

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

SECOND APPEAL NO. 381 OF 2022

Arun Ramkrushna Gawande

..VS..

Suresh Maroti Navkar (Dead) Smt. Tarabai wd/o Suresh Navkar and others

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

Court's or Judge's orders

Mr. S.V. Sohoni, Advocate for appellant.

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

DATED : JANUARY 09, 2023

Heard.

2. The present Appeal is filed being aggrieved by the judgment and decree dated 07.06.2022 in Regular Civil Appeal No. 3 of 2018, passed by learned District Judge – 3, Akola arising out of order dated 04.11.2017 passed in Regular Civil Suit No.276 of 2016 below Exh.11 by 4th Joint Civil Judge, Junior Division, Akola.

3. The case of the appellant in short is that :

The suit property is an agricultural field bearing Survey No.452, Mouja Majlapur, Taluka and District Akola, admeasuring 2H. 2R. The appellant entered into an agreement with one Ramesh Navkar on 06.04.1995 and the said Ramesh Navkar agreed to sell the suit property for consideration of Rs.50,000/-. At the time of

agreement, the appellant had paid an amount of Rs.40,000/- to Ramesh Navkar and it was agreed that Rs.10,000/- to be paid at the time of execution of sale-deed. The said Ramesh Navkar expired in the year 1995-96. As he was unmarried and issue-less, his brother Suresh Navkar was the only legal heir. It is the contention of the plaintiff that the defendant Suresh Navkar has not obtained any sanction from S.D.O. as the suit property was Class II land, and therefore, the appellant has filed a suit on 27.06.2016 for specific performance of contract and permanent injunction. It is further submitted that the defendant Suresh Navkar has filed application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure as suit is barred by Law of Limitation.

4. The suit is filed after 21 years of agreement of sale whereas it requires to be filed within three years from the date fixed for performance or if no such date is fixed, then from the date plaintiff has noticed that his performance is refused. It is a matter of record that the plaintiff earlier had filed a suit bearing Regular Civil Suit No. 229 of 2007 for permanent injunction against the defendant. It is the contention of the learned counsel for the defendant that in the said suit of 2007, execution of agreement was specifically denied by way of written-statement. In spite of this the suit is filed in the year 2016. This aspect is duly considered by the learned Trial Court as well as Appellate Court as there was no specific

date mentioned in the agreement dt. 06.04.1995, then the date on which the plaintiff has noticed that the performance is refused, the limitation begins to run from that date.

5. In my considered opinion, there is no error whatsoever committed by the Trial Court as well as the Appellate Court in allowing the application under Order VII Rule 11 of the Code of Civil Procedure. There is no substantial question of law involved.

6. Accordingly, the Appeal is dismissed. No costs.

CIVIL APPLICATION (CAS) NO. 1060 OF 2022.

In view of dismissal of Second Appeal, Civil Application (CAS) No. 1060 of 2022 also stands disposed of.

(SMT. M.S. JAWALKAR, J.)

Kirtak