

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 484 OF 2024
WITH
INTERIM APPLICATION NO. 11206 OF 2024
IN
SECOND APPEAL NO. 484 OF 2024**

Shrimati Kamal Shripati Khot
POA Holder Sharadkumar
Shripatrao Khot

.....Appellant

Vs.

Namdev Dhondiram Yadav
(Deceased) through LRs

.....Respondents

Mr. Sandesh D. Patil a/w Mr. Chintan Shah a/w Mr. Krishnakant
Deshmukh i/b Ms. Divya A. Pawar for the appellant

CORAM : GAURI GODSE, J.

DATE : 7th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellant. This second appeal is filed by the original plaintiff to challenge the concurrent judgments and decrees dismissing the suit for specific performance.

2. Learned counsel for the appellant submits that since there was reciprocal promises to be performed by both the parties, time could not

IRESH
MASHAL

Digitally
signed by
IRESH
MASHAL
Date:
2025.01.21
14:57:39
+0530

have been considered as an essence of the contract. He submits that in view of the reciprocal obligations to be performed by both the parties, the suit could not have been dismissed as barred by limitation on the ground that time was essence of the contract and thus suit filed beyond three years of the time fixed for purpose of the contract would be barred by limitation.

3. Learned counsel for the appellant further submits that the findings recorded by both the Courts on readiness and willingness of the plaintiff are also not in accordance with the terms and conditions of the contract and the pleadings. He submits that since the plaintiff was not an agriculturist, permission under Section 63 of The Maharashtra Tenancy and Agricultural Lands Act, 1948 was necessary. He further submits that in view of the terms and conditions of the contract, the defendant had agreed to remove all the obstructions for executing the sale deed. He thus, submits that failure on the part of the defendant to take steps for applying for necessary permission cannot be considered as a ground against the plaintiff to decide the issue of readiness and willingness. Learned counsel therefore submits that the second appeal would require consideration as both the aforesaid grounds raise substantial question of law.

4. To support the grounds on the point of limitation, learned counsel for the appellant relied upon the decision of the Hon'ble Apex Court in the case of *Gaddipati Divija and Another v. Pathuri Samrajyam and Ors*¹. He submits that the Hon'ble Apex Court held that if there are reciprocal obligations to be performed by both the parties, stipulation for execution of the sale deed provided under the contract cannot be termed as an essence of the contract for performance of the terms. He relied upon the observations of the Hon'ble Apex Court in paragraph 35 of the Judgment.

5. To consider the submissions on behalf of the appellant, I have examined both the Judgments, pleadings and the copy of the suit agreement. The terms and conditions of the suit agreement as recorded in the document are not disputed by the plaintiff. A perusal of the suit agreement indicates that it is a simple agreement under which the parties agreed about the total consideration and the payment of the earnest amount was recorded. The agreement further stipulates that the parties had agreed to execute the sale deed in February 2004. The defendant had agreed to remove the obstructions, if any, for execution of the sale deed. The plaintiff has not pleaded and proved

¹ 2023 SCC OnLine SC 442

that any obstruction required to be removed by the defendant were not removed by her. Thus, time being essence of the contract is clearly recorded in the suit agreement. There is no dispute of the clause in the agreement regarding time being essence of the contract. Considering the clause in agreement, the trial Court held that the suit was barred by limitation in view of Article 54 of the Limitation Act.

6. The trial Court has referred to the cause of action pleaded by the plaintiff wherein she relied upon the notice issued in the year 2009 calling upon the defendant to execute the sale deed pursuant to the suit agreement executed in the year 2003. Thus, the trial Court held that time is the essence of the contract, and the suit filed in the year 2010 for execution of the contract of the year 2003 is barred by limitation.

7. The grounds raised regarding readiness and willingness on the part of the plaintiff is based on the notice issued by the plaintiff in the year 2009. Nothing is shown to support the ground of readiness and willingness by explaining the steps taken by the plaintiff from 2003 to 2009. In the absence of any specific terms and conditions of the contract imposing any obligation on the defendant, the plaintiff's

contention on readiness and willingness only based on notice issued in the year 2009 cannot be accepted as sufficient compliance to show readiness and willingness on the part of the plaintiff.

8. The grounds argued on behalf of the plaintiff do not indicate that there is sufficient compliance about the plaintiff's readiness and willingness as contemplated under Section 16 (c) of the Specific Relief Act. Both the Courts have concurrently held that the plaintiff was unable to prove his readiness and willingness to perform the contract, by making payment of balance consideration.

9. As far as reliance placed by the learned counsel for the appellant in the decision of *Gaddipati Divija*, in the facts of the case before the Hon'ble Apex Court, the terms and conditions of the contract specifically provided for performance on behalf of both the parties. The terms and conditions also provided for consequences for non performance. Thus, the observations of the Hon'ble Apex Court in paragraph 35 are with reference to the specific terms of the contract in the facts of the said case.

10. In the present case, there are no specific terms agreed between the parties for any particular performance on behalf of both the parties.

The agreement only stipulates time for execution of the sale deed and provides for time to make payment of balance consideration by the plaintiff at the time of execution of the sale deed. Thus, in the present case, there are no such reciprocal obligations on the part of the parties. Hence, the legal principles settled by the Hon'ble Apex court in the said decision would not be of any assistance to the arguments raised on behalf of the appellant.

11. I do not see any illegality or perversity in the reasons recorded by both the Courts. The suit is rightly dismissed on the point of limitation, as well as readiness and willingness not proved by the plaintiff. Thus, in view of the concurrent findings recorded by the Courts, the grounds argued on behalf of the appellant would not require any consideration by this Court.

12. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

13. In view of dismissal of second appeal, Interim Application No. 11206 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]