

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.469 OF 2014
ALONG WITH
CIVIL APPLICATION NO.2704 OF 2013

Shri Jayantilal Devji Shah (Haria), age 53 yrs.]
Occupation : Business residing at Vasundhara]
Apartment, Zunjarrao Nagar, Kalyan (W),]..... Appellant.
Dist. Thane] (Orig. Plaintiff)

V/s.

- 1] Mangesh Dasrath Gaikar,]
Age 40 years, Occ : Business, residing at]
Sukh Shanti Niwas, Near Mangeshi Dham] Birla College Rd., Kalyan (W).]
]
- 2] Mahendra Sadashiv Dhone,]
Age 29 years, Occ : Agriculturist, residing] at Dhonecha Pada, Shahad Taluka Kalyan] no.2 is the C.A. of nos.3 to 7 below hence] summons and notices of nos. 3 to 7 be] served on No.2 alone :-]
]
- 3] Smt. Kusum Sadashiv Dhone]
Age 48 years, Occ : Household]
]
- 4] Sau. Ranjana Lalchand Patil,]
@ Ranjana Sadashiv Dhone]
Age 31 years, Occ : Household]
]
- 5] Shri.Chandrakant Sadashiv Dhone]
Age 28 years, Occ : Agriculturist]
]
- 6] Shri. Pramod Sadashiv Dhone,]
Age 25 years, Occ : Household]
]
- 7] Smt. Manglubai Tukaram Madvi]
Since deceased through her LRs]
]
- 7a] Mr. Prakash S/o Tukaram Madhavi]
Age 44 years, Occ : Agriculturist residing]

- 7b] Mr. Naresh S/o Tukaram Madhavi]
Age 42 years, Occ : Agriculturist residing]
- 7c] Mr. Jaidas S/o Tukaram Madhavi]
Age 32 years, Occ : Agriculturist residing]
- 7d] Mrs. Sunita Wd/o Ganesh Khot Nee]
Sunita Tukaram Madhavi]
Age 37 years, Occ : Housewife]
- 7e] Mrs. Nita Deepak Wadkar Nee]
Nita Tukaram Madhavi]
Age 35 years, Occ : Housewife]
- All residents of Shahad, Taluka Kalyan]
District Thane.]
- 8] M/s. Annapurna Universal, a partnership]
firm having its office at A-3, Anant Smruti]
Tata Line, Ramnagar, Dombivli (E)]
Taluka Kalyan, District Thane.]
- 9] Shri Manish P Patel]
Age 40 years, occ : Builder, R/at]
302, Kasturi Park, New Maneklal Estate]
Ghatkopar (W), Mumbai]
- 10] Shri Shantilal Shivaji Patel]
Age 43 years, Occ : Builder, residing at]
R No.8, Shri Vardhaman Apartment]
II Floor, Ramnagar, Dombivli (E)]
Taluka Kalyan, District Thane.]
- 11] Shri Gopal D. Patel]
Age 49 years, Occ : Builder, residing at]
B/20, Nilkanth Puja, Dr. R. P Road,]
Dombivli (E), Taluka Kalyan]
- 12] Kalyan Dombivli Municipal Corporation]
through its Municipal Commissioner,]
Shankarrao Chowk, Kalyan (West).]
- 13] Taluka Inspector of Land Records,]

Kalyan Division Office, Third Floor,]
Zunjarrao Bldg. Dhanya Bazar,]..... Respondents.
Kalyan (W), Dist. Thane] (Orig. Defendants).

Mr. Vishal Kanade a/w Mr. M P Jagani for the Appellant.

Mr. D S Mhaispurkar a/w Mr. S M Mangaonkar for the Respondent No.1, 8 to 11.

Mr. Deepak Natu i/by N Deepak & Co. for the Respondent No.2 to 7A to 7D.

Mr. Prashant Kamble i/by A S Rao for the Respondent No.12.

Mr. A R Patil, AGP for the Respondent No.13/State.

**CORAM : R. M. SAVANT &
SANDEEP K SHINDE, JJ.**

DATE : 20th December 2017

ORAL JUDGMENT : [PER R. M. SAVANT, J.]

1 Admit. Considering the challenge raised, taken up for hearing
forthwith by the consent of the learned counsel for the parties.

2 The above First Appeal challenges the order dated 08/02/2013
passed by the learned Civil Judge, Senior Division, Kalyan by which order the
Application filed by the Respondent No.1 herein i.e. the Original Defendant
No.1 under Order 7, Rule 11(a)(d) of the Code of Civil Procedure came to be
allowed and resultantly the plaint came to be rejected.

3 The facts giving rise to the filing of the above First Appeal in brief
can be stated thus :-

The Appellant herein is the original Plaintiff. The Respondent Nos.
2 to 7 are the heirs of one Ganpat Dagdu Dhone. The Respondent No.1 herein

is the original Defendant No.1 claims through the Respondent Nos. 2 to 7 herein. The Respondent Nos. 8 to 11 i.e. the original Defendant Nos. 8 to 11 have the rights created in their favour by the Respondent No.1 herein i.e. the original Defendant No.1. The Respondent Nos.12 and 13 are the Public Authorities exercising the powers under the relevant Acts.

In the context of the controversy, it is only the Plaintiff, the Defendant No.1 and the Defendant Nos.2 to 7 who can be said to be the relevant parties, the said parties would be referred to as per their designation in the Suit viz. The Appellant would be referred to as the Plaintiff, the Respondent No.1 would be referred to as the Defendant No.1, and the Respondent Nos. 2 to 7 would be referred to as the Defendant Nos.2 to 7.

4 The bone of contention between the parties is the land bearing Survey No.37/2 admeasuring 12000 sq.mtrs (Now claimed by the Defendant No.1 as 12430 sq.mtrs.). The said land originally belonged to Shri Vijay Krishnalal Parekh and Smt. Pushpaben D Dani. In respect of the said land one Ganpat Dagdu Dhone was the tenant (Kul) recognized as such under the Bombay Tenancy and Agricultural Lands Act 1948 (for short "BT&AL Act"). It is the case of the Plaintiff as averred in the plaint that he had already purchased from the said owners Shri Vijay Krishnalal Parekh and Smt. Pushpaben D Dani the land admeasuring 22250 sq.mtrs. in the said Survey

No.37 in the year 1987. It is the case of the Plaintiff that upon this the tenant Ganpat Dagdu Dhone was persuading the Plaintiff to purchase the part of the land in the said Survey No.37 of which he was the tenant. The parties accordingly entered into an Agreement for Sale dated 20/02/1988. (It seems that the said Agreement for Sale has been subsequently registered on 11/05/2009.) The said Ganpat Dagdu Dhone also executed Irrevocable General Power of Attorney dated 29/09/1988. It is averred by the Plaintiff that pursuant to the said Agreement for Sale dated 20/02/1988, the Plaintiff was put in possession and he is in possession as such from the date of the said Agreement for Sale. It has further been averred by the Plaintiff that out of the said property i.e. 12000 sq.mtrs, an area of 5480 sq.mtrs. was gifted by him to one Shahu Shikshan Sanstha of Pandharpur. It has further been averred by the Plaintiff that since the plot of land which was gifted to the said Shahu Shikshan Sanstha did not have access, the Plaintiff provided the said Shahu Shikshan Sanstha the access through the remaining land. It has further been averred by the Plaintiff that the said Survey No.37 was bifurcated at his behest on account of the Gift Deed executed by him in favour of the said Shahu Shikshan Sanstha. In so far as the land gifted to the said Shahu Shikshan Sanstha is concerned, the same came to be designated as Survey No.37/2 whereas the remaining land with the Plaintiff was designated as Survey No.37/1. It has further been averred by the Plaintiff that out of the said survey No.37/2, an Agreement for Sale was entered into by the Plaintiff with Shri Girish Suryakanth Latke. It is

the case of the Plaintiff that the said Agreement for Sale was cancelled giving rise to the dispute between the Plaintiff and the said Girish Latke resulting in a Suit filed by the Plaintiff for appropriate reliefs in which suit an order of status quo was passed by the concerned Court. It is averred by the Plaintiff that the Defendant No.1 who has the financial wherewithal approached the Plaintiff to purchase the said Survey No.37/2 which the Plaintiff refused. It is further averred by the Plaintiff that behind the back of the Plaintiff the Defendant Nos.2 to 7 i.e. the heirs of the said Ganpat Dagdu Dhone executed a Development Agreement dated 31/12/2007 in respect of the land admeasuring 12430 sq.mtrs. as also the Power of Attorney in favour of the Defendant No.1. It is the case of the Plaintiff that both the Development Agreement as well as the Power of Attorney were illegally registered with the concerned Sub-Registrar. It is thereafter averred by the Plaintiff that the Defendant Nos.1 to 7 applied to the Defendant No.13 for survey of the land to be carried out. The Plaintiff by his letter dated 07/05/2008 informed the Defendant No.13 i.e. the Survey Officer that he is in settled possession of the said land and therefore there is no necessity for survey. However, if the Defendant No.13 wants to carry out the survey, the same should not be without the knowledge and consent of the Plaintiff. It is the case of the Plaintiff as averred that the Defendant No.13 highhandedly carried out the survey and showed the area of 12430 sq.mtrs at the place and choice of the Defendant No.1. It is the case of the Plaintiff that it is at the behest of the Defendant No.1 that the said Survey

No.37/2 was further bifurcated into Survey No.37/2 and 37/2 (P). It is the case of the Plaintiff that on 17/03/2011 the Defendant No.1 visited the suit land and once again threatened the Plaintiff of dire consequences. Thereafter in the plaint the Plaintiff has inter-alia made a reference to the correspondence between the Plaintiff and the Statutory Authorities, as also between the Defendants inter-se, by which correspondence according to the Plaintiff the Defendant No.1 asserted his rights as an owner by virtue of the Development Agreement executed by the Defendant Nos.2 to 7 in his favour. It is therefore the case of the Plaintiff that the Defendant Nos.1 to 11 are in illegal use, occupation and possession without any right, title and interest in the suit property. It is lastly averred by the Plaintiff that he was always willing to perform his part of the contract dated 20/02/1988 and his obligations thereunder, but the Defendant Nos.2 to 7 have refused to do so resulting in the Plaintiff being constrained to file the Suit in question.

5 In the context of the challenge raised in the above First Appeal, it would be apposite to refer to the substantive prayers which have been sought in the same. The same are prayer clauses (a), (c), (d) and (f) amongst the prayers. The said prayers are reproduced herein under for the sake of ready reference.

- (a) That this Hon'ble Court may be pleased to declare that the said Agreement for Sale dated 20th February, 1988

executed by the said late Shri Ganpat Dagdu Dhone in favour of the Plaintiff is valid, subsistin, in force and binding on the Defendant Nos.1 to 11 and the same is neither cancelled nor terminated, revoked in any manner whatsoever and therefore the Plaintiff is entitled for the specific performance of the said Agreement for Sale dated 20th February 1988 executed by the said late Shri Ganpat Dagdue Dhone in favour of the Plaintiff being Exhibit A hereto in respect of the suit land by calling upon the Defendant Nos. 2 to 7 to execute and register deed of conveyance in favour of the Plaintiff.

- (c) That this Hon'ble Court may be pleased to declare that the purported Development Agreement dated 31.12.2007 executed by Defendant nos. 2 to 7 in favour of the Defendant No.1 being Exhibit F hereto as also purported Power of Attorney dated 31.12.2007 being Exhibit G hereto in respect of the land described in Exhibit A are null and void ab-initio and not binding on the Plaintiff and the same be revoked and cancelled.
- (d) That this Hon'ble Court may be pleased to declare that the purported Development Agreement dated 13.05.2008 executed by the Defendant No.1 in favour of the Defendant Nos.8 to 11 in respect of the land more particularly described in Exhibit A to the Plaint are null and void ab-initio and not binding on the Plaintiff and the same be revoked and cancelled.
- (f) That this Hon'ble Court may be pleased to declare that the Defendant Nos.1 to 11 or such of them are in illegal use, occupation and possession of suit land admeasuring 12,430 sq.mtrs. bearing Survey No.37, Hissa No.2 P situated at village Shahd, Taluka Kalyan, Dist. Thane and more particularly described in Exhibit A hereto and the Defendant Nos.1 to 11, their family members, agents and servants, the partners of the Defendant No.8 or any person or persons claiming through them be directed to remove themselves from possession of the said land admeasuring 12,430 sq.mtrs. as aforesaid together with their servants and agents belongings, lock, stock and barrel and to handover to the Plaintiff quite, vacant and peaceful possession thereof.

6 The Defendant No.1 filed the instant Application invoking Order 7 Rule 11(a)(d) of the CPC. The rejection of the plaint was sought on the ground that the plaint does not disclose any cause of action and that the relief of specific performance is barred by limitation. Suffice it would be to state that in so far as absence of cause of action to file the suit is concerned, it was the case of the Defendant No.1 that having regard to the averments made in the plaint viz. that the vendor of the Plaintiff i.e Ganpat Dagdu Dhone was a tenant under the BT & AL Act, the transaction in respect of the land in his occupation could not have been entered into without obtaining the permission under Section 43 of the BT & AL Act and hence the Plaintiff cannot derive any right under the said Agreement for Sale dated 20/02/1988 and if that be so the Plaintiff has no cause of action to file the suit for specific performance.

In so far as clause (d) is concerned, the rejection of the plaint was sought on the ground that the Plaintiff was aware of the said Development Agreement dated 31/12/2007 entered into between the Defendant No.1 and the Defendant Nos. 2 to 7 as he had objected to the survey being carried out by his letter dated 07/05/2008 and had also recorded his statement before the Survey Officer on 16/05/2008 and therefore the suit filed in the year 2011 was beyond the period of limitation prescribed by Article 54 of the Limitation Act. The said clause (d) was also sought to be invoked on the ground that the

survey and the sanction of the plans has been carried out in exercise of the powers conferred by the Maharashtra Land Revenue Code and the Maharashtra Regional Town Planning Act, and since filing of a civil suit challenging the order passed under the said Acts is barred, the plaint was required to be rejected on the said ground.

7 To the said Application, the Plaintiff filed his reply and denied the case of the Defendant No.1. The Plaintiff questioned the locus standi of the Defendant No.1 to file the said Application as according to the Plaintiff, the Defendant No.1 had already divested himself of his rights by executing the Agreement in favour of the Defendant Nos.8 to 11. The Plaintiff denied the fact that there is no cause of action to file the suit in question for specific performance as according to the Plaintiff the permission under Section 43 of the BT & AL Act was required to be obtained prior to or at the time of the execution of the conveyance in respect of the property.

8 In so far as the issue of limitation is concerned, it was the case of the Plaintiff that since the survey was not carried out till the year 2010 and hence there was no cause of action for the Plaintiff to file the suit and it is only in the year 2011 that the cause of action arose for the Plaintiff to file the suit and when the threat was given by the Defendant No.1 acting on behalf of the Defendant Nos.2 to 7, that the Plaintiff filed the suit in question.

9 It is in the back-drop of the pleadings in the plaint, the gist of which has been referred to herein above, that the Trial Court ventured to decide the Application filed under Order 7 Rule 11 (a)(d) of the CPC. On behalf of the parties, judgments were sought to be relied upon in support of their respective assertions as regards the applicability of Section 43 of the BT & AL Act. The Trial Court has by the impugned order as indicated above allowed the said Application in so far as the suit being hit by limitation, in so far as the suit being barred under the Maharashtra Land Revenue Code and the Maharashtra Regional Town Planning Act is concerned, since orders were already passed in respect of the Defendant No.12, the Trial Court did not deem it appropriate to pass any orders. The Trial Court however rejected the ground of there being no cause of action as according to the Trial Court, permission under Section 43 of the BT & AL Act could be obtained at the time of execution of the conveyance. The Trial Court in that regard relied upon the judgment of this Court reported in 2001 (3) Bom. C.R. 255 in the matter of Balu Baburao Zarole & ors. v/s. Shaikh Akbar Shaikh Bhikan & ors.

10 In so far as the ground of limitation is concerned, the Trial Court held that since the Plaintiff had represented to the Survey Officer by his letter dated 07/05/2008 objecting to the survey being carried out by the Survey Officer, the Trial Court imputed knowledge of the Development Agreement

dated 31/12/2007 to the Plaintiff as on 07/05/2008 and since the suit was filed in June 2011, the same would be barred having regard to the limitation of 3 years stipulated by Article 54 of the Limitation Act.

11 In so far as the other reliefs are concerned, the Trial Court was of the view that the said reliefs were an offshoot of the main substantive relief of specific performance and was therefore of the view that the said reliefs cannot be taken into consideration in so far as the issue of limitation is concerned. In so far as bar contained in the Maharashtra Land Revenue Code and the Maharashtra Regional Town Planning Act is concerned, as indicated above, the Trial Court was of the view that since the order has already been passed in respect of the Defendant No.12, no orders were necessary to be passed in that regard, but however observed that the plaint was required to be rejected being barred by limitation. As indicated above it is the said order dated 08/02/2013 passed by the Trial Court which is taken exception to by way of the above First Appeal.

12 Heard the learned counsel for the parties. The learned counsel appearing for the Appellant Shri Kanade would submit that the Trial Court had erred in reckoning the starting period of limitation from 07/05/2008 when the Plaintiff objected to the survey being carried out. The learned counsel would submit that mere notice of survey and the objection of the Plaintiff to the same

would not give a cause of action to the Plaintiff to file the suit in question and impute knowledge to the Plaintiff of the Development Agreement. It was the submission of the learned counsel that mere notice of survey would not result in a compulsorily cause of action in so far as the Plaintiff is concerned. It was the submission of the learned counsel that it is only when the threat to the Plaintiff's possession had arisen that the cause of action for filing the suit arose and that event transpired sometime in the year 2011 and therefore the suit as filed was within limitation. The learned counsel would also submit that apart from the specific performance, the Plaintiff had also sought the relief of putting the Plaintiff back in possession which relief was based on the Plaintiff's previous possession for which relief the limitation prescribed is 12 years under Article 64 of the Limitation Act. To buttress the aforesaid submissions, the learned counsel for the Appellant sought to place reliance on the judgment of a learned Single Judge of this Court reported in 2008(5) Mh.L.J.18 in the matter of Elamno Menion Dias v/s. Archbishop and others. And the judgment of a Division Bench of this Court reported in AIR 2005 Bombay 442 in the matter of Satish Dalichand Shah v/s. Municipal Corporation of Greater Bombay. It was the submission of the learned counsel that the Trial Court had erred in taking into consideration the averments in the Application filed under Order 7 Rule 11 of the CPC by the Defendant No.1 when it is well settled that whilst trying the Application under Order 7 Rule 11 of the CPC, only the averments in the plaint have to be taken into consideration.

13 Per contra, the learned counsel appearing for the Respondent Nos.1, 8 to 11 Shri Mhaispurkar would submit that having regard to the averments made in the plaint and especially clause (m) and (n) of the plaint, the findings of the Trial Court in respect of the ground of limitation cannot be faulted with. It was the submission of the learned counsel that since the Development Agreement dated 31/12/2007 is a registered document, the same would constitute notice in terms of Section 3 of the Transfer of Property Act, 1882. If that be so the date for reckoning the period for limitation would be 31/12/2007. The learned counsel would submit that even assuming that the date 07/05/2008 when the Plaintiff objected to the notice of survey issued by the Defendant No.13 is taken into consideration, the suit filed in June 2011 is beyond limitation. The learned counsel sought to place reliance on the judgment of the Apex Court reported in (2007) 15 SCC 174 in the matter of Janardhanam Prasad v/s. Ramdas on the aspect of a registered document constituting a notice to the parties.

14 The learned counsel appearing for the Respondent Nos.2 to 7 Shri Natu would reiterate the submission which was urged before the Trial Court viz. the Agreement for Sale entered into between the Plaintiff and the said Ganpat Dagdu Dhone is hit by Section 43 of the BT & AL Act and therefore the Agreement for Sale executed by the said Ganpat Dagdu Dhone in favour of the

Plaintiff is of no avail to the Plaintiff so as to give him a right to file a suit for specific performance.

15 Having heard the learned counsel for the parties, we have considered the rival contentions. The issue which arises for consideration is whether the suit filed by the Plaintiff for specific performance of the Agreement for Sale dated 20/02/1988 was required to be rejected on the touchstone of Order 7 Rule 11(d) of the CPC as done by the Trial Court. In the earlier part of the instant Judgment we have already referred to in brief the averments made in the plaint. There can be no gainsaying of the fact that an Application under Order 7 Rule 11 has to be adjudicated on a demurrer i.e. on the basis of the averments in the plaint and the defence of the Defendants is not to be taken into consideration. It is in the said context that the clauses (m) and (n) of the plaint assumes importance. Prior to the said clauses (m) and (n) the Plaintiff has referred to the events which have transpired from the Agreement for Sale dated 20/02/1988 executed in his favour to the filing of the suit by him in respect of the transaction relating to one Girish Latke. The Plaintiff has thereafter averred as regards the clout that the Defendant No.1 seems to be having in the area in question as also the financial wherewithal of the Defendant No.1. The Plaintiff has thereafter in proximity averred that the Defendant No.1 was persuading the Plaintiff to sell the suit property to him which the Plaintiff had refused. It is thereafter that clauses (m) and (n) of

paragraph 7 of the plaint are placed. The said clauses (m) and (n) read thus :-

(m) Behind the back of the Plaintiff, the Defendant No.1 being influential person involved in and an active politics and as the Plaintiff did not pay any heed to the Defendant No.1, he caused the Defendant Nos.2 to 7 who without having any authority or share, right, title or interest of whatsoever nature in the suit land illegally and highhandedly signed and registered in favour of the Defendant No.1 a purported Development Agreement dated 31st December, 2007 in respect of land admeasuring about 12,430 sq.meters and further illegally and highhandedly granted Power of Attorney in his favour even though the Defendant Nos. 2 to 7 had no legal right to do so as their grand father i.e. the said Ganpat Dagdu Dhone had already sold and transferred the Suit Land to and in favour of the Plaintiff. The said Development Agreement and Power of Attorney have been illegally and highhandedly registered before Sub-Registrar Kalyan-1 under Sr. No.2997 of 2008 and Sr. No.2998 of 2008 respectively both dated 21st April 2008. Hereto annexed and marked Exhibit F is xerox copy of the purported development Agreement dated 31st December 2007. Hereto annexed and marked Exhibit G is xerox copy of the said purported power of attorney.

(n) The Defendant Nos.1 to 7 further illegally called upon the Defendant No.13 for alleged survey of lands at Survey No.37, Hissa No.2. Upon knowing the same, the Plaintiff by his letter dated 07.05.2008 to the Defendant No.13 inter alia informed him that the Plaintiff was in settled possession of the said Survey no.37/2 since 1988 onwards and which was under his right and possession and therefore there was no necessity at all for survey however if the Defendant No.13 desired for such survey, he should not do so without the consent and knowledge of the Plaintiff. Hereto annexed and marked Exhibit H is Xerox copy of the said letter dated 07.05.08.

A reading of the said clauses (m) and (n) therefore give an indication that the

Plaintiff was aware of the transaction i.e. the Development Agreement dated 31/12/2007 in respect of the suit property. This is fortified by the details which the Plaintiff has given in the said clause (m) of paragraph 7 of the plaint as regards the registration of the Development Agreement and the Power of Attorney. As can be seen from paragraph 7 of the plaint, it is the case of the Plaintiff that the Defendant Nos.1 to 7 have further allegedly called upon the Defendant No.13 for the alleged survey of the suit property. The averments made in the said clause (n) therefore indicate that the sequence of events have been elaborately mentioned by the Plaintiff, which is indicative of the fact that he had the knowledge of the said events viz. The execution of the Development Agreement dated 31/12/2007 and on the said basis survey which was sought by the Defendant No.1 by making the Application to Defendant No.13.

16 Now coming to the survey and measurement of the land, from the documents produced by the learned counsel for the Appellant Shri Kanade it is deciphered that the application for survey was made by the one of the heirs of the said Ganpat Dagdu Dhone on 01/03/2008. The notice of survey addressed by the Defendant No.13 seems to be the consequence of the said application made by one of the heirs of the said Ganpat Dagdu Dhone. There is no dispute about the fact that the Plaintiff has vide his letter dated 07/05/2008 objected to the survey being carried out and has by his statement recorded on 16/05/2008 before the Survey Officer stated that the survey should not be

carried out without his knowledge and consent. In the backdrop of the averments made in the Plaintiff which are, as indicated above, very elaborately refer to the transaction between the Plaintiff and the said Ganpat Dagdu Dhone and thereafter between the Defendant No.2 to 7 and the Defendant No.1 which Development Agreement is dated 31/12/2007, the only conclusion that can be reached is that the Plaintiff was aware of the said transaction dated 31/12/2007 if not prior or on the same day, at least on 07/05/2008 when he objected to the survey being carried out.

17 In so far as a suit for specific performance is concerned, the limitation for the same is prescribed by Article 54 of the Limitation Act which reads thus :-

Description of suit	Period of Limitation	Time from which period begins to run
54. For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused

Hence the limitation starts when the date for performance is fixed and if no such date is fixed, there is a refusal on the part of the vendor. In the instant case admittedly no date was fixed for performance and therefore the limitation would have to be reckoned from the date of refusal. As indicated above the heirs of the said Ganpat Dagdu Dhone i.e. the Plaintiff's vendor entered into a

Development Agreement on 31/12/2007 with the Defendant No.1 which was registered. The heirs applied for survey on 01/03/2008. The said Development Agreement and the application was therefore an affront to the Plaintiff's right which he claimed under the Agreement for Sale dated 20/02/1988. Hence the said Development Agreement and the application for measurement would have to be construed as a refusal on the part of the heirs to complete the transaction which their father had entered into on 20/02/1988. The Plaintiff obviously ought to have taken the said fact as a refusal by the heirs i.e. his vendor to complete the transaction and therefore ought to have filed the suit within 3 years of 01/03/2008 or at least within 3 years of 07/05/2008 when he objected to the survey. That being not done by the Plaintiff, the suit for specific performance is obviously barred by limitation, having regard to Article 54 of the Limitation Act.

The contention urged on behalf of the Plaintiff that since in the suit, recovery of possession is also sought, and since in respect of a suit for recovery of possession based on previous possession the limitation is of 12 years, the suit filed is within time. In our view the said contention cannot be accepted. It is required to be noted that having regard to the frame of the suit, it can be seen that the same had been essentially filed for specific performance of the Agreement for Sale dated 20/02/1988. the other reliefs as rightly observed by the Trial Court are only an offshoot of the said principal relief.

Significantly in the plaint there is not a whisper as to when the Plaintiff has lost possession and as to who dispossessed him. If the Plaintiff in fact was dispossessed as claimed by him, he could obviously have filed a suit under Section 6 of the Specific Relief Act for recovery of possession within 6 months of such dispossession. The conduct of the Plaintiff is such that belies the case of the Plaintiff of any such dispossession.

It is well settled that whilst adjudicating upon an application under Order VII Rule 11 of the CPC the plaint as a whole has to be meaningfully read and the Court would have to see through clever drafting which creates an illusion of a cause of action. If the said test is applied the cause of action being pleaded on account of loss of possession is merely with a view to bring the suit within limitation. The contention urged on behalf of the Plaintiff that the Trial Court has also taken into consideration the facts pleaded in the Application is not borne out by the order. The order only refers to the facts which are contained in the averments in the plaint.

18 Now coming to the judgment of the learned Single Judge of this Court in *Elmano Menino Dias's* case (supra) is concerned, there can be no dispute of the proposition of law laid down therein viz. That whilst considering the Application under Order 7 Rule 11 of the CPC, the averments made in the plaint are relevant and nothing beyond that. As per the proposition that if

there is slightest doubt and the point is arguable then the plaint cannot be rejected under Order 7 Rule 11 of the CPC. In the instant case, as indicated above, the facts on record ex-facie indicate that the suit filed in the year 2011 after the refusal of the Defendant Nos.2 to 7 which is exemplified by the fact of they entering into a registered Development Agreement and applying for survey would indicate that the suit is barred by limitation.

19 Now coming to the judgment of the Division Bench of this Court in *Satish Dalichand Shah's* case (supra). In our view the said judgment would not aid the Plaintiff in coming out of the clutches of the bar of limitation. The Division Bench in the said case was concerned with the limitation to file a suit challenging an order passed by the Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act directing demolition of an extended portion of a structure. The period of limitation in so far as the said Act is ingrained or prescribed in/by Section 527. In the said case the suit was filed beyond six months of the accrual of the cause of action. In the said case the rejection of the plaint was sought to be challenged on the ground that the limitation for filing suit which is a period of 6 months from the accrual of the cause of action would have to be reckoned from the date when the Corporation sought to take action pursuant to the order passed under Section 351. The Division Bench negated the said contention and held that the period of limitation would have to be reckoned from the date when the order under

Section 351 came to be passed and not when the officers/employees of the Corporation came on the site to take action pursuant to the said Order. In the said case the order was passed on 02/09/1994 and the officers and employees of the Corporation had come on site on 22/03/1996. Hence the Division Bench held that the period of limitation would start to run from 02/09/1994 and not 23/03/1996. Applying the said judgment to the facts of the present case wherein it is the case of the Plaintiff that the date of reckoning should be from the date when the survey was carried out, in our view cannot be accepted as implicit in the heirs entering into a registered Development Agreement with the Defendant No.1 and applying for survey is the factum of their refusal to complete the transaction in so far as the Plaintiff is concerned.

20 The issue has to be looked at from one more perspective, having regard to the judgment of the Apex Court in *Janardhanam Prasad's* case (supra). The Apex Court in the said case has held that since the document in question is registered, the same would constitute a notice in terms of Section 3 of the Transfer of Property Act. If that be so, the document in the instant case i.e. the Development Agreement dated 31/12/2007 is a registered document and therefore, the notice of the same would have to be attributed to the Plaintiff. Hence the Plaintiff had a notice of the document being executed and consequentially refusal on the part of the heirs to complete the transaction. If that be so, then the suit filed in June 2011 for specific performance of his own

Agreement is obviously barred by limitation.

21 As indicated above, the Trial Court has reckoned the limitation from 07/05/2008 when the Plaintiff objected to the survey being carried out which fact is the acceptance of the Plaintiff of knowledge of the Development Agreement dated 31/12/2007 entered into between the Defendant Nos.2 to 7 and the Defendant No.1.

22 In our view, on both the counts i.e. on the basis of the objection taken by the Plaintiff vide his letter dated 07/05/2008 as also on account of the fact that the Development Agreement dated 31/12/2007 being a registered one, the same would constitute a notice, the suit filed in June 2011 is obviously barred by limitation.

23 It would not be out of place to mention a few facts which have been placed on record on behalf of the Defendant Nos.8 to 11. The said Defendants have filed an Affidavit in Reply as also an Additional Affidavit to the Civil Application for interim reliefs filed in the above First Appeal. The sum and substance of the said affidavits is that the said Defendants have constructed about 10 buildings on the land in question in respect of which they have obtained occupation certificates from the Kalyan Dombivli Municipal Corporation, and that the Purchasers of flats/Residents of the said buildings

have constituted themselves into Co-operative Housing Societies which are registered. Hence the affidavits disclose that the said land has been substantially developed by the Respondent Nos.8 to 11 after the Defendant No.1 had entered into a Development Agreement with them. Hence though the aforesaid facts have no bearing in so far as the Application filed under Order VII Rule 11 of the CPC is concerned, however, in our view they cannot be ignored whilst adjudicating upon the above First Appeal.

24 For the reasons afore-stated, we do not deem it appropriate to interfere with the impugned order passed by the Trial Court allowing the Application filed by the Defendant No.1 under Order 7 Rule 11 of the CPC. The above First Appeal is accordingly dismissed.

25 In view of the dismissal of the above First Appeal, the Civil Application No.2704 of 2013 does not survive and the same to accordingly stand disposed of as such.

[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]