

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 202 OF 2018
WITH
CIVIL APPLICATION NO. 1593 OF 2016
IN
SECOND APPEAL NO. 202 OF 2018**

Hansajirao Laxman Deshmukh and ors. ... Appellants/Applicants
VS.

Maloji Bhagwanrao Deshmukh and anr. ... Respondents

Mr. Vivek Salunke for the Appellant/Applicant.

Mr. Rupesh Bobade for the Respondent.

CORAM : GAURI GODSE, J.

DATED : 8th JULY 2024

ORDER:

1. This second appeal is filed by the original plaintiff challenging the concurrent judgments and decrees granting specific performance in favour of the defendants in the counter claim.

2. The appellants had filed suit for recovery of possession. In the said suit, the defendants filed a counter claim seeking specific performance of the agreement dated 18th January 1990. The said counter claim is decreed directing the plaintiffs to execute sale deed in favour of the defendants. The first appellate Court has confirmed

the said decree by dismissing the appeal filed by the plaintiffs.

3. Learned counsel for the appellants submitted that as per the suit agreement the respondents were put in possession. It was the plaintiffs contention that in fact the document was a mortgage document and hence the respondents were called upon to accept the amount and reconvey the property. He further submits that so far as the grant of specific performance in favour of the defendants is concerned, the trial Court had ignored the issue regarding the claim of specific performance being time barred. Hence, in the appeal a specific ground was raised that the counter claim was time barred. Learned counsel for the appellants raises his grounds of objections on the findings recorded by the first appellate Court on the issue of limitation. He submits that both the Courts have ignored the pleading of the defendants that they were aware about the statutory permission, which was required to be taken for change in the tenure of the land. He submits that the suit agreement was to be specifically performed on the change in the tenure of the suit land.

4. It is thus contended on behalf of the appellants that the necessary change in tenure was effected pursuant to the permission dated 10th June 1991 and the same was given effect in the revenue record by way of mutation entry, which was produced in the trial

Court at Exhibit-38. He, therefore, submits that the certification of the mutation entry, was a sufficient source of knowledge to the defendants regarding change in the tenure. Hence, once the tenure of the suit land was changed the obligation was on defendants to pay balance consideration amount and get the document executed. He, thus, submits that the specific performance claimed by the defendant by way of counter claim in a suit filed in the year 2003 was clearly time barred. He submits that both the Courts ignored the specific pleadings of the defendants, where they agreed that they were aware about the order passed regarding the change in the tenure and though called upon to execute the sale deed, the plaintiffs had refused to execute the sale deed. He thus submits that a material pleading of the defendants is ignored by both the Courts, while dealing with the issue of limitation. He, thus, submits that this second appeal would require consideration on the question of law as to whether the counter claim of the defendants seeking specific performance was time barred.

5. I have considered the submissions made on behalf of the appellants. Perused the record. The execution of the suit agreement dated 18th January 1990 is not in dispute. The defendants were put in possession based on the agreement. The obligation on the part of the defendants to pay the balance consideration amount was

admittedly after the change in the tenure of the suit land. The obligation for getting the permission for change in the tenure was on the plaintiffs/vendors. It was only after the orders passed with regard to the change in tenure, the obligation was passed upon the defendants to make the payment of the balance consideration amount for getting the suit agreement specifically performed.

6. Once the terms of the agreement are admitted and there is no sufficient evidence to show that the change in the tenure was intimated to the defendants and they were called upon to make payment of the balance amount towards the consideration amount, the counter claim filed for specific performance in the suit filed by the plaintiffs cannot be said to be time barred.

7. I have perused the pleadings in the written statement, which is relied upon by the learned counsel for the appellants to contend that the defendants were aware about the permission granted for change in the tenure and that they had called upon the plaintiffs to specifically perform the agreement. A perusal of the pleadings in the written statement indicates that the reference to the knowledge about the permission in the change in the tenure was after filing of the suit. Thus, the finding recorded by the first appellate Court on the point of limitation are after examining the oral as well as

documentary evidence on record.

8. I do not find that there is any illegality or any perversity in the reasons recorded by the first appellate Court on the point of limitation.

9. In view of aforesaid admitted facts on record and the reasons recorded by the first appellate Court, I do not find that the question of law as sought to be argued on behalf of the appellants regarding the counter claim being time barred would require any consideration by this Court.

10. In view of aforesaid, the question argued for consideration as a question of law would require re-appreciation of the pleadings and evidence on record, which is not permissible under Section 100 of Code of Civil Procedure.

11. The second appeal does not raise any other substantial question of law. Hence, the Second Appeal is dismissed.

12. In view of the dismissal of the second appeal, Civil Application No. 1593 of 2016 is dismissed as infructuous.

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signed by
MANGALTAI
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JADHAV
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(GAURI GODSE, J.)