

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

SECOND APPEAL NO. 307 OF 2019

1. Raghoji S/o. Rangus Thakre,
Aged about 61 years, Occ.: Cultivation,
R/o. Sindewahi, Tahsil : Sindewahi,
District : Chandrapur (Deceased thr.
LRs)
 - 1-A) Nilkanth S/o. Raghoji Thakre,
Aged about 42 years, Occupation:
Cultivation,
 - 1-B) Sudhakar S/o. Raghoji Thakre,
Aged about 35 years, Occupation:
Cultivation,
 - 1-C) Smt. Tuljabai Wd/o. Raghoji Thakre,
aged about 65 years, Occ. Household,

Nos. 1-A to 1-C R/o. Wirudeo Chowk,
Sindewahi, Tahsil : Sindewahi, District:
Chandrapur.
 - 1-D) Sau. Vandana W/o. Bhaurao Larale,
Aged about 42 years, Occupation :
Household, R/o. Hinganghat, District:
Wardha.
2. Mahadeo S/o. Rangus Thakre (Dead)
Through his legal heirs:
 - 2-A. Smt. Mirabai W/o. Mahadeoji Thakare,
Aged about 70 years, Occ.: Household,
R/o. Gurudeo Chowk, Ward No.5,
Sindewahi, Tahsil : Sindewahi, District:
Chandrapur, Maharashtra, Pin-441222.

2-B. Sau. Pratibha W/o. Nilkanth Tarare,
Aged about 44 years, Occ.: Household,
R/o. Ward No.5, Nagorao Vaidya Chowk,
Nagbhid, Tahsil : Nagbhid, District :
Chandrapur, Maharashtra, Pin- 441 205.

2-C. Sau. Archana W/o. Ishwar Sahare,
Aged about 31 years, Occ.: Household,
R/o. 111, 100 L.I.G. MHADA Colony,
MIDC Road, Datata, Chandrapur,
Tahsil & District Chandrapur,
Maharashtra, Pin-442401.

All through Power of Attorney Holder
Ishwar S/o. Kisan Sahare, Aged about
32 years, Occ. : Labour, R/o. Jatpura Ward,
Chandrapur, Tahsil & District :Chandrapur.

.... APPELLANTS.

// **VERSUS** //

Hanumantrao S/o. Vithalrao Choudhari,
Aged about 48 years, Occu.: Cultivation,
R/o. Sharada Colony, Behind Bus Stand,
Bramhapuri, Tahsil : Bramhapuri,
District : Chandrapur.

.... RESPONDENT.

Shri Atul Sonak, Advocate for Appellants.
Shri A.A.Dhawas, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 18, 2023

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.** Heard finally by consent of the learned counsel for the parties.

3. This Second Appeal takes exception to the judgment and decree dated 14/12/2018 passed by District Judge-1, Chandrapur in Regular Civil Appeal No. 38 of 2010 dismissing the appeal and thereby confirming the judgment and decree dated 21/12/2005 passed by Joint Civil Judge Junior Division, Sindewahi in Regular Civil Suit No. 35 of 2004 decreeing the suit for specific performance of contract in favour of the respondent/ plaintiff.

4. The facts in brief are as follows: (The parties are referred as per their status before the trial Court)

That, the respondent/plaintiff filed a suit for specific performance. It is the case of the plaintiff that on 08/04/1992 he entered into an Agreement of Sale with the defendants/appellants orally in presence of Bhagwant Tukudji Popate. He further averred that he paid Rs.29,000/- on the same day in cash, Rs.50,000/- from time to time and lastly he paid Rs.7,500/- on 18/09/1996 to the defendants. The

defendants executed Agreement of Sale on stamp paper before the witnesses. The plaintiff further averred that as per the terms of the agreement of sale the defendants undertaken to obtain the permission of Revenue Officials for the reason that he was having more than eight acres land and he was intending to sell only one acre land out of it. It is further decided between the parties that Sale Deed to be executed on 31/01/1997, after obtaining the requisite permission, the plaintiff averred that though he paid the entire consideration defendants avoided to obtain the necessary permission. Hence, from time to time, he requested the defendants to obtain permission and to execute sale deed. Every time the defendants avoided to execute the sale deed, hence, he issued notice, which was replied by the defendants and they avoided to execute the sale deed.

5. It is the further case of the plaintiff that in pursuance of the agreement of sale he was put into possession of the suit land by the defendants on 18/09/1996. however, in the year 2002 the defendants dispossessed the plaintiff illegally taking disadvantage of the fact that the plaintiff started residing at Bramhapuri. When the plaintiff came to know about the dispossession he gave warning to defendants and asked

them to get the permission from Collector and to execute the sale deed. That time the defendants denied to execute the sale deed and threatened the plaintiff by using rough language and also threatened to beat him. Hence, the plaintiff issued legal notice through Advocate on 24/09/2003. In spite of the receipt of notice the defendants avoided to execute the sale deed. Therefore, he filed a suit against the defendants.

6. The defendants filed their written statement and opposed the plaint and thereby denied the material contentions of the suit. The suit was also opposed on the ground of limitation.

7. The learned trial Court, after scrutinizing the evidence and considering the submissions made by both the parties, decreed the suit in favour of the plaintiff. The learned trial Court recorded findings in affirmative on the issue of limitation. The appellants, feeling aggrieved by the same, preferred an appeal namely Regular Civil Appeal No.38 of 2010, which came to be dismissed by the judgment and decree dated 14/12/2018, the same is subject matter of the present appeal.

8. This Court while issuing notice on 19th July 2019 framed the following Substantial Question of Law:

“Whether the Courts below were right and justified in holding that the suit was filed within a period of limitation?”

9. Shri Sonak, learned counsel for the appellants submits that though the suit was time barred and filed beyond the period of limitation of three years, both the Courts below have committed error in holding that it is within limitation. He submits that the Court has considered the second part of Article 54 of the Limitation Act, 1963 for counting limitation, whereas, as per the agreement, the Sale Deed was to be executed on 31/01/1997 and as such the limitation ought to have considered from the date fixed for execution of the sale deed and not the date on which the defendants refused performance.

10. It is pointed out that the date, which was fixed for execution of the sale deed was 31/01/1997 and the period of three years was lapsed on 31/01/2000, whereas, the suit was filed on 29/09/2004. He, therefore, submits that the suit was time barred and both the Courts below committed error in holding that it is well within the time limit.

11. On the other hand, Shri Dhawas, learned counsel for the respondent/plaintiff argues that second part of Article 54 of the

Limitation Act will apply in this case. It is pointed out that in the year 2003 first time the defendant refused to execute sale deed by falsely answering the notice issued by the plaintiff. He submits that both the Courts below have rightly held in favour of the plaintiff on the point of limitation.

12. The learned counsel for the respondent further points out that there was a clause in the agreement that before execution of the sale deed the defendants would obtain necessary permissions of the Revenue Officials for the reason that the defendant was having more than 8 acres of land and he was intending to sell only one acre of the land out of it. He submits that therefore, the time limit was extended and the date fixed for execution of the Sale Deed has lost its efficacy. He, therefore, submits that both the Courts below have rightly decreed the suit in favour of the plaintiff.

13. In light of the rival contentions of the parties, I have perused the record and the impugned judgment and decree.

14. The Hon'ble Supreme Court of India in the case of *P. Daivasigamani ..vs.. S. Sambandan*, reported in **2022 SCC OnLine SC 1391**, while dealing with Article 54 of the Limitation Act, 1963, has observed thus:

“9. Now, advertng to the first contention raised by the learned counsel for the appellant that the respondent – plaintiff having filed the suit for specific performance of the agreement after the expiry of three years of the agreement, it may be noted that as per Article 54 of the Limitation Act, 1963, the suit for the specific performance of contract could be filed within three years from the date fixed for the performance, or when no such date has been fixed, from the date when the plaintiff has noticed that performance is refused. In the instant case, the execution of the agreement on 05.10.1989 has not been disputed. It was also proved by the respondent by leading the evidence that the respondent had sent a notice dated 17.03.1990 by registered post and called upon the appellant to execute the power of attorney and to conclude the sale transaction in view of Clause 10 of the agreement. However, there was no response from the appellant to the said letter. The respondent thereafter had again sent a notice through his lawyer on 26.03.1990, which had come back with the endorsement “refused”. Thereafter, again the respondent caused a public notice published in the Tamil daily “Dhina Thanthi” on 02.05.1990 and in the English daily “Indian Express” on 06.05.1990. The appellant having not responded to any of the said notices, the suit was filed on 26.03.1993. Since the sale had to be completed within a period of six months from the date of the execution of the agreement dated 05.10.1989, the respondent had called upon the appellant to perform his part of the contract by issuing the notices within six months of the said agreement.

However, the appellant having failed to respond to any of the said notices, it was deemed that the appellant had refused to perform his part of contract. The period of limitation had started running from the date the respondent noticed that the performance was refused by the appellant and not from the date of the execution of agreement in question.

10. It cannot be gainsaid said that even though time is not considered as the essence of the contract in case of immovable property and that the suit could be filed within three years as provided in Article 54 of the Limitation Act, the respondent-plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time limit. The time limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be filed within three years from the date fixed for performance or from the date when the performance is refused by the vendor. Nonetheless, as discussed above, the suit having been filed by the respondent well within the prescribed time limit under Article 54 of the Limitation Act, the respondent could not have been non-suited on the ground of the suit being barred by limitation as sought to be submitted by learned counsel for the appellant.”

15. From the above referred observations, it is evident that suit for the specific performance of contract could be filed within three years from the date fixed for the performance, or when no such date has been fixed, from the date when the plaintiff has noticed that performance is refused.

16. In the present matter, there is no dispute that the date was fixed for execution of the Sale Deed i.e. 31/01/1997. However, it is the case of the plaintiff that because the permission was not obtained from the Revenue Officials the period was extended.

17. The Hon'ble Supreme Court of India vide judgment dated 06/03/2019 in the case of *Urvashi Aggarwal thr. LRs & Anr...vs.. Kushagr Ansal & Oth.* passed in **Civil Appeal No.2525 of 2019** (Arising out of SLP(C) No.32480 of 2018), while dealing with similar matter wherein there was condition for obtaining permission, has held thus:

*“10. ...It was submitted that even after 31.03.1975, the Defendants were pursuing the application filed for permission before the L&DO with the cooperation of the Plaintiffs. The further submission of the Plaintiffs is that without the permission of the L&DO, the sale deed could not have been executed on 31.03.1975. Therefore, the Plaintiffs submit that the date fixed by the agreement for the execution of the sale deed stood extended. It is settled law that the vendee cannot claim that the cause of action for filing the suit has not arisen on the date fixed in the contract on the ground that certain conditions in the contract have not been complied with. (See: **Fateh Nagpal & Co. v. L.M. Nagpal, Vishwa Nath Sharma v. Shyam Shanker Goela and K. Raheja Constructions Ltd. v. Alliance Ministries**).*

11. On a detailed consideration of the evidence on record, the Courts below have come to the conclusion

that the clauses in the Agreement have neither been amended nor varied. Merely because the Defendants were pursuing the application filed for permission before the L&DO, it cannot be said that the date fixed for performance of the Agreement stood extended. We agree with the findings of the Courts below that the suit ought to have been filed within three years from 31.03.1975 which was the date that was fixed by the Agreement. The submission made on behalf of the Plaintiffs that part II of Article 54 of the Schedule to the Limitation Act applies to this case and that the suit was filed within limitation as the refusal by the Defendants was only in the year 1987 is not acceptable. ...”

18. From the above referred observations, it is evident that merely because certain conditions in the contract have not been complied with it cannot be said that the date fixed for performance of the agreement stood extended.

19. In the circumstances, the argument made by the learned counsel for the plaintiff that, because the defendants did not obtain permission of the Revenue Officials as per the conditions of the Agreement, the date fixed for performance of the agreement stood extended, cannot be accepted.

20. Thus, considering the date fixed for execution of the sale deed i.e. 31/01/1997 and the fact that the suit was filed on 29/09/2004

i.e. after seven years, I have no hesitation to hold that the suit is barred by limitation.

21. Both the Courts below have committed error in counting the period of limitation from the year 2003 on the ground that in the year 2003, the defendants first time refused to execute the sale deed, as held by the Hon'ble Supreme Court of India in the case of *P.Daivasingamani* (supra) that the suit for specific performance of contract shall be filed within three years from the date fixed for the performance and when no such date is fixed, when the plaintiff has noticed that performance is refused.

22. In the present case, as the date was fixed, the period of limitation ought to have counted from the date fixed for sale deed and not from the date on which first time the defendants allegedly refused the performance. In the circumstances, it is held that first part of Article 54 of the Limitation Act, 1963 will apply to the present case.

23. Thus, to answer the substantial question of law, framed by this Court, it is observed that both the Courts below are not justified in holding that the suit was filed before this Court within the period of limitation. Accordingly, I pass the following order:

- i) The second appeal is allowed.
- ii) The impugned judgment and order dated 14/12/2010 passed by learned District Judge-1, Chandrapur in Regular Civil Appeal No.38 of 2010 and impugned order dated 21/12/2005 passed by Joint Civil Judge Junior Division, Sindewahi, are hereby quashed and set aside.
- iii) Resultantly, the plaintiff is not entitled for specific performance. However, he is entitled for refund of the earnest amount along with interest @18% per annum from the date of payment of the amount, till its realisation.

The Second Appeal stands **disposed of** accordingly. The parties to bear their own costs.

(ANIL S. KILOR, J)

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