



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

**SECOND APPEAL NO. 800 OF 2013
WITH
CIVIL APPLICATION NO. 14777 OF 2013**

Meena Suyakant Aynile and another .. Appellants

Versus

Balaji Venkatrao Jadhav .. Respondent

Shri H. B. Nandagavale, Advocate h/f Shri Vijay G. Sakolkar,
Advocate for the Appellants.

Shri V. D. Gunale, Advocate for the Respondent - Sole

**CORAM : SHAILESH P. BRAHME, J.
DATE : 04TH AUGUST, 2025.**

FINAL ORDER :

. Heard learned counsel Mr. Nandagavale for the appellants and Mr. Gunale, learned counsel for the respondent.

2. This second appeal is arising out of concurrent findings of facts recorded by both the Courts for granting decree for specific performance of contract by the Courts below. The respondent founded his claim on agreement dated 05.04.1997, which is at Exhibit 18. It is his case that in pursuance of agreement earnest amount was paid and he was put in possession of half portion of plot No. 9. The property in question is further developed by him. It is further contended that the respondent requested for execution of sale deed and a notice was issued on 23.05.2008 to

the appellants, calling upon them to execute the sale deed. Thereafter suit was filed on 26.06.2008 for specific performance of contract.

3. The appellant failed to appear before the Trial Court despite service of summons. Following observations are recorded by the Trial Court :

“5. As per summons report at Exh. 11 it is clear that the defendants No. 1 and 2 refused to accept the summons and also restrained the bailiff from affixing the copy of the summons on the door of their house, therefore, the suit proceeded ex parte against the defendants.”

4. In absence of any contest the matter proceeded further. Considering oral evidence and documents produced on record, the suit came to be decreed on 21.08.2009. Being aggrieved appellants preferred R.C.A. No. 05 of 2010.

5. Regular civil appeal was dismissed holding that there was proper service of summons on both the appellants and in absence of any contest on the merits of the matter, no case was made out.

6. Learned counsel for the appellants submits that there was no proper service of summons on the appellants and both the Courts below did not look into the procedure required to be followed to demonstrate valid service. It is further submitted that suit was hopelessly barred by limitation as agreement was executed on 05.04.1997. The husband of the appellant No. 1

Suryakant died on 02.06.2000. No steps were taken by the respondent to file the suit within time. Both the Courts below committed error of jurisdiction in decreeing the suit. It is further contended that agreement, Exhibit 18, is bad in law because it does not bear the signature of purchaser Balaji and attesting witness Mohan. Agreement is invalid and should not have been executed. Learned counsel would also point out Exhibit 22, which is a receipt executed on 07.04.1997, acknowledging the payment. It makes the transaction doubtful. Learned counsel for the appellants relies on the following judgments of the Supreme Court.

- I Rajesh Kumar Vs. Anand Kumar and others reported in 2024 AIR (SC) 3017.
- II Sabbir (Dead) Vs. Anjuman (Since Deceased) reported in AIR (SC) CIV-2024-0-51.
- III Judgment dated 05.08.2024 in the matter of Usha Devi and others Vs. Ram Kumar Singh and others in Civil Appeal No. 8446 of 2024.

7. Per contra, learned counsel Mr. Gunale for the respondent would support the impugned judgments and decrees. It is submitted that there was no contest on merits and, therefore, whatever the submissions made by the learned counsel for the appellants cannot be considered and they would not form any substantial question of law.

8. Both the Courts below have concurrently held that there was valid service on the appellants. They are recorded to have refused to accept the summons and have also restrained the serving officer to affix the copy on the conspicuous part of the house. It is relevant to refer to judgment of the Supreme Court in the matter of Bhanu Kumar Jain Vs. Archanakumar and another reported in *(2005) 1 SCC 787*, which is recently followed in *AIR 2022 SC 4213* that if the ex-parte order or decree is not assailed by resorting to Order IX Rule 13 of the Code of Civil Procedure and directly appeal U/Sec. 96 of the C. P. C. is filed, then the scope is limited. In the present matter also appellants chose to prefer appeal U/Sec. 96 of the C. P. C. The grounds available are

- (i) the materials on record brought on record in the ex-parte proceedings in the suit by the plaintiff would not entail a decree in his favour, and
- (ii) the suit could not have been posted ex-parte hearing.

9. No procedural lapses in effecting service of summons is found. The material is produced on record is sufficient to pass decree of specific performance of contract in favour of the respondent. It is urged that agreement is not valid and the suspicious circumstances existed at the time of execution of agreement. In the absence of the written statement, the submissions raised by the appellants cannot be entertained for the first time in the High Court.

10. Though it is vehemently contended that the agreement Exhibit 18 does not bear the signature of the purchaser if is devoid of any substance in the wake of law laid down by the Supreme Court in the matter of Raju Ramsing Vasave Vs. Mahesh Devorao Bhivpurkar and others reported in *2009(1) Mh.L.J. 01*.

12. It's a matter of record that initially agreement was not on sufficient stamp. It was taken back by the respondent and impounded. Though there was no contest in the suit, oral evidence was adduced to prove the contents of the agreement. The receipt of payment Exhibit 22 corroborates the theory of the respondent. The consideration was fixed at Rs. 16,000/- out of that Rs. 6,000/- was paid. Considering preponderance of probabilities and in the absence of any serious contest by the appellants, the decree passed by the Trial Court cannot be faulted.

13. It is permissible for the defendant to raise point of limitation even without filing of written statement. It is bounden duty of the Court to examine as to whether the suit is filed within limitation. To that extent I am entertaining the submissions made by the learned counsel for the appellants. The agreement at Exhibit 18 does not stipulate any time for execution of sale deed. The original vendor Suryakant died on 02.06.2000. At the time of execution of agreement possession was handed over to the respondent. Thereafter it is the case of the respondent that appellants failed to execute sale deed and

ultimately notice was required to be issued on 23.05.2008. In the absence of any material on record, it will have to be held that the suit is filed within limitation. As per Article 54 of the Limitation Act, limitation reckons from the time when specific performance is refused. In that view of the matter, I find that the submissions in respect of limitation sans merit.

14. The judgments relied upon by the appellants can be dealt in following manner :

(i) In the judgment of Rajesh Kumar vs. Anand Kumar and Others reported in **2024 AIR (SC) 3017**, the effect of filing of the suit for specific performance after long delay is dealt with. The judgment is distinguishable on facts. The judgment will not help the appellants.

(ii) Appellants relied on the further judgment of Apex Court in the matter of Sabbir (Dead) vs. Anjuman (Since Deceased) in **Special Leave Petition (Civil) No.4477 of 2019**. In that case plaintiff did not spell out averments of readiness and willingness. The principle that “Law is harsh, but it is the law” is highlighted. This judgment also does not help the appellants.

(iii) In case of Usha Devi and Ors. vs. Ram Kumar Singh and Ors. in **Civil Appeal No.8446 of 2024** and considering time of one month stipulated in agreement for execution of sale-deed, it was recorded that suit was barred by limitation. In the case at hand, there is no mention of time for executing sale deed. Time is not

the essence of the contract. Hence, the judgment cited is not helpful to the appellants.

15. For the reasons stated above, I do not find any substantial question of law is involved in the second appeal. Second appeal is dismissed.

16. After pronouncement of the order, learned counsel for the appellants prays for continuation of protection granted by this Court. The request is opposed by Mr. Gunale, learned counsel for the respondent.

17. The respondent is in possession of the suit plot and he has constructed the same also. Interim protection was issued on 09.12.2024 and it is in operation till this date. I think it appropriate to continue the protection for a period of four (04) weeks from today. It is clarified that after expiry of period of four (04) weeks, protection granted shall stand vacated.

18. The Civil Application No. 14777 of 2013 stands disposed of.

[SHAILESH P. BRAHME J.]

bsb/Aug. 25