



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 83 OF 2014
WITH
CIVIL APPLICATION NO. 10383 OF 2011 IN SA/83/2014
WITH
CIVIL APPLICATION NO. 15153 OF 2019 IN CA/10383/2011

1. Sayyad Mohammad Ali S/o. Sayyad Alam (**Died**)
Through LR's.

1-A Sayyad Sadik S/o. Sayyad Mohammad Ali,
Age : 54 years, Occ. : Labour,

1-B Sayyad Hamid S/o. : Sayyad Mohammad Ali,
Age : 54 years, Occ. : Labour,

1-C Sayyad Asif S/o. Sayyad Mohammad Ali,
Age : 42 years, Occ. : Labour,

1-D Sayyad Ajaj S/o. Sayyad Mohammad Ali,
Age : 47 years, Occ. : Labour,

1-E Sayyad Ayaz S/o. Sayyad Mohammad Ali,
Age : 39 years, Occ. : Labour,

All R/o. : Sayyed Mohala, Jafrabad,
Tq. & Dist. Jalna

1-F Shamimbi W/o. Shaikh Aman (**Died**)
Through LR's.

1-F-a. Shaikh Imran Shaikh Aman,
Age : 40 years, Occ. : Labour,
R/o. : Barabhai Mohalla, Ward No.13,
Chikli, Buldhana

1-G Zakiyabi W/o. Shaikh Kayyum,
Age : 70 years, Occ. : Household,

R/o. : Lambi Galli, Shivna,
Dist. Buldhana

... APPELLANTS

(Appellant No.1 – Ori. Defendant No.2)

VERSUS

1. The State of Maharashtra,
Through the Collector, Jalna
2. Ganesh S/o. Govindrao Mehunkar,
Age : 37 years, Occ. : Agriculture,
R/o. : Deulgaon Raja, Tq. : Deulgaon Raja, Dist. Buldhana
3. Mahesh S/o. Govindrao Mehunkar,
Age : 35 years, Occ. : Nil,
R/o. : As above

... RESPONDENTS

(Resp. No.1 – Ori. Defendant No.1 &
Resp. Nos.2 & 3 – Ori. Plaintiffs)

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Mr. Mujtaba Gulam Mustafa – Advocate for Appellants
Mr. V.S. Badhakh – AGP for Respondent No.1, State
Mr. A.S. Bajaj – Advocate for Respondent Nos.2 and 3

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 2nd April, 2024

JUDGMENT :

1. Heard rival submissions on admission of this appeal.
2. **Background facts of the case are as under :**

The present respondent Nos.2 and 3 who are the original plaintiffs have filed Regular Civil Suit No.211 of 2007 on 05.06.2007 in the Court of Civil Judge Senior Division, Jalna (hereinafter referred to as “*the learned Trial Court*”) against the present original appellant – Sayyad Mohammad Ali S/o. Sayyad Alam for specific performance of contract

and perpetual injunction. It is contended by the respondents/plaintiffs that, the original appellant agreed to sale the suit land i.e. land admeasuring 02 H out of Gat No.103 situated at village Satephal, Tq. Jafrabad, Dist. Jalna to them for total consideration of Rs.36,000/-. Accordingly, an agreement to sale to that effect was executed by the original appellant in favour of the respondents/plaintiffs by accepting Rs.20,000/- as an earnest money. Prior to the said agreement to sale the original appellant had already leased out the suit land to the respondents/plaintiffs for cultivation for five years under one Thekapatra (ढेकापत्र). However, despite execution of agreement to sale the original appellant refused to execute the sale-deed and hence, the aforesaid suit was filed. The appellant resisted the suit by filing written statement and denied the contents of the same in respect of Thekapatra (ढेकापत्र) and agreement to sale. The learned Trial Court after trial of the suit, decreed the same on 19.09.2009. Feeling aggrieved the original appellant preferred the Regular Civil Appeal No.188 of 2009 in the Court of Principal District Judge, Jalna (hereinafter referred to as "*the learned First Appellate Court*") but the same got dismissed on merit by the learned First Appellate Court on 27.09.2010. As such, the present Second Appeal is preferred by the appellant/original defendant No.2 against the concurrent findings of both the learned Courts below. During the pendency of this appeal the original appellant Sayyad

Mohammad Ali S/o. Sayyad Alam died and therefore, his legal representatives namely respondent Nos.1-A to 1-G are brought on record.

3. Learned Counsel for appellant/defendant No.2 strongly argued that both the learned Courts below have not properly appreciated the evidence on record and decreed the suit of the respondents/plaintiffs for specific performance specially by ignoring the fact that, the suit of the respondents/plaintiffs is not in limitation. He also pointed out that, the learned First Appellate Court, contrary to the provisions under Order 41 Rule 33 of Civil Procedure Code decided the appeal by not framing proper points. According to him, the plaintiffs were already aware about the refusal of original appellant for execution of sale-deed in the year 2005 and, therefore, the suit in respect of agreement to sale dated 28.06.2002 filed in the year 2007 is completely barred by law. Thus, according to the learned Counsel for the appellants the substantial question of law involves in this appeal is regarding limitation aspect.

4. On the contrary, learned Counsel for the respondents/plaintiffs strongly opposed the submissions made on behalf of the appellants. He pointed out that, no limitation issue

was in fact involved in the suit and it was not raised by the original appellant in his written statement and therefore, such issue cannot be raised at this belated stage. He further submitted that, both the learned Courts below have appreciated the evidence on record in proper manner and held that, the respondents/plaintiffs were always ready and willing to perform the part of their contract. According to him, the time was not made an essence of contract at the time of execution of agreement to sale and it was subjected to obtain necessary permission from the Collector, Jalna by original appellant. He pointed out that, no such permission was obtained by original appellant and therefore the learned Trial Court decreed the suit by directing the original appellant to execute sale-deed after bringing such permission. Besides his oral submissions, he relied on the following judgments :

- (a) Hon'ble Supreme Court in the case of **Balasaheb Dayandeo Naik (dead) Through LRs and Others Vs. Appasaheb Dattatraya Pawar** reported in (2008) 4 Supreme Court Cases 464
- (b) Hon'ble Supreme Court in the case of **Smt. Indira Kaur and Others Vs. Sheo Lal Kapoor** reported in (1988) 2 Supreme Court Cases 488
- (c) Hon'ble Supreme Court in the case of **Babasaheb Dhondiba Kute Vs. Radhu Vithoba Barde** in SLP (C) No.29462 of 2019

(d) Hon'ble High Court in the case of **Balu Baburao Zarole and Others Vs. Shaikh Akbar Shaikh Bhikan and Others** reported in 2001 SCC OnLine Bom 103

5. Heard rival submissions and also perused the documents on record.

6. The record shows that, the respondents/plaintiffs have proved the contents of agreement to sale (Exhibit-50), through necessary witness which indicates that, the original appellant had agreed to sale the suit land to them for the consideration of Rs.36,000/- and also accepted earnest amount of Rs.20,000/-. Further, there is also reference of earlier Thekapatra (ढेकापत्र) dated 20.04.2002 and delivery of possession of the suit land. Though the original appellant had denied the execution of agreement to sale (Exhibit-50) and earlier Thekapatra (ढेकापत्र) but, the evidence on record adduced by the respondents/plaintiffs has proved the said fact beyond doubt. Moreover, the learned First Appellate Court has also concurred the finding of learned Trial Court. Further, as regards the ready and willingness on the part of respondents/plaintiffs there is sufficient evidence on record. They had also issued legal notice to original appellant for performing his part by obtaining necessary permission from the Collector, Jalna.

The original appellant had contended that, since the Collector, Jalna has asked him to satisfy certain queries in respect of the permission, he had asked the respondents/plaintiffs to satisfy those queries. However, the letter for complying the objections/queries was issued to original appellant and nothing is there on record as to how the responsibility of complying the said objections was on the respondents/plaintiffs. As such, the learned Trial Court has rightly held that, it was the responsibility of original appellant to obtained such permission for completing the sale transaction of the suit land.

7. According to learned Counsel for the appellants, the substantial question of law involved in this appeal is regarding limitation aspect. It is vehemently argued by him that according to the case of the respondents/plaintiffs the original appellant had obstructed their possession in the year 2005 and, therefore, they must have got the knowledge about the intention of the original appellant for refusal of execution of sale-deed in the said year itself, but they did not file any suit immediately within three years of the agreement to sale dated 28.07.2002. Thus, the appellant is seeking dismissal of the suit being barred by limitation. As against this the learned Counsel for the respondents/plaintiffs claimed

that, time was never made essence of the contract between the parties but it was subject to obtaining necessary permission from the Collector, Jalna. Admittedly, the agreement to sale is dated 28.07.2002. According to the respondents/plaintiffs, their possession was obstructed by original appellant in the year 2005, therefore, they were having knowledge about such refusal to execute the sale-deed in that year itself. However, on perusal of the judgment of the learned First Appellate Court it is clearly evident that, the reference of damaging of crops of respondents/plaintiffs at the hands of original defendant in the year 2005-2006 has come on record. It has nowhere come on record that, the original appellant had in fact refused to execute the sale-deed in their favour. In fact a reference has come on record that, the original appellant had in fact demanded more consideration for execution of registered sale-deed therefore the refusal to execute the sale-deed was firstly known to the respondents/plaintiffs when the original appellant i.e. defendant No.2 refused to accept notice dated 24.01.2007 issued by the plaintiffs calling upon him to perform his part of contract. The refusal of such notice had in fact compelled the respondents/plaintiffs to file the present suit which *prima-facie* appears to be well within limitation.

8. Even otherwise also from bare reading of the recitals of the agreement to sale-deed (Exhibit-50) it is evident that, the original appellant had undertaken the responsibility of bringing permission from Collector, Jalna as the suit land was allotted to him under Ceiling Act. Further, the recitals of the said agreement to sale also indicate that, no specific time was fixed for execution of sale-deed. On the contrary, it was mentioned that after obtaining the permission of Collector, Jalna, the sale-deed was to be executed. Therefore, it is clearly evident that, time was not made essence of the contract between the parties and the registration of the sale-deed was subjected to the condition of bringing necessary permission from the Collector, Jalna. The Hon'ble Apex Court in the case of Balasaheb Naik (*supra*) has specifically observed that, from the recitals of agreement for sale or contract it is to be ascertained whether time is made essence of contract. It has been observed that, if no such recitals in respect of certain time period for execution of sale-deed is mentioned, then the suit cannot be said barred by limitation and it would always be dependent on the conditions mentioned in the agreement for sale. Here in this matter, there is nothing in the recitals of agreement for sale (Exhibit-50) that the sale-deed should be executed in the certain

time limit. On the contrary, the date of sale-deed was always subjected to bringing the permission from the Collector, Jalna. It is extremely important to note that, original appellant till today did not obtain such permission and therefore the learned Trial Court had directed the appellant to execute the sale-deed by obtaining such necessary permission as mentioned in the agreement to sale itself.

9. Further, the Hon'ble Apex Court in the case of Smt. Indira Kaur (*supra*) has observed that, the question as to which party was not prepared to perform his part of the contract is to be inferred on the basis of evidence itself and any finding contrary to the evidence can be set aside by the Hon'ble Supreme Court by invoking powers under Article 136 of the Constitution of India. Here in this matter, both the learned Courts below have appreciated the evidence on record in proper perspective and have observed through the concurrent findings that the original appellant was not ready to perform his part of contract. Thus, considering all these aspects no substantial question of law as regards the limitation aspect appears to be involved in this matter and in view of the concurrent findings of both the learned Courts below, no substance is found in the present Second Appeal.

Accordingly, the Second Appeal stands dismissed at admission stage alongwith the pending Civil Applications and the *interim* relief granted, if any, also stands vacated.

10. Second Appeal is accordingly disposed of alongwith Civil Application No. 10383 of 2011 and Civil Application No. 15153 of 2019.

[SANDIPKUMAR C. MORE]
JUDGE

11. Learned Counsel for the appellants after pronouncement of judgment, requested to continue *interim* relief which was in force during the pendency of this appeal. Learned Counsel for the respondents though opposed the submission, but considering the statutory right of the appellants, the *interim* relief which was in force during pendency of this appeal, is continued till further period of six weeks.

[SANDIPKUMAR C. MORE]
JUDGE