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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 510 OF 2017
WITH
CIVIL APPLICATION NO. 16 OF 2016**

Shri Balaso Ganpati Varekar ... Appellant

Vs.

Assistant Director of Town Planning ... Respondents
and Others

Mr. Rahul Kulkarni for the Appellant.

Mr. Prashant Suryawanshi i/b. Mr. Gajanan M. Savagave for
Respondent No. 6.

Mr. Sumedh Modak i/b. Mr. Vijay Killedar for Respondent Nos.
7 to 10.

Ms. S. G. Talhar, AGP for Respondent nos. 1 to 5 - State.

CORAM : GAURI GODSE, J.

DATE : 13th JANUARY 2025

ORDER :

1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing his suit challenging a temporary sanction plan and order in favour of defendant nos. 7 to 10.

2. Learned counsel for the appellant submits that the first appellate court has erroneously dismissed the suit by framing issue

on plaintiff's locus for the first time in the first appeal. He submits that the first appellate court has erroneously decided point of limitation, when the same was never raised in the trial court. He submits that in the event the first appellate court found it fit to frame the point on plaintiff's locus and limitation, the court should have considered remanding the suit to the trial court instead of deciding the same for the first time in the first appeal.

3. Learned counsel for the appellant submits that the second appeal would also require consideration on the ground that necessary compliance under Section 25 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP") was not complied with by defendant nos. 1 to 5. He submits that both the courts failed to take into consideration the aspect which was necessary to decide the validity of the temporary sanctioned plan which was subject matter of the suit.

4. I have considered the submissions made on behalf of the appellant. The appellant claims right in respect of the suit property based on an agreement for sale, which according to the plaintiff was executed by father of defendant nos. 7 to 9. However, copy of the agreement is not produced on record. It is not in dispute that defendant nos. 7 to 9 are owners of the property who had initiated

proceedings for sanction of the layout for development of the suit property. Though the trial court has not framed any issue on the plaintiff's locus, learned counsel for the appellant does not dispute that except for an agreement for sale the plaintiff has not pleaded any right, title or interest in the suit property.

5. With reference to the arguments raised on the point of limitation, I have perused the reasons recorded by the first appellate court. The challenge in the suit filed on 16th July 2004 is to the temporary layout of the year 1994 and order for non-agricultural use of the year 1995. These dates are not disputed. Hence, I do not see any reason for the first appellate court to remand the matter to the trial court for deciding the issue of locus or limitation. The reasons recorded by the first appellate court on the plaintiff's locus and issue of limitation is based on the admitted facts. Both the issues being questions of law, the first appellate court was well within its power and jurisdiction to decide them. In view of the admitted facts, both the grounds would not require any consideration by this court.

6. To support the ground raised on the point of limitation, learned counsel for the appellant submits that there was a writ petition filed on behalf of the original owners through the appellant as power of attorney holder to challenge the temporary sanctioned plan. He

submits that the writ petition was withdrawn and thereafter the appellant filed the suit. He, therefore, submits that the suit filed after writ petition was withdrawn was well within the limitation in view of Section 14 of the Limitation Act.

7. The writ petition was admittedly filed on behalf of the original owners. The plaintiff claims to be power of attorney holder of original owners. The present suit is not filed in the capacity as power of attorney holder and on behalf of original owners, hence, pendency of the writ petition or disposal of the writ petition as withdrawn will not entail any benefit to the plaintiff who seeks independent right in the suit based on an agreement for sale which was not even produced before the court. Hence, I do not find any substance in the arguments raised on behalf of the appellant on the point of limitation.

8. I do not find any substance in the third ground regarding the compliance of Section 25 of the MRTP Act. Admittedly the challenge in the suit is to the temporary sanctioned plan. Learned counsel for the appellant submits that subsequently a final approval is already granted, however the final approval is not challenged by the plaintiff. Hence, I do not see any reason to entertain the third ground argued on behalf of the appellant.

9. None of the grounds argued on behalf of the appellant raises any substantial question of law. Hence, the second appeal is dismissed.

10. In view of dismissal of the second appeal, interim application is disposed of as infructuous.

[GAURI GODSE, J.]