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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 688 OF 1989**

Ganpati Tavanappa Gadkari
(Since deceased through LRS)

1. Smt. Neelabai Shrikant Vagne
Aged : 66 years, Occ : Household
R/o. Kabnur, Tal. Hatkanangale
District : Kolhapur
2. Sou. Rajmanti Shrikant Vagane
Aged : 61 years, Occ : Household
R/o. Halondi, Tal : Hatkanangale
District : Kolhapur
3. Sou. Sudhatai Sukumar Patil
Aged : 56 years, Occ : Household
R/o. Bambavade, Tal. : Shirala,
District : Sangli
4. Sou. Pushpa Shriimandhar Naregonda
Aged : 46 years, Occ : Household,
R/o. Hingangaon, Tal : Hatkanangale
District : Kolhapur

... Appellants

Versus

Ilai Usman Attar
deceased by LRS.

1. Smt. Ashabi Ilai Attar,
since deceased represented by LRS at
Sr. No. 2 and 3).
2. Shri Ramzan Ilai Attar,
Age : Adult, Occ : Not known,
Both R/o. A/P. Kumbhoj,
Taluka : Hatkanangale,
District : Kolhapur.
3. Mrs. Wahida Naushad Attar,
Aged : Adult, Occ : Housewife,
R/o. Sangrul, Taluka : Karvir,
District : Kolhapur. ... Respondents

Mr. Vinayak R. Kumbhar a/w. Mr. Rajendra B. Khaire, Mr. Aniket S. Phapale i/b. Mr. Narendra V. Bandiwadekar, Senior Advocate for the Appellants.

Mr. Sandeep Koregave a/w. Ms. Pallavi A. Karanjkar for the Respondents.

CORAM: GAURI GODSE, J.

RESERVED ON: 19th DECEMBER 2024

PRONOUNCED ON: 6th MAY 2025

JUDGMENT:

1. This appeal is preferred by the heirs and legal representatives of the plaintiff to challenge the concurrent judgments and decrees

dismissing the suit for specific performance of the contract dated 19th April 1971. The second appeal is admitted by order dated 22nd February 1990 on the questions of law formulated in grounds (2) and (5), which read as under :

“(2) In the light of the admitted fact that the Defendant being required to execute the deed of reconveyance and in favour of the Plaintiff on or before 1980, the present suit filed in 1980 can it be held to be barred by law of limitation.

(5) Is it correct to hold that just because the party Plaintiff does not issue notice calling upon the Defendant to execute the deed of reconveyance (as in the present case) that such lapse on the part of the Plaintiff is sufficient to draw inference that the Plaintiff was not ready and willing to perform his part of the contract and can it be right to hold that the provisions of Section 16(c) of the Specific Relief Act would not govern the facts of the present case. “

2. The suit was filed to seek specific performance of an agreement dated 19th April 1971 and possession of the suit property. The plaintiff contended that by a registered sale deed dated 19th April 1971, he transferred the suit property in favour of

the defendant for a consideration of Rs.1000/-. According to the plaintiff, on the same day a separate agreement was executed between the parties, by which it was agreed between them that if the plaintiff repaid the consideration amount of Rs.1000/- to the defendant by the end of any Falgun month from 1896 till the end of 1902 of the marathi calendar, the defendant would reconvey the property in favour of the plaintiff. The plaintiff contended that every year in the month of Falgun, he requested the defendant to reconvey the property, but the defendant avoided doing so. Lastly, in 1980, in the month of Falgun, the plaintiff requested the defendant to reconvey the property; however, the defendant refused. Hence, he filed the suit.

3. The defendant filed a written statement and denied the suit claim. The defendant admitted the execution of the registered sale deed; however, he denied execution of any separate agreement for reconveyance. The defendant also denied that the plaintiff had approached him for reconveyance. He contended that, assuming without admitting execution of the agreement, the plaintiff's claim for reconveyance was time-barred.

4. The trial court dismissed the suit. The court held that the plaintiff failed to prove execution of any agreement of reconveyance, that the defendant offered to repay the amount and called upon the defendant to execute a reconveyance. Thus, the court held that the plaintiff was not entitled to any specific performance of the document as pleaded by the plaintiff. The first appellate court dismissed the appeal preferred by the plaintiff and confirmed the dismissal of the suit. In addition to the issues decided by the trial court, the first appellate court also held that the suit was barred by limitation.

5. The learned counsel for the appellants submitted that the signature on the suit agreement was not denied; hence, the plaintiff's contentions on the execution of the document are erroneously disbelieved by both courts. He submitted that the period for reconveyance was six years from 1974; therefore, the limitation period would start at the end of 1980. The suit was filed on 9th June 1980. Hence, according to the learned counsel for the appellants, the suit was within limitation. Learned counsel for the appellants relied upon paragraph 18 of the first appellate court's judgment. He submitted that the first appellate court referred to the specific averment of the plaintiff regarding his readiness and willingness to

repay the consideration amount. He thus submitted that based on the specific pleading as contemplated under Section 16(c) of the Specific Relief Act, 1963 and the supporting evidence, the findings recorded against the plaintiff that he was not ready and willing to repay the consideration amount were based on erroneous reasons. Learned counsel for the appellants thus submitted that both questions of law must be answered in favour of the appellants.

6. Learned counsel for the respondents supports the impugned judgments and decrees dismissing the suit. He submitted that as per the registered sale deed dated 19th April 1971, the absolute title of the suit property is transferred in the defendant's name. Even if the plaintiff's case of his entitlement to reconveyance was to be considered, the suit should have been filed within three years from the end of the year 1974, which was agreed upon for repaying the consideration amount. He submitted that the witnesses to the agreement were not examined, and the contents of the agreement were not proved. He submitted that the admission given in the cross-examination does not support the plaintiff's case that he was entitled to seek reconveyance of the suit property. He further submitted that even otherwise, in the absence of any pleading as contemplated under Section 16(c) of the Specific Relief Act, the

plaintiff is not entitled to any discretionary relief of specific performance of the agreement. He submits that the plaintiff failed to plead and prove the readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act. He failed to offer the amount or deposit it after filing the suit. Hence, the plaintiff is not entitled to seek relief of reconveyance. He thus submitted that both questions of law must be answered in favour of the defendant.

7. I have perused the record of the second appeal. The trial court held that the plaintiff did not prove the independent writing after the execution of the registered document by examining any witness or scribe. The trial court refused to accept the plaintiff's contention that he offered to repay the amount and seek reconveyance from the defendant. Thus, the trial court held that the readiness and willingness on the part of the plaintiff were not pleaded and proved. The trial court examined the written statement of the defendant. Based on the pleadings in the written statement, the trial court held that the document relied upon by the plaintiff to support the terms of reconveyance was not proved by the plaintiff by leading sufficient evidence. The trial court refused to accept the plaintiff's contention regarding the agreement between the parties for reconveyance and thus dismissed the suit.

8. The first appellate court also refused to accept the agreement pleaded by the plaintiff that the defendant had agreed to reconvey the property if the plaintiff repaid the amount of consideration any time between 1896 and 1908 as per the Marathi calendar. The first appellate court held that the defendant categorically denied the execution of the terms for reconveyance. Hence, according to the first appellate court, in the absence of any valid and sufficient evidence, the subsequent writing claimed by the plaintiff for reconveyance of the property cannot be accepted.

9. The first appellate court held that the prayers in the suit were in the form of specific performance of the agreement for reconveyance as pleaded by the plaintiff. Hence, the first appellate court held that in view of Article 54 of the Limitation Act, 1963, the limitation period would be three years from the refusal on the part of the defendant to perform his part of the contract. Considering the dates pleaded by the plaintiff for reconveyance, the first appellate court held that the first opportunity for the plaintiff to seek reconveyance was available from 1896 to 1902 of the Marathi calendar. However, the suit was filed in the year 1980; hence, in view of Article 54 read with Section 3 of the Limitation Act, the suit was barred by limitation.

10. After re-examining evidence on record, the first appellate court confirmed the trial court's findings, disbelieving the plaintiff's theory of his readiness and willingness to repay the consideration amount as per the agreement of reconveyance. Hence, the first appellate court held that the plaintiff was not entitled to any discretionary relief in the absence of any particular pleading and proof that the plaintiff was ready and willing to repay the consideration amount.

11. There is no dispute that the suit property originally belonged to the plaintiff, and the registered sale deed was executed in favour of the defendant on 19th April 1971. The plaintiff relied upon a separate unregistered agreement dated 19th April 1971, which, according to the plaintiff, was executed between the parties agreeing that if the plaintiff repaid the amount of consideration by the end of any Falgun month from 1896 till the end of 1902 of the marathi calendar, he would be entitled to get the property reconveyed in his favour. However, the execution of the independent writing for reconveyance relied upon by the plaintiff is disputed. Thus, the first question of law has to be considered by keeping in mind that the execution of the suit agreement is disputed. Thus, the limitation issue cannot be decided on the

background that it is admitted that the defendant was required to execute a deed of reconveyance in favour of the plaintiff on or before 1980.

12. Both courts have concurrently held that execution of the suit agreement has not been proved. Admittedly, except for his own oral evidence, the plaintiff has not examined any independent witness to prove the execution and the contents of the suit agreement. I do not find any illegality or perversity in the reasons recorded by both courts to disbelieve the execution of the suit agreement. Hence, the first question of law is considered based on the plaintiff's pleadings. According to the plaintiff, if he repaid the amount of consideration by the end of any Falgun month from 1896 till the end of 1902 of the Marathi calendar, he would be entitled to get the property reconveyed in his favour. Thus, the period for reconveyance would end by the end of six years from 1896, i.e., the end of 1902 of the Marathi calendar. There is no dispute that the year 1896 of the Marathi calendar is 1974 of the English calendar; therefore, six years from 1974, i.e., the end of 1980. Therefore, the suit filed on 9th June 1980 would not be barred by limitation. Hence, the first question of law is answered accordingly by holding that if it is

assumed that the suit agreement was executed, the suit would not be barred by limitation.

13. The second question of law is on the readiness and willingness on the part of the plaintiff to perform his part of contract. Again, this question of law is to be considered in the background that both courts concurrently held that the execution of the suit agreement is not proved. Thus, if it is assumed that the suit agreement was executed, on a perusal of the plaint, it is clear that the plaintiff did not plead that he offered to repay the consideration amount. The plaintiff has only pleaded that he requested the defendant to reconvey the property in the month of Falgun in every year; however, the defendant avoided. He further pleaded that at the end of 1980, when the plaintiff requested reconveyance, the defendant refused; therefore, the suit was filed. Thus, failure to issue any notice calling upon the defendant to reconvey the property would be irrelevant in the facts of the present case, in as much as the plaintiff failed to plead and prove that he offered to repay the amount. The question of reconveying the property would not arise without offering to repay the amount. Hence, the second question of law is answered accordingly to hold that the readiness

and willingness to perform the contract is not pleaded and proved, as contemplated under Section 16 (c) of the Specific Relief Act.

14. Therefore, the impugned judgments and decrees would not require any interference by this court. For the reasons recorded above, the second appeal is dismissed.

RAJESHWARI
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[GAURI GODSE, J.]