

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.669 OF 2017

Ramrao Laxmanrao Kasture .Vs. Shatrughan S/o Madhaorao Thakre and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.I. Dhattrak, Advocate for the petitioner.

Shri P.S. Kadam, Advocate for the respondent Nos.1 to 4.

CORAM : ANIL S. KILOR, J.

DATED : 16/03/2023

1. Heard.

2. In this second appeal the challenge is raised to the judgment and decree dated 07.04.2017 in Reg. Civil Appeal No.29 of 2013 passed by the District Judge-3, Yavatmal, dismissing the appeal and confirming the judgment and decree dated 20.03.2013 passed by the Civil Judge Junior Division, Ghatanji in Reg. Civil Suit No.25 of 2017, dismissing the suit filed by the appellant for specific performance.

3. This Court on 22.11.2021, has framed the following substantial question of law :-

“Whether the learned lower Appellate Court is right in holding that the suit was barred by limitation ?”

4. I have heard the learned counsel for the respective parties. (The parties are referred to as per their status before the trial Court).

5. It is the case of the plaintiff that, he entered into an oral agreement with father of the defendants on 15.05.1996 for sale of land Survey No.27/1 and land Survey No.27/2 at Mouza Inzala, Tq. Ghatanji, District Yavatmal for total consideration of Rs.63,000/- which was paid on 17.05.1996 and thereupon, the possession was handed over to the plaintiff of both the lands.

6. Late Madhukar expired on 20.09.1996 and thereafter, the widow of Madhukar executed a sale deed of land Survey No.27/1 on 10.08.1998 in favour of one Nainewar.

7. The mother of defendant-Godabai expired on 07.01.1999 and thereafter, according to the plaintiff, he requested the defendants to execute the sale deed as per the oral agreement between the plaintiff and father of the defendants and though they promise to execute the sale deed in respect of land Survey No.27/2, no sale deed was executed and therefore, on 23.01.2007 legal notice was issued to the defendant No.2 calling upon them to execute the sale deed and filed regular Civil Suit No.25/2007 for specific performance which came to be dismissed and it has

been confirmed by the Appellate Court vide impugned judgment and decree dated 07.04.2017. Hence, this appeal.

8. Shri Dhattrak, learned counsel for the appellant submits that though the specific issue was framed by the learned trial Court as regards the limitation, it was observed that, in view of the observation made as regards issue Nos.1 to 3, issue No.6 does not remain to be discussed as it does not survive. Thus, it is submitted that the learned Appellate Court ignoring the same went on to decide the issue of limitation and held that the suit was barred by limitation. He, accordingly, submits that the said findings are perverse.

9. On the other hand, the learned counsel for the respondents/defendants points out the finding recorded by the learned trial Court as to issue Nos.1 to 3 and submits that the finding sufficiently show that the suit was time barred and in that sense, the learned trial Court has observed that in view of the finding recorded as to issue Nos.1 to 3, issue No.6 does not survive. He further points out that, the learned Appellate Court has rightly held that the suit is barred by limitation after considering the limitation provided under Article – 54 of the limitation Act, 1963.

10. In light of rival contentions, I have perused the record and the judgment and decree of both the Courts below.

11. The learned trial Court in its judgment and order has observed that as per the plaintiff's case, the oral agreement was executed on 15.05.1996 for total consideration of Rs.63,000/- which was paid after two days of the agreement and thereupon, the plaintiff was put in possession.

12. The Court has further observed that on 20.09.1996 i.e. after more than four months of death of Mahadeo widow Godabai executed a sale deed in respect of Survey No.27/1 on 10.08.1998. It is held that thereafter the appellant has not taken any steps to get the sale deed executed in respect of Survey No.27/2 and first time in the year 2007, the legal notice was issued.

13. The learned trial Court has also observed numerous lacuna in the evidence of the plaintiff to arrive at a conclusion that the plaintiff was not ready and willing to perform his part of contract. That apart on the point of limitation, the only case of the plaintiff is that, he contacted all the four defendants and they promised to the plaintiff that they will execute the sale deed and relying upon such

promises, he waited up to 2007, when first time legal notice was issued.

14. All the defendants are resident of different towns and villages. No details are given in the plaint or in the legal notice, when the plaintiff made request to each of the defendants or whether he went to the defendants where they are residing, to make such request or whether the defendants came to the plaintiff to promise that they will execute the sale deed.

15. Thus, it appears that the story narrated by the plaintiff about the promises made by all the defendants to execute the sale deed, appears to be created one to bring the suit within limitation. However, in absence of necessary details, such story cannot be accepted and as such, both the Courts have rightly held against the plaintiff on the point of limitation.

16. In the circumstances, I do not find any merit in the present appeal and the substantial question of law is accordingly answered.

The second appeal is **dismissed**.

JUDGE