



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

902 SECOND APPEAL NO. 786 OF 2015

**ANJALI MAHENDRA BALLAL
VERSUS
SHYAMLA MADAN BALLAL**

**WITH
CIVIL APPLICATION NO. 17062 OF 2015
IN SA/786/2015**

...
Advocate for Appellant : Mr. S.S. Dudhane h/f Mr. Dhorde V.R.
Advocate for Respondent/Caveator : Mrs. C. S. Deshmukh.
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**CORAM : SHAILESH P. BRAHME, J.
DATE : 07.10.2025**

PER COURT :-

1. Heard both sides.
2. But for the point of limitation, all are concurrent findings of facts in the second appeal. Appellant/original defendant is facing decree of specific performance of contract passed by Lower Appellate Court on 29.04.2015 in Regular Civil Appeal No.414 of 2012. The respondent's Special Civil Suit No.236 of 2008 for specific performance of contract was dismissed by the Trial Court on 30.04.2009.
3. Parties are closed relatives. Appellant proposed to transfer her share to the extent of 60 R. of land Gut No.839/1

vide agreement to sell dated 17.01.2004. The consideration of Rs.2,34,000/- was fixed. Out of that, appellant is stated to have received Rs.2,20,000/- from the respondent. The sale deed was to be executed within six (6) months. It is further recited that after repayment of loan by the appellant, the balance amount should be paid by the respondent within six (6) months. At the time of agreement, amount of Rs.1,10,000/- was paid. On 20.01.2004, Rs.60,000/- was paid. Thereafter, Rs.50,000/- was paid by cheque on or after 19.07.2004.

4. Respondent issued notice on 07.10.2006 calling upon appellant to execute sale deed. Appellant did not reply the notice. Thereafter, respondent filed Regular Civil Suit No.345 of 2006 for injunction which was subsequently withdrawn on 07.10.2008 with a permission to prosecute the present suit.

5. Appellant's case is that there was no agreement to sell between the parties but the transaction was that of hand loan of Rs.50,000/-. It is further contended that the signatures on blank papers are misused and the agreement was got prepared. It is further contended that suit is barred by limitation.

6. Trial Court decided all issues in favour of the respondent/plaintiff but suit is held to be barred by time as it was not filed within six (6) months as per Article 54 of the Limitation Act. Trial Court only awarded refund of amount with interest to the respondent/plaintiff. Being aggrieved, Regular Civil Appeal No.414 of 2012 was filed by the appellant and the cross objection was preferred by the respondent. By common judgment and order dated 29.04.2015, cross objection was allowed and the appeal of the appellant was dismissed granting decree for specific performance of contract to the respondent.

7. Learned counsel for the appellant submits that Appellate Court committed error of jurisdiction in holding that suit is within limitation. It is submitted that considering the relationship between the parties, it was transaction of hand loan and the agreement was fraudulently prepared by the respondent. It is contended that Regular Civil Suit No.345 of 2006 was filed for injunction which was withdrawn and that time only suit for specific performance of contract should have been filed. It is submitted that decree passed by Lower Appellate Court is unsustainable.

8. Learned counsel for the appellant submits that substantial questions of law are involved in the second appeal and it requires consideration.

9. He placed reliance on the judgment in the case of ***Arvind Krushnarao Waghmare Vs. Baba Jasbirsing Kalsi ; 2018 (6) ABR 213.***

10. Learned counsel Mrs. Deshmukh appearing for the respondent supports impugned judgments and orders. It is submitted that Lower Appellate Court is justified in holding that agreement runs into two parts. The interpretation of the agreement is reasonable and proper so as to hold that it was a contingent contract between the parties. It is further submitted that acceptance of the earnest amount beyond six months from the execution of agreement indicates that time was not the essence of contract. It is submitted that there are concurrent findings of facts recorded by the Courts below which cannot be interfered with.

11. I have gone through agreement to sell which is at Exh.30 tendered on record by the learned counsel for the appellant. It is an unregistered document executed on 17.01.2004 thereby reciting that sale deed was to be executed within six months.

In later part, the appellant is shown to have under obligation to repay the loan and the balance amount was to be paid by the respondent within six months. At the time of execution of agreement Rs.1,10,000/- was paid by the respondent. Thereafter, Rs.60,000/- was paid on 20.01.2004. A cheque of Rs.50,000/- was issued on 19.07.2004.

12. Admittedly, last payment of Rs.50,000/- was made by cheque which was accepted after expiry of six months i.e. 17.07.2004. Appellant could have refused to accept the payment as it was beyond six months. Appellant did not reply notice dated 07.10.2006 which was duly received by her. The conduct and the circumstances indicate that the condition of execution of sale deed within six months from the agreement was dispensed with. It cannot be said that time was the essence of the contract.

13. After serving notice dated 07.10.2006 on the appellant, present suit was filed. Appellant failed to perform her part of contract. No reply was given to the notice. Neither it was disclosed or represented to the respondent that loan was repaid and saleable title was available. Therefore, cause of action for filing present suit can be said to be within time.

14. Reliance is placed on the case of *Arvind Keshavrao Waghmare (supra)*. I have gone through paragraph Nos.12, 13 and 14. I would have accepted the submissions of the learned counsel for the appellant, had there been not the dispensation of the stipulation of time by accepting the last amount beyond six months. In the present case, though parties agreed to execute sale deed within six months, by their conduct the condition was relaxed. Under these circumstances, I am of the considered view that present case is not covered by first part of Article 54. The facts in the cited judgments are distinguishable. This judgment will not help the appellant.

15. Both Courts below have recorded concurrent findings of facts on the defence raised by the appellant that fraud was played. No material was placed on record to indicate that there was any fraud on part of the respondent. The parties are closed relatives and they are educated. It is incomprehensible that the parties would sign on blank paper. I do not find that there is any perversity and illegality in the findings of the Courts below.

16. Agreement Exh.30 can be said to be contingent one considering lateral part of the recitals. I have already observed that it has not been disclosed by the appellant that loan of

Maharashtra Khadi Gramodyaya Mandal was ever repaid and it was disclosed to the respondent so as to unable her to pay balance amount. This contingency did not arise in the present case. After serving notice when there was no response, the respondent felt that specific performance was being refused the limitation commenced for filing suit. I endorse the findings that suit is within limitation. I find no substantial questions of law involved in the second appeal.

17. Second appeal is dismissed.

18. In view of disposal of second appeal, pending civil application does not survive. Civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

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vmk/-