



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

SECOND APPEAL NO. 214 OF 2005

Pralhad Daulatrao Kalekar
(dead) through LRs

- 1] Ganesh Pralhad Kalekar,
aged about 45 years, Occ. Agriculturist,
R/o Badnera, Tq. Badnera, District – Amravati.
- 2] Umesh Pralhad Kalekar,
aged about 35 years, Occ. Agriculturist.
- 3] Shamrao Pralhad Kalekar,
aged about 32 years, Occ. Agriculturist.
- 4] Arvind Pralhad Kalekar,
aged about 27 years, Occ. Labour.

Appellant nos. 2 to 4 are R/o
Kanzhara, Tq. Murtizapur, District – Akola.

...APPELLANTS

Versus

- 1] Smt. Sayankabai wd/o Dhannu Wahar,
aged about 65 years, Occ. Household (dead)
- 2] Shri Avdhut s/o Dhannu Wahar,
aged about 45 years, Occ. Agriculturist.
- 3] Shri Shripad s/o Dhannu Wahar,
aged about 42 years, Occ. Agriculturist.
- 4] Shri Gulab s/o Dhannu Wahar,
aged about 40 years, Occ. Agriculturist.
- 5] Shri Babarao s/o Dhannu Wahar,
aged about 35 years, Occ. Agriculturist.

All are R/o Kanzara, Taluka – Murtizapur,
District – Akola.

...RESPONDENTS

Shri S.M. Vaishnav, Counsel for the appellants.
Shri P.D. Meghe, Counsel for the respondents.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : APRIL 30, 2024

JUDGMENT IS PRONOUNCED ON : MAY 3, 2024

JUDGMENT :

The appeal has been admitted on the following
substantial questions of law :

“1) Whether the Appellate Court was right in passing the decree for specific performance without recording findings of fact about the readiness and willingness of the appellant to perform his part of contract as is required under section 16(c) of the Specific Relief Act ?

2) Whether the Appellate Court had framed proper points for determination in the appeal ?

3) Whether the appreciation of the evidence made by the Appellate Court is perverse ?

4) Whether the suit was barred by limitation ?”

2] The appellant – Pralhad, original defendant (now represented by legal representatives) has filed present appeal against the respondents – original plaintiffs being aggrieved by the judgment and decree passed by the 3rd Ad hoc Additional

District Judge, Akola in Regular Civil Appeal No. 209/2002. The First Appellate Court has allowed the appeal and decreed the suit for specific performance of contract. The trial Court, vide judgment and decree dated 30/9/2002, dismissed the suit being Regular Civil Suit No. 73/1999 and directed the respondents to handover the possession of the suit property to the appellant.

3] The respondents filed suit being Regular Civil Suit No. 73/1999 seeking specific performance of contract, which was entered into on 10/3/1981. The land admeasuring 4 acre was agreed to be sold by the appellant/defendant for a sum of Rs.8,000/- of which Rs.7,000/- was paid. The balance amount of consideration, i.e., Rs.1,000/- was agreed to be paid once the appellant obtain N.O.C. from the State Government for execution of the sale deed. The appellant did not obtain permission. The respondents were in possession of the suit property which was delivered at the time of execution of agreement to sell. The respondents were always ready and willing to perform their part of contract. The sale deed was,

however, not executed because permission was not obtained. The respondents, therefore, issued registered notice on 12/2/1999 calling upon the appellant to obtain necessary permission and to execute sale deed. The appellant did not comply nor did he reply to the notice. Accordingly, the suit was filed.

4] As stated earlier, the trial Court had dismissed the suit. The First Appellate Court, however, allowed the appeal and decreed the suit.

5] On the first substantial question of law, the learned Counsel for the respondents has argued that the issue of respondents' readiness and willingness to perform their part of contract was answered in the affirmative. The suit, however, was dismissed on the point of limitation. The respondents, and not the appellants, had challenged the appeal. The appellants have, thus, not questioned the finding given by the trial Court on the issue of respondents' readiness and willingness to perform their part of contract, which the trial Court answered

in favour of respondents. Accordingly, he submits and to my mind rightly, that there was no reason for the Appellate Court to formulate the point as regards readiness and willingness of the respondents to perform their part of contract. The Appellate Court will naturally formulate the points on the basis of challenge raised by the respondents. The issue of readiness and willingness to perform was answered in favour of the respondents and, therefore, the First Appellate Court did not formulate the said point, there being no challenge to the said issue. The first two substantial questions of law are accordingly answered in the affirmative.

6] The controversy is as regards the issue of limitation. The trial Court found the suit to be barred by limitation. The learned Counsel for the appellants submits that the agreement to sell was executed on 10/3/1981. The respondents have issued notice to the appellant in the year 1999, i.e., after a period of about 18 years. In the meantime, i.e., in the year 1995, the appellant had filed suit for injunction for restraining the respondents from disturbing possession of the appellant

over the suit property.

7] The respondents appeared and contested the suit on the ground that in the year 1981, the appellant had agreed to sell the suit property and have handed over possession. This suit has been withdrawn later.

8] The learned Counsel for the appellants submits that filing of suit by the appellants coupled with their prolonged inaction to obtain permission from the State Government was sufficient for the respondents to notice that the appellants have refused to perform their part of contract. In the circumstances, the suit filed by the respondents seeking mandatory injunction as also specific performance of contract ought to have been filed within three years from the date of noticing refusal by the appellants to perform their part of contract. The respondents did not file the suit within three years. They filed the suit in the year 1999. The trial Court has, therefore, rightly held that suit is barred by limitation.

9] The learned Counsel for the appellants has relied

upon the judgment in the case of *R. Kumar Vs. G. Jaganmoorthy* [Second Appeal No. 674/2015 decided on 25/10/2017] wherein the Madras High Court in similar such situation has referred to the judgment of the Division Bench of the Madhya Pradesh High Court to opine that there is no separate Article provided under the Limitation Act, 1963 for a suit for injunction. The suit for injunction, therefore, has to be governed by the residuary Article, i.e., Article 113, which provides that suit can be filed within three years from the date of accrual of cause of action.

10] As against, the learned Counsel for the respondents contends that in the suit filed by the appellants, they have not referred to or relied upon the agreement executed by an between the parties. Hence, according to him, the respondents had no reason to notice that they have refused to perform their part of contract. He further submits that the appellants were duty bound to obtain permission from the State Government and having failed to do so for a considerable period and further having failed to respond to the notice issued by the

respondents in the year 1999, the cause of action would arise upon refusal to respond to the notice and not upon filing suit, particularly when the suit was withdrawn.

11] I do not find any substance in the submissions made by the learned Counsel appearing for the respondents. The respondents filed the suit stating therein that the possession of suit property was handed over to them in pursuance to execution of agreement in the year 1981. The respondents have not issued any notice till the year 1995, the year when the appellants filed the suit against the respondents seeking injunction. This long inaction on part of the appellants to not obtain permission from the State Government to execute the sale deed coupled with the fact that they have lodged the suit against the respondents seeking injunction for protecting their possession, is, to my mind, an obvious act of refusal to perform their part of contract. The appellants have not obtained requisite permission and on the top of it, have filed suit against the respondents. The appellants claimed themselves to be in possession of the suit property, which is a

stand contrary to the respondents' plea of appellants handing over possession of suit land in the year 1981. This action by the appellants was sufficient enough to take notice that the appellants have refused to perform their part of contract. The cause of action and in turn limitation would start running from the date of taking such stand *viz.* the date when the suit was filed or at least from the date when the suit summons was served upon the respondents. It is nobody's case that the respondents' suit was filed within three years of receiving suit summons.

12] In the circumstances and in terms of Article 54 read with Article 113 of the Limitation Act, the respondents ought to have filed the suit within three years from the date of receipt of summons in suit filed by the appellants. Withdrawal of suit, in my view, will not give rise to fresh cause of action inasmuch as once the limitation starts running, it would not stop unless the appellants have given fresh assurance of execution of their part of contract. That being not the case of the respondents, there appears no reason why would limitation, which started running

in the year 1995, will stop in between.

13] The trial Court, therefore, was fully justified in holding that the suit was barred by limitation. The First Appellate Court has taken an erroneous view that mere filing of suit by the appellants cannot be said to be an act of repudiating the contract. The First Appellate Court has observed that the respondents were in peaceful possession and enjoyment of suit field from the year 1981 and, therefore, the possibility cannot be ruled out that they did not issue any notice to the appellants to obtain necessary permission to execute the sale deed. This view is an outcome of conjecture and surmise.

14] The First Appellate Court then has noted that in the oral evidence, the respondent has deposed that he orally requested the defendant/appellant to obtain N.O.C. but the appellant has avoided the same on one or the other pretext. This evidence of the respondent of avoiding request to obtain N.O.C., coupled with the act of the appellant of filing suit against the respondent leaves no room for doubt that the

appellants have expressed their refusal to perform their part of agreement.

15] The reasons rendered by the First Appellate Court to over turn the finding of the trial Court is, thus, erroneous and, therefore, is unsustainable. The fourth substantial question of law is accordingly answered in the affirmative. The suit was barred by limitation.

16] The Appellate Court found merit in the plea taken by the respondent herein that refusal to answer his notice gave rise to cause of action. The Appellate Court ought to have appreciated that, if mere refusal to answer notice is sufficient for the respondent to arrive at a conclusion that respondent has refused to perform his part of contract, then the avoidance of the appellant to act on the repeated requests of the respondent to obtain N.O.C. coupled with a fact of filing suit should be more than sufficient for the respondent to notice refusal of appellants to perform their part of the contract. The appreciation of evidence is thus perverse. The third substantial

question of law is accordingly answered in the affirmative.

17] The sum and substance of above discussion is that the appellants have made out a case in their favour. Hence, following order :

ORDER

- i] The appeal is allowed.
- ii] The judgment and decree dated 3/2/2004 passed by the 3rd Ad hoc Additional District Judge, Akola in R.C.A. No. 209/2002 is quashed and set aside.
- iii] The judgment and decree dated 30/9/2002 passed by the Civil Judge Junior Division, Murtizapur in R.C.S. No. 73/1999 is restored.

CIVIL APPLICATION NO. 452/2021

The applicant has, in the year 2000, i.e., pending suit, has purchased the suit property from the appellant herein, who was original defendant. He did not intervene in the suit nor did he intervene in First Appeal. In Second Appeal,

however, he has moved with the contention that the suit property has been purchased by him.

2] The Hon'ble Supreme Court in the case of *Sanjay Verma Vs. Manik Roy And Others [(2006) 13 SCC 608]* has held that the transferee *pendente lite* is bound by the decree just as much as he was a party to the suit and the principle of *lis pendens* embodied in Section 52 of the Transfer of Property Act, 1882 being a principle of public policy, no question of good faith or *bona fide* arises.

3] In another case, i.e., in the case of *Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and another [(2004) 1 SCC 191]*, the Supreme Court has held that the petitioner being a transferee *pendente lite* without leave of the court cannot, as of right, seek impleadment as a party in the suits which are long pending since 1983.

4] Thus, the applicant cannot now be permitted to intervene. Even otherwise, the Second Appeal is allowed and, therefore, interest of the applicant is well protected. The

application is accordingly rejected.

JUDGE

Sumit