IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO.16974 OF 2025
WITH
INTERIM APPLICATION NO.8181 OF 2025

Sadhana Surendra Patel and Ors. ... Appellants
versus
Nitin Gajanan Gaidhani and Ors. … Respondents

Mr. Shailendra Kanetkar i/by Mr. Aditya A. Joshi, for Appellants.
Mr. Vijay Patil, Sr. Advocate with Mr. Girish Agrawal, Ms. Chitra Darekar, for Respondents.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 15 APRIL 2026
PRONOUNCED ON : 27 APRIL 2026

JUDGMENT :

1. This appeal is directed against a judgment and decree passed by the learned Principal District Judge, Nashik, in Regular Civil Appeal No.89 of 2019, whereby the appeal preferred by the Appellants – Original Plaintiffs against the judgment and decree dated 6 July 2011 passed by the learned Civil Judge, Nashik, thereby dismissing Special Civil Suit No.367 of 2001 instituted by the Appellants for specific performance of the contract for sale of immovable property, came to be dismissed by affirming the decree passed by the trial Court.

2. Shorn of unnecessary details, the background facts can be stated as under :

2.1 Mahadev Keshav Gaidhani was the holder of land bearing Gat No.654 situated at Mauje Adagaon, Taluka and District Nashik. After the demise of Mahadev, the said land devolved upon Defendant Nos.1 to 5. On 10 October 1991, Defendant Nos.1 to 5 agreed to sell 7R land out of Gat No.654 in favour of Plaintiff No.1 at the rate of Rs.4,51,000/- per acre.

2.2 It was, inter alia, agreed that the said transaction was to be completed within a period of 12 months from the execution of the said agreement for sale. Rs.4,00,000/- was paid under the said agreement and the balance amount of Rs.31,57,000/- was to be paid in stages. Plaintiff No.1 claimed that he has always been ready and willing to perform his part of the contract. Apart from the said amount of Rs.4,00,000/-, Plaintiff No.1 had paid further sum of Rs.5,22,900/- to the Defendants towards consideration, over a period of time.

2.3 Plaintiff No.1, in turn, agreed to sell the suit property in favour of Plaintiff Nos.2 to 6 under an agreement for Sale dated 19 April 1992. The Defendants, however, could not perform their part of the contract. In the intervening period, Prakash Wagh and others instituted SCS No.194 of 1991 against the Defendants for specific performance of the contract to sell the very same property. One Shrikrishna Gaidhani, cousin of the Defendants, also instituted a suit for partition of the joint family properties, including the suit property, being RCS No.232 of 1993. In the said suit, the trial Court directed the parties to maintain status quo.

2.4 In the year 2001, however, the Defendants published a public notice expressing their intent to transfer the suit property in favour of a third party. Thereupon, the Plaintiffs instituted a suit for specific performance of the contract contained in the agreement for sale dated 10 October 1991, injunction and refund of consideration.

2.5 By a judgment and decree dated 6 July 2011, the learned Civil Judge dismissed the suit observing that the Plaintiffs were not entitled for specific performance of the contract and also to recover part consideration, though the agreement for sale dated 10 October 1991 was proved and the Plaintiffs were ready and willing to perform their part of the contract. Learned Civil Judge was of the view that, in the facts of the case, the Plaintiffs were not entitled to discretionary relief of specific performance of the contract.

2.6 Being aggrieved, the Plaintiffs preferred an appeal before the District Court, Nashik. Learned Principal District Judge dismissed the appeal concurring with the conclusion of the trial Court that the suit deserved to be dismissed. The learned Principal District Judge, however, answered the issues of readiness and willingness to perform the contract and limitation against the Plaintiffs. In the view of the learned Principal District Judge, time was the essence of the contract and the institution of the suit on 5 December 2001 when the cause of action arose on 10 October 1992 i.e. after the expiry of period of 12 months from the date of the agreement for sale, was clearly barred by limitation. Referring to the inaction on the part of the Plaintiffs from the date of the execution of the sale deed till the institution of the suit in the year 2001, the learned Principal District Judge also negatived the claim of the Plaintiffs that they were ready and willing to perform their part of the contract.

2.7 Being aggrieved by and dissatisfied with the impugned judgment and decree, the Plaintiffs are in second appeal.

3. Mr. Kanetkar, learned Counsel for the Appellants – Plaintiffs canvassed multi-pronged submissions. Firstly, the trial Court had dismissed the suit, though all the issues were answered in favour of the Plaintiffs. Second, the learned District Judge committed a grave error in law in returning a finding that the suit was barred by law of limitation. In the process, the learned District Judge misconstrued the agreement for sale and that resulted in an erroneous finding that the date of performance of the contract was fixed by the parties.

4. Emphasis was laid by Mr. Kanetkar on the fact that the agreement for sale did not stipulate a calender date for performance of the contract. Therefore, the suit was governed by second part of Article 54 of the Limitation Act, 1963. As the refusal of performance was manifested by the public notice published by the Defendants in the year 2001, the instantaneous institution of the suit by the Plaintiffs was well within the period of limitation.

5. To buttress the submission that the first part of Article 54 is attracted only when a calender date is fixed, Mr. Kanetkar placed reliance on a three-Judge Bench judgment of the Supreme Court in the case of **Ahmmadasahab Abdul Milla (dead) by proposed LRs V/s. Bibijan and Ors.**[1].

6. Thirdly, Mr. Kanetkar would urge, the learned District Judge was in error in holding that the Plaintiffs were not ready and willing to perform their part of the contract. It was urged with a degree of vehemence that the Defendants had accepted part consideration from the Plaintiff No.1 till the year 2001. Thus, under no circumstances, the Court could have inferred that the Plaintiffs were not ready and willing to perform their part of the contract.

7. Fourthly, the Courts below have lost sight of the fact that, immediately after the execution of the agreement for sale in favour of the Plaintiff No.1, suits came to be instituted; first, by a person in whose favour another agreement for sale was allegedly executed and second, by a person who claimed to be a co-sharer, and, the restraint order was passed by the Civil Court. In these circumstances, the Defendants could not have executed the sale deed in favour of the Plaintiffs. Thus, the Courts below were in error in holding that the Plaintiffs were otherwise not entitled to the discretionary relief of specific performance. As the discretion has been exercised against the settled principles of law on each of the aforesaid counts, Mr. Kanetkar would

1 2009(3) SCC 160

urge, substantial questions of law arise for consideration.

8. In opposition to this, Mr. Patil, learned Senior Advocate for the Respondents – Defendants, would submit that, concurrent findings of facts on the aspect of the Plaintiffs not being entitled to the discretionary relief of specific performance do not warrant any interference in the second appeal. Mr. Patil submitted that the issue of bar of limitation has been correctly decided by the learned District Judge, in as much as the suit came to be instituted after more than 10 years of the agreement for sale. The recitals in the agreement for sale make it explicitly clear that the parties had intended to make time essence of the contract, by providing consequences for the failure on the part of the Plaintiffs to complete the transaction within the stipulated period.

9. By no stretch of imagination, Mr. Patil would urge, a suit instituted in the year 2001, when the period of 12 months elapsed in the year 1992, can be said to have been instituted within the period of limitation. Mr. Patil further submitted that the assertion of the Plaintiffs that, on account of the suits instituted by third parties, the Plaintiffs did not initiate action, is a clear subterfuge. A suit by a purported co-sharer i.e. SCS No.232 of 1993 was instituted on 7 June 1993 well past 8 months of the expiry of the stipulated period of 12 months for the completion of the transaction. There is not an iota of material to indicate that, during the period of 12 months, Plaintiff No.1 had

taken any steps to demonstrate his readiness and willingness to perform the contract. In the absence of such cogent evidence, learned District Judge was wholly justified in answering the issues of readiness and willingness as well as limitation against the Plaintiffs. Mr. Patil would, thus, urge that appeal does not deserve to be entertained.

10. The foundational facts appear rather incontrovertible. Defendant Nos.1 to 5 professed to sell their undivided interest in the suit property. The agreement for sale was executed on 10 October 1991. A sum of Rs.4 Lakhs was paid thereunder. Balance amount was agreed to be paid upon a separate record of rights being created in the names of the vendors and at the time of the execution of the sale deed. Suit came to be instituted on 5 December 2001 purportedly after the Defendants published a public notice expressing their intent to sell the suit property to a third party. The parties are at issue over the subsequent payment of Rs.5,22,900/- allegedly made by the Plaintiffs to the Defendants over a period of time in small tranches.

11. On the aspect of limitation, the recitals in the agreement for sale deserve to be carefully appreciated. Under clause (3) of the agreement for sale, the parties agreed that the transaction would be completed within 12 months from the date of the execution of the agreement for sale. In clause (12), it was emphasised that the completion of the transaction within the stipulated period, was the important term of the contract. And, in the event,

the transaction could not be completed within the said period, the Plaintiffs would pay the balance consideration and seek extension of time for the performance of the contract from the Defendants. In clause 7, it was provided that if the Plaintiff No.1 failed to complete the transaction despite Defendants being ready and willing, 75% of the earnest amount would be forfeited and the agreement for sale would terminate.

12. It is trite, generally in a contract for sale of an immovable property, time is not the essence of the contract. Suffice to make reference to the Constitution Bench judgment in the case of **Chand Rani V/s. Kamal Rani**[2], wherein after an elaborate analysis, the Supreme court enunciated that

> "25…….it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are evident : (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract".

13. Following the aforesaid proposition, in the case of **K.S.Vidyanadam and Ors. V/s. Vairavan**[3], the Supreme Court enunciated that, it cannot be

2 AIR 1993 SC 1742
3 (1997) 3 SCC 1

said that the time limit prescribed by the parties in the agreement have no significance or value and that they mean nothing. Where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time, and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property.

14. On the aforesaid touchstone, if the recitals in the agreement for sale, adverted to above, are appraised, it becomes evident that the intent of the parties to make the time for performance of the contract, a significant part of the bargain becomes explicitly clear. First, the time specified for performance was expressly stipulated. Second, it was re-emphasised in clause 12 that the performance of the contract within the stipulated period, was an important term of the contract. Third, in the event of non-performance, a provision for seeking extension was made conditioned upon payment of balance consideration. Fourth, in the event of default in performance by the purchasers, the vendors were entitled to forfeit 75% of the consideration already paid. Fifth, failure to perform within the stipulated period, would entail the consequence of termination of the agreement. Cumulatively, the parties had made the stipulation as to the time for performance of the contract an essence of the contract.

15. The submission of Mr. Kanetkar that no calender date was prescribed

and, therefore, the first part of Article 54 would not govern the suit, premised on the judgment of the Supreme Court in the case of **Ahmmadasahab Abdul Milla (dead) by proposed LRs (supra),** does not seem to be well founded. In the said case, the Supreme Court considered the question, whether the use of the expression "date" used in Article 54 of the Schedule to Limitation Act, 1963 is suggestive of a specific date in the calender. The said question was answered in the following terms :

> "7. The inevitable conclusion is that the expression `date fixed for the performance' is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on `when the plaintiff has notice that performance is refused'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression `date' used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."
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> (emphasis supplied)

16. The aforesaid enunciation of law is clear and explicit. However, the submission of Mr. Kanetkar that 12 months from the date of the execution of the agreement for sale does not constitute "date fixed for the performance" does not merit acceptance unreservedly. The enunciation that the expression date used in Article 54 is suggestive of a specified date in the calendar, cannot be equated with the specification of a particular day, in the sense of date, month and year in the calendar.

17. In the case at hand, the recitals in the agreement for sale did indicate the date fixed for the performance. Therefore, the learned District Judge was justified in returning a finding that the institution of the suit in the year 2001 when the date fixed was 10 October 1992, was clearly beyond the period of limitation. The fact that a couple of suits were instituted by another purchaser and co-sharer, would not arrest the period of limitation.

18. I find substance in the submission of Mr. Patil that the Plaintiffs failed to demonstrate that within 12 months period, the Plaintiff No.1 took steps showing readiness and willingness to perform his part of the contract. Nor after the expiry of the period of 12 months, the Plaintiff No.1 initiated any measure which would evince Plaintiff No.1's continued readiness and willingness to perform the contract. The suit came to be instituted after the Defendants gave a public notice in the year 2001. It does not appear that, at any prior point in time, the Plaintiff No.1 ever called upon the Defendants by

addressing a notice to perform the contract. Continuous readiness and willingness of the Plaintiff to perform his part of the contract is an indispensable condition for the grant of specific performance. It is, in a sense, a condition precedent. The readiness and willingness is required to be judged with reference to conduct of the parties and the attendant circumstances.

19. In the case of **N.P.Thirugnanam (dead) by LRs v/s. Dr. R. Jagan Mohan Rao and Ors.**[4], the Supreme Court underscored the significance of continuous readiness and willingness of the person seeking specific performance of the contract, in the following words :

> "5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under s.20 of the Specific Relief Act 1963 (for short, 'the Act'). Under s.20, the court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be be considered by the

4 (1995) 5 SCC 115

> court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract."
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> (emphasis supplied)

20. In the case at hand, the fact that there was complete inaction on the part of the Plaintiff No.1 till the year 2001, was rightly appreciated by the learned District Judge. The institution of the suits by third parties, though relevant, cannot be considered as a refuge for the Plaintiff No.1 from showing his readiness and willingness to perform the contract.

21. Reliance placed by Mr. Kanetkar on the purported payments made by the Plaintiffs to the Defendants till the year 2001, though appears attractive at the first blush, yet, in the light of the findings of fact recorded by the learned

District Judge, does not carry much substance. The learned District Judge, upon appreciation of evidence, has recorded a finding that the vouchers produced by the Plaintiffs would reveal that the some are prepared on blank papers and some are prepared on the letterheads of Bhoomi Developers, without description. No entries to evidence the said payments were maintained in the books of accounts made by the Plaintiff No.1. It would be, thus, unsafe to place implicit reliance on such uncorroborated documents.

22. The aforesaid findings of facts recorded by the learned District Judge cannot be said to be based on no evidence. Such findings of facts cannot be interfered with in a Second Appeal.

23. In any event, in the totality of the circumstances, the learned Civil Judge and the learned District Judge were justified in declining to exercise the discretion to grant specific performance of the contract in favour of the Plaintiffs. The passage of time since the “date fixed” in the agreement for sale; emphasising the consequences of non-performance of the contract within the stipulated period, the uncertainty about the extent of the share of the Defendants in the suit property and the fact that the Plaintiff No.1 professed to execute an agreement for sale in favour of the Plaintiff Nos.2 to 6, though there was no semblance of title in the Plaintiff No.1, would dissuade any court from exercising the discretion to grant specific performance. Thus, the Second Appeal does not deserve to be entertained.

24. The Second Appeal stands dismissed.

25. Interim Application also stands disposed.

(N.J.JAMADAR, J.)

26. At this stage, Mr. Kanetkar learned Counsel for the Appellants seeks continuation of the interim relief granted by this Court by an order dated 19th June 2014 in the First Appeal, which was subsequently transferred to the District Court, and has since been in operation till date.

27. The prayer is justifiable. Interim order dated 19 June 2014 shall continue to operate for a period of eight weeks from today.

(N.J.JAMADAR, J.)