

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 50 OF 2025
WITH
INTERIM APPLICATION NO. 815 OF 2025

Narayan Khandu Bhongale & Ors ..Appellants

Versus

Chandrakant Baburao Kunjir & Ors ...Respondents

Mr. Ganesh Bhujbal, for the Appellants.

CORAM: N. J. JAMADAR, J.

DATE : 7th NOVEMBER 2025

ORDER.:

1. This Second Appeal is directed against the judgment and decree dated 17th October 2024 passed by the learned District Judge, Pune in RCA No. 1093 of 2016, whereby the said Appeal preferred by the Appellants against a decree passed by the trial Court in RCS No. 36 of 2012, thereby dismissing the Suit for specific performance of the contract, came to be dismissed.

2. Late Narayan Khandu Bhongale, the Plaintiff and the predecessor-in-title of the Appellants instituted a Suit for specific performance of the contract to sell half share of Baburao Bhikoba Kunjir, the predecessor-in-title of Defendant Nos. 1 to 6, out of Gat No. 232 admeasuring 4 H and

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10 R, with the assertion that late Baburao Kunjir and Dattatray Kunjir has executed an Agreement for Sale on 29th May 1972 in respect of Gat No. 232, accepted part consideration of Rs.4000/- thereunder and put the late Plaintiff in possession of the said land. The predecessor-in-title of the Defendant Nos. 1 to 6 committed default in execution of the Sale Deed on one or the other pretext.

3. By a judgment and decree dated 18th October 2016, the learned Civil Judge dismissed the Suit holding *inter alia* that the late Plaintiff failed to establish that he was ready and willing to perform his part of the contract and the suit was within the stipulated period of Limitation

4. Being aggrieved, the late Plaintiff preferred an Appeal before the District Court.

5. By the impugned judgment and order, the learned District Judge substantially concurred with the view of the learned Civil Judge that the late Plaintiff failed to prove that he was ready and willing to perform his part of the contract and the Suit was not barred by law of limitation.

6. Mr. Bhujbal, the learned Counsel for the Appellants, submitted that the Courts below committed a grave error in law in holding that the late Plaintiff was not ready and willing to perform his part of the contract. Emphasis was laid on the fact that the late Plaintiff had been put in possession of the entire Survey No. 232.

7. The co-vendor, namely, Dattatray Kunjir had executed the Sale Deed in respect of the half portion of the land bearing Gat No. 232. The predecessor-in-title of the Defendant Nos. 1 to 6 had, however, refused to execute the Sale Deed. In these circumstances, the Courts below could not have returned a finding that the late Plaintiff was not ready and willing to perform his part of the contract. Thus, the substantial question of law as to whether the Courts below misconstrued the evidence, arises for consideration.

8. I am unable to persuade myself to accede to the submissions of Mr. Bhujbal.

9. The material on record indicates that there was no impediment in the execution of the conveyance of the suit property. The delay and laches on the part of the Plaintiff is writ large. Though the Agreement for Sale was executed on 29th May 1972, it does not appear that the Plaintiff took any steps to seek the conveyance of the suit land. On the contrary, the vendors had addressed a notice to the purchaser calling upon him to pay the balance consideration and get the said Sale Deed, as there was no impediment in the execution of the Sale Deed.

10. If further appears that on 6th February 1982, the late Plaintiff had addressed a notice to Baburao Kunjir, the predecessor-in-title of the Defendant Nos. 1 to 6, and Dattatray Kunjir calling upon them to attend the office of the Registrar on 24th February 1982 and execute the Sale

Deed in respect of the respective portions of Gat No. 232. Evidently Baburao Kunjir did not attend and execute the Sale Deed. Eventually, a notice was again addressed by the Plaintiff on 27th April 1987 calling upon Baburao Kunjir to execute the Sale Deed. Surprisingly, no steps were taken and a fresh notice came to be issued on 3rd November 2011 and on the strength of the said notice, the Suit came to be instituted on 2nd January 2012.

11. The aforesaid time lag indicates that the refusal to perform the contract was manifest in the failure on the part of the predecessor-in-title of the Defendant Nos. 1 to 6 to execute the Sale Deed after notices dated 6th February 1982 and 27th April 1987. The period of limitation to institute the Suit thus began to run from the date of service of notice dated 6th February 1982 and the refusal on the part of the Baburao Kunjir to execute the Sale Deed. It is trite once the period of limitation begins to run it does not stop. The suit was thus hopelessly barred by law of limitation.

12. Even otherwise the Courts below have recorded concurrent findings of fact that the late Plaintiff was not ready and willing to perform his part of the contract. As noted above, the vendors had addressed a notice to the late Plaintiff in the year 1980 calling upon him to perform his part of the contract. The masterly inaction on the part of the Plaintiff for over 25 years even after the notice dated 27th April 1987

was at the own peril of the Plaintiff, and demonstrated a clear absence of readiness and willingness on the part of the Plaintiff. The Courts below have thus taken a correct view of the matter. No question of law, much less substantial one, arises for consideration.

13. The Second Appeal thus stands dismissed.

14. In the view of the dismissal of the Second Appeal, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]