27 of the judgment is permissible in law?"

3. It is vehemently argued by the learned counsel for respondent no. 1 that the time was never essence of the contract, therefore, the point no. (i) regarding limitation is not at all arise.

4. There is an agreement executed on 28/03/2006, and date fixed for execution of sale deed was 28/02/2007. However, it appears that there are certain conditions to be complied with by the defendants (present appellants) before execution of sale deed. The record shows that the defendants have accepted the amount towards consideration after 28/02/2007, which was the date fixed for execution of sale deed. The date of last payment appears to be 14/04/2007 and notices were issued on 09/02/2010. Thereafter, the suit is filed on 22/04/2010. Thus, it will require the consideration "whether the suit was within limitation ? and whether it attracts Article 54 of the Limitation Act ?"

5. The findings recorded against issue no. (iii) prima facie appears to be perverse. As such, substantial question of law no. (iv) is also required to be considered. Thus, appeal is admitted on all the substantial questions of law formulated at the time of issuance of notice.

CIVIL APPLICATION (CAS) NO. 930 OF 2021

The present application is filed for grant of interim stay till pendency of appeal.

2. In view of the fact that the appeal is admitted, the relief in terms prayer Clause (i) is hereby granted.

3. It is informed by the learned counsel for the appellants, Special Darkhast No. 91/2022 is also filed by the respondents during the pendency of this appeal and it is fixed on 06/1/2023.

4. In view thereof, the proceedings in Spl. Darkhast No. 91/2022 is also hereby stayed, subject to deposit of amount of Rs. 7,00,000/- in the Court within a period of nine weeks.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar