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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 757 OF 2024**

Dayanand Lalasaheb Suryawanshi ... Appellants
and Others

Vs.

Vishnu Bhau Shedge since ... Respondents
deceased through LRS and Others

Mr. Sangramsinh S. Yadav for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 24th JANUARY 2025

ORDER :

1. Heard learned counsel for the appellants. This appeal is preferred by the original defendants to challenge the judgment and decree passed by the first appellate court. The trial court decreed the appellants' suit for specific performance of the contract. In an appeal preferred by the original defendants the trial court's decree is reversed and the appellants' suit is dismissed.

2. Learned counsel for the appellants submits that the first appellate court has erroneously reversed the trial court's findings on issue of limitation. He submits that as per the terms and conditions of the contract defendants were under obligation to obtain

permission under The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("The Fragmentation Act") for executing the sale deed. He submits that since the defendants failed to perform their part of the contract, the plaintiff called upon the defendants in the year 2006 to perform their part of the contract by obtaining permission and executing sale deed. He submits that since the defendants refused to perform their part of the contract, the suit was filed within three years from refusal. He therefore submits that the trial court rightly considered the refusal on the part of the defendants to perform their part of the contract and correctly held the suit within limitation in view of Article 54 of The Limitation Act, 1963 ("Limitation Act").

3. Learned counsel for the appellants further submits that the issue regarding readiness and willingness is reversed by the first appellate court without taking into consideration the terms and conditions of the contract. He submits that the suit agreement was a registered document on payment of earnest amount. He further submits that the only part to be performed by the plaintiffs was payment of the balance consideration at the time of execution of the sale deed. He submits that the sale deed was not executed only for want of permission under the Fragmentation Act. Hence, there was

no part of the contract to be performed by the plaintiffs, except for making payment of the balance consideration amount, at the time of execution of the sale deed. He submits that the suit agreement was executed in favour of the plaintiffs' father. He further submits that the evidence on record supports the plaintiffs' case that immediately after knowledge about the agreement the plaintiffs called upon the defendants to perform their part of the contract. He thus submits that the issue regarding readiness and willingness is erroneously held against the plaintiffs. He thus submits that the second appeal would require consideration by this court as both the grounds on limitation and readiness and willingness raise substantial questions of law.

4. I have perused both the judgments and the plaintiffs' pleadings. The suit agreement was executed by defendants predecessor in title in favour of plaintiffs' father. The suit agreement is dated 5th August 1975. The plaintiffs' father expired on 13th October 1976. The plaintiffs called upon the defendants to execute the sale deed by issuing notice in the year 2006. On refusal by the defendants the suit was filed on 16th September 2006. The trial court has held the suit to be within limitation on the ground that the refusal on the part of the defendants to execute the sale deed after

receipt of the suit notice would amount to refusal on the part of the defendants to perform their part of the contract. Hence, the suit was held within limitation in view of Article 54 of the Limitation Act.

5. The first appellate court has examined the plaintiffs' evidence in support of their contention regarding the cause of action and readiness and willingness. The first appellate court has referred to the admissions given by plaintiff no. 1 that 15 years back he learnt that permission of the competent authority to sell the suit land was not necessary. The first appellate court has also referred to the ignorance shown by plaintiff no. 1 regarding the suggestions put to him that even on the date of agreement the permission of the competent authority was not necessary. Thus the first appellate court has considered the requirement of permission from the competent authority to be insignificant in view of the nature of the suit property.

6. By examining the evidence on record the first appellate court held that permission under the Fragmentation Act was not necessary for executing the sale deed. It is thus held that based on a vague clause in the agreement, the plaintiff would not be entitled to seek benefit. The suit was not filed earlier on the ground that permission was not obtained by the defendants. The first appellate

court thus held that in the absence of any specific condition in the agreement for obtaining permission from the competent authority by the defendants, the plaintiffs' would not be entitled to rely upon the suit notice for contending that the suit was within the limitation. The first appellate court thus held the suit to be barred by limitation on the ground that the cause of action pleaded in the year 2006 by relying upon the notice is based on an insignificant clause in the agreement. Hence, it is held that the cause of action pleaded would not bring the suit within limitation.

7. Except for the pleadings that permission under the Fragmentation Act was not obtained by the defendants, the plaintiffs have failed to produce any evidence to justify the cause of action for seeking specific performance of the agreement dated 5th August 1975 after more than 30 years. In view of these facts the reasons recorded by the first appellate court for holding that the suit was barred by limitation cannot be faulted.

8. Apart from the suit being barred by limitation, the first appellate court has also considered the issue regarding readiness and willingness. In the absence of any evidence to indicate any steps taken by the plaintiffs' predecessor in title for performance of the contract during his lifetime, the ground raised on behalf of the

appellants regarding readiness and willingness were disbelieved by the first appellate court.

9. Apart from relying upon the notice issued in the year 2006, nothing is pleaded and proved to show readiness and willingness of either the plaintiffs' father or by the plaintiffs after death of their father. The suit agreement is dated 5th August 1975. The plaintiffs father expired on 13th October 1976. The suit filed in the year 2006 is based on a notice issued in the year 2006. In the absence of any evidence regarding any steps taken by the plaintiffs from 1976 to the year 2006, the first appellate court has rightly disbelieved the plaintiffs' theory of readiness and willingness.

10. A perusal of the reasons recorded by the first appellate court indicates that the parameters as contemplated in clause (c) of Section 16 of the Specific Relief Act, 1963 are not satisfied. I do not see any illegality or perversity in the reasons recorded by the first appellate court on appreciation of the material on record.

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

[GAURI GODSE, J.]