

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

C.R.P.M.P.No.3016 of 2016 and

CIVIL REVISION PETITION No.4596 of 2009

COMMON ORDER:

This civil revision petition is filed against the order dated 19.08.2009 in I.A.No.104 of 2009 in O.S.No.1321 of 2008 on the file of the II Additional Senior Civil Judge, Visakhapatnam, filed under Order VII Rule 11 (a) and (d) of C.P.C.

2. The revision petitioners are the defendants. The plaintiffs filed the suit for specific performance of agreement of sale dated 27.04.1994, stating that the GPA Holder of the defendants executed the agreement of sale dated 27.04.1994 to sell the schedule properties. It is stated that there is a clause in the agreement of sale stipulating that the defendants have to get all clearances in connection with the schedule property and then inform the same to the plaintiffs to get ready for registration. The plaintiffs issued several notices to the defendants expressing their readiness, but the defendants did not come forward with all clearances. Instead, they are trying to sell the suit schedule properties to third parties. Hence the plaintiffs filed the suit.

3. The case of the defendants is that the suit is barred by time and not maintainable. Their case is that the plaintiffs demanded for performance of agreement between 09.02.1999 and 08.09.1999 and the notice sent by the plaintiffs was returned on 08.04.1999 and hence they contended that the limitation will commence from 08.04.1999 and the suit has to be filed within three years there from, but the plaintiffs filed the suit in September 2008 and therefore, the plaint is liable to be rejected.

Seeking rejection of the plaint, the defendants filed I.A.No.104/2009. The Court below, upon considering the material on record and case law relied on by the defendants, dismissed the said I.A., while observing that the defendants have not fulfilled their obligation of settling the case pending before the Government as agreed and intimate the plaintiffs, and the limitation will start only after notice to the plaintiffs about clearances obtained by the defendants in respect of the subject property.

4. Aggrieved by the dismissal of the I.A., the defendants filed this revision petition.

5. Learned Counsel appearing for the petitioners submits that the Court below erred in dismissing their application to reject the plaint, that the Court below ought to have seen that a reading of the plaint together with the agreement of sale shows that the suit is hopelessly barred by limitation and the respondents/plaintiffs had no cause of action to file the suit. It is further submitted that if the plaint averments coupled with the agreement of sale dated 27.04.1994 are carefully perused, it is manifest that either the suit is premature or barred by limitation and hence the same is liable to be rejected for want of cause of action and barred by limitation.

6. On the other hand, learned Counsel appearing for the respondents/plaintiffs submits that the Court below has taken into consideration the fact that the question of limitation being a mixed question of fact and law needs to be adjudicated after full-pledged trial and dismissed the application. It is further submitted that as a matter of fact, as per the agreement, it was for the petitioners/defendants to comply with certain obligations and inform the same to the plaintiffs in

writing and within two months after such notice from the petitioners/defendants, the respondents/plaintiffs were required to make themselves ready with the balance consideration and get the sale deed executed. It is further submitted that since no such notices were received from the petitioners/defendants, the respondents/plaintiffs addressed several letters to the petitioners/defendants and since there was no response and instead they were intending to sell the suit schedule properties to third parties, the suit came to be filed. Learned Counsel further submits that during the pendency of the present revision, the third party purchaser has filed C.R.P.M.P.No.3016 of 2016 for impleading him as necessary party on the ground that he along with others purchased the suit schedule properties under registered sale deeds dated 03.06.2010. This, according to the learned Counsel, clearly shows that their apprehension that the petitioners/defendants are trying to sell away the schedule lands to third parties without selling the same to the respondents/plaintiffs with whom they entered into agreement as long back as on 27.04.1994 by receiving substantial consideration has been substantiated. Learned Counsel submits that the application of the petitioners/defendants to reject the plaint was rejected on proper appreciation which do not warrant any interference.

7. The admitted facts are that the petitioners/defendants have entered into an agreement of sale to sell the suit schedule property which comprises of ac.4.28 cents in new Sy.Nos.140/4 to 140/12 situated at Visalakshinagar Area, Visakhapatnam, for consideration of Rs.8,56,000/-. On the date of agreement and subsequent thereto, by August, 1997, the

petitioners/defendants in all received Rs.7,06,000/- out of the sale consideration of Rs.8,56,000/-. The balance left out was Rs.1,50,000/-.

8. The respondents/plaintiffs filed the suit for specific performance of contract and also for the alternative relief of refund of Rs.7,06,000/- with interest thereon at 24% per annum from the date of agreement till realization. The suit is also for permanent injunction against the defendants restraining them from alienating the plaint schedule property to third parties. The petitioners/defendants, on appearance, filed I.A.No.104 of 2009 under Order VII Rule 11 (a) & (d) C.P.C., for rejecting the plaint. The said application was dismissed by the learned II-Additional Senior Civil Judge, Visakhapatnam, on 19.08.2009 and the present C.R.P. came to be filed and the petitioners/defendants obtained stay of all further proceedings in the suit on 23.10.2009. While the matter stood thus, it is not disputed that on 14.09.2006, the petitioners/defendants entered into agreements of sale in respect of the suit property in favour of Kanumuri Subba Raju and three others and executed the sale deed on 03.06.2010. One of the purchasers filed C.M.P.No.3016 of 2016 for impleading him as a party to the present proceedings.

9. The scope of enquiry to be undertaken at the stage prior to the defendants filed written statement is limited to what is provided for under Order VII Rule 11 (a) to (d) C.P.C. Reliance is placed upon the recent decision of the Supreme Court reported in P.V.GURU RAJ REDDY v. P.NEERADHA REDDY¹, wherein it is held as under in paras 5 and 6:-

“Rejection of the plaint Under Order VII Rule 11 of the Code of Civil Procedure is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power Under Order VII Rule [11](#),

¹ 2015 (3) ALT 14 (SC)

therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power Under Order VII Rule 11, the stand of the Defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie discloses that the suit is barred by limitation or is barred under any other provision of law. The claim of the Plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application Under Order VII Rule 11 the stand of the Defendants in the written statement would be altogether irrelevant.”

Similarly, in GUNWANTBHAI MULCHAND SHAH AND ORS. v. ANTON ELIS FAREL AND ORS.² the Supreme Court in paras 8, 9 and 11 observed as under:-

“It is seen that the suit was dismissed by the trial court on the finding that the claim for the relief of specific performance was barred by limitation. The plaint contains not only a prayer for specific performance but also a prayer for perpetual injunction restraining the defendants from interfering with the possession of the plaintiffs and from creating any documents or entering into any transaction in respect of the suit property. Of course, the latter part of that prayer is directly linked to the claim for specific performance, but the suit as regards the prayer for perpetual injunction to protect the possession of the plaintiff over the suit property on the claim that the predecessor of the plaintiffs was put in possession of the property pursuant to the agreement for sale, on a subsequent date, could not have been held to be not maintainable on any ground.....

.....These aspects relating to the prayer for specific performance, of course, would become relevant, only if the suit for that relief is found to be in time and that question requires investigation, on the terms of the agreement in this case.

² AIR 2006 S.C., 1556

The question as to how long a plaintiff, even if he had performed the whole of his obligations under an agreement for sale, in which a time for performance is not fixed, could keep alive his right to specific performance and to come to court after 29 years seeking to enforce the agreement, may have also to be considered by the court especially in the context of the fact that the relief of specific performance is discretionary and is governed by the relevant provisions of the Specific Relief Act. But again, these questions cannot be decided as preliminary issues and they are not questions on the basis of which the suit could be dismissed as barred by limitation. The question of limitation has to be decided only on the basis of Article 54 of the Limitation Act and when the case is not covered by the first limb of that Article, normally, the question of limitation could be dealt with only after evidence is taken and not as a preliminary issue unless, of course, it is admitted in the plaint that the plaintiffs had notice that performance was refused by the defendants and it is seen that the plaintiffs approached the court beyond three years of the date of notice. Such is not the case here.”

10. Bearing in mind the above observations, the facts of the present case needs to be appreciated.

11. The plaint averments, which are relevant for looking into the aspect as to whether it shows the existence of cause of action and whether the suit is within limitation are contained in para III (d), (f) and (g) which can be usefully extracted:-

“It is submitted that the defendants unable to mobilize huge funds to proceed with governmental authorities for procurement of pattas, defendants through their general power of attorney holder to sell Ac.4-28 cents to the plaintiffs and plaintiffs are also agreeing to purchase plaint schedule property (more specifically described in the schedule hereto) for agreeable rate of Rs.2,000/- (Rupees two thousand only) per cent, for total consideration of Rs.8,56,000/- (Rupees eight lakhs fifty six thousand only) the general power of attorney holder of defendants executed an agreement to sell on 27.04.1994 and received Rs.4,56,000/- (Rupees four lakhs fifty six thousand only) as an advance, which constitutes the sale consideration. And defendants deposited the 7 (seven) original general power of attorney documents with the plaintiffs on condition, if the general power of attorney documents are required to be submitted before any authorities. And the balance sale consideration of Rs.4,00,000/- (Rupees four lakhs only) is only payable after settlement of disputes in SR No.11 (a) 6/82 on the file of the Government of Andhra Pradesh has to be cleared amicably before

registration. Defendants agreed to clear the dispute with the Government of Andhra Pradesh as early as possible and incurred expenditure is borne by the defendants and this first plaintiff has to cooperate to clear dispute with the Government of Andhra Pradesh. Defendants agreed to send notices to the plaintiffs no sooner the said disputes cleared with Government of Andhra Pradesh and agreed to get registered the plaint schedule land in favour of plaintiffs or their nominee or nominees by whole bifurcating bits of the plaint schedule property and the plaintiffs are required to be ready within two months on the receipt of the defendant's notice defendants agreed to issue necessary clearance certificates, no objection certificates, income tax clearance certificate and get the survey the plaint schedule property before the plaintiffs and measure the plaint schedule property and the costs is payable on the actual measurement of the plaint schedule property i.e., Rs.2,000/- (Rupees two thousand only) per cent only. Subsequently, the plaintiff sent notice on 11.05.1999, but the defendants received the said notice, and the main content of that the plaintiff paid the defendants received the said notice, and the main content of the plaintiff paid the defendants a sum of Rs.40,000/- (Rupees forty thousand only) from time to time towards the expenditure incurred by the defendants for attending concerned authorities. And upon receiving slip from defendants dated 30.07.1997, on 07.08.1997 the plaintiff paid a sum of Rs.2,10,000/- (Rupees two lakhs ten thousand only) toward payment of defendants and the defendants duly endorsed the same and did not sent any reply notices, strongly established that the defendants received Rs.7,06,000/- (Rupees seven lakhs six thousand only) as against total sale consideration of Rs.8,56,000/- and the balance sale consideration is payable only Rs.1,50,000/- as on 07.08.1997.

It is submitted that the defendants duly received 7 original general power of attorney documents from the plaintiffs for submitting in the High Court and the defendants did not return the same to the plaintiffs till now, and the first plaintiff send the registered notices more than 8 times and telegrams to defendants to return 7 original GPA documents, original patta books and information regarding progress of procurement of pattas, the plaintiffs also attended the concerned authorities and High Court along with the defendants several times and spent much money and took much strain. The plaintiff provided defendants a scooter bearing No.AP 31 G 2268 with driver for obtaining pass books from the concerned authorities and maintenance cost and repairing cost of Rs.3,500/- was borne by the plaintiffs. The defendants wilfully avoiding to receiving registered notice and if received, the defendants never bothering to return the 7 original GPA documents, original pattas, and relevant papers and they hiding themselves and they are not complying agreement to sell dated 27.04.1994. It is learnt that the defendants having procured the patta pass books from the concerned authorities and obtained necessary permissions from

Government authorities for the plaint schedule property and trying to alienate the plaint schedule property to third parties.

It is submitted that the plaintiffs before instituting the present suit for specific performance of agreement of sale deed dated 27.04.1994 are required to be issued a legal notice expressing their readiness and willingness to perform their obligation, same was not issued since plaintiff sent 8 registered notices i.e., on 10.02.1999, but it is duly returned, again notice sent on 06.03.1999, but the defendants received the said notice did not sent any reply notice, notice sent on 11.05.1999, but the defendants received the said notice did not sent any reply notice for the contents of that the plaintiff paid the defendants a sum of Rs.40,000/- from time to time towards the expenditure incurred by the defendants for attending concerned authorities. And upon received the slip from the defendants on 30.07.1997, on 07.08.1997, the plaintiff a sum of Rs.2,10,000/- towards payment of defendants and the defendants duly endorsed the same established that the defendants received Rs.7,06,000/- as against total sale consideration of Rs.8,56,000/- and the balance is payable only Rs.1,50,000/- as on 07.08.1997. Again notice sent on 13.12.1998, the defendant received the same and did not sent any reply notice established hiding and avoiding nature of the defendants not register the plaint schedule property in favour of plaintiffs. Again notice sent on 29.12.1998 the defendants received the same did not sent any reply notice is clearly shows the attitude of the defendants having received 83% of the total sale consideration i.e., Rs.7,06,000/-, again notice sent on 08.01.1999 the defendants received the same and did not sent any reply notice shows the negligent behaviour to comply the terms and conditions of agreement of sale dated 27.04.1994, again notice sent on 18.01.1999 the defendant received the same and did not sent any reply notice amounts to alienate the plaint schedule property to third parties due to exclamation of the market value of the plaint schedule property. Again notice sent on 08.04.1999 the notice duly returned have asserted the defendants intention of denial to perform their part of terms and conditions of agreement of sale dated 27.04.1994 and thereby issuing of 8 registered notices to defendants expressing the readiness and willingness by plaintiffs would not serve any purpose by virtue of the conduct of the defendants. Hence, the suit is filed in the above stated facts and circumstances seeking relief as prayed for.”

12. With regard to the cause of action, it is mentioned that several notices were issued and finally the notice was sent on 08.04.1999 that the defendants have not come forward to execute the sale deeds and hence the suit.

13. On the basis of the above averments, learned Counsel appearing for the petitioners/defendants submits that the suit having been filed in the year 2008 i.e., nearly eight years after the notice was issued is clearly barred by limitation.

14. If the entire averments of the plaint are carefully read, the contention of the learned Counsel appearing for the petitioners/defendants do not appear to be sustainable. The totality of the conduct of the parties has to be analyzed and what could be gathered from the plaint averments is that the agreement was entered in the year 1994 and several acts have to be performed by the petitioners/defendants more significantly a litigation, which was pending in between the defendants and the Government in respect to the same suit lands in SR No.11 A 6/82, was to be decided before the transaction can be further proceeded. It is also provided that if the defendants succeed in the litigation with the Government, in the said case, the defendants have to obtain the requisite no objection certificate, income tax clearance, and survey and measure the lands. A duty is cast upon the defendants to issue a written notice to the plaintiffs informing them about the above acts being performed and two months within thereafter, it was required the plaintiffs are required to make arrangement for the balance consideration and take steps to get the registered sale deed executed. Admittedly, the defendants have not issued any notice nor did they inform the plaintiffs that the litigation with the Government has been concluded. The plaintiffs on their part have addressed several letters to which there was no response from the defendants. The plaint further discloses that instead of responding to their request, the defendants appeared to have

obtained the title deeds from the Government and are intending to sell away the suit schedule lands to third parties. When the suit was filed, this was the apprehension of the plaintiffs, which ultimately proved to be true, since as already stated, the defendants have already sold the suit schedule lands to Kanumuri Subba Raju and three others under registered sale deed dated 03.06.2010. When the defendants were conducting themselves in the manner stated above, the plaintiffs had no option except to approach the Court for the reliefs, as stated above.

15. It is apparent that time was not the essence of the contract and several obligations were cast upon the defendants who were to perform their part of contract and inform the plaintiffs in writing about its completion. The agreement further provided that after the defendants issued such a notice to the plaintiffs in writing, the plaintiffs are given two months time to fulfil their part of the contract. Admittedly, no such notice was issued by the defendants and they were not even responding to the letters of the plaintiffs and instead were preparing to sell the suit lands to third parties as is evident from the fact that on 14.09.2006 itself, the defendants are said to have entered into an agreement of sale with Kanumuri Subba Raju and three others, which ultimately has been converted into a registered sale deed on 03.06.2010. At this stage, it may be appropriate to extract the relevant covenants of the agreement of sale dated 27.04.1994, which is in telugu language.

1)

2) మిగతా క్రయధనము యావత్తు పైనివుదహరించిన S.R.No.11 (a) 6/82 రుగాగల కేసు తీర్మానం పర్యంతం గాని లేక నేను కోరినప్పుడు గాని మీరు గాని, మీరు మాలో ఏ ఆసామీ గాని నాకు చెల్లించుటకున్న

- 3) సదరు కేసు నేను నా స్వంత బాధ్యతపై నా స్వంత ఖర్చుతో పరిష్కరించుటకున్నా, అవుసరం వెంటనే మీలో 1 వ ఆసామీ నాకు సహాయసహకరములు అందచేయుటకున్నా
- 4) సదరు కేసు తీర్మానము పర్యంతం నేను మీకు వ్రాత పూర్వకముగా తెలియపర్చుటకున్నా, అలాగున తెలియపర్చిన రెండు నెలలులోగా నాటి సర్కి మీరు క్రయధనము బకాయి యున్నచో, సదరు క్రయధనము యావత్తు మీరు ఆ వెంటనే చెల్లించుటకున్నా, ఆ వెంటనే మీ పేర్లు గాని, మీరు కోరిన వారి పేర్లు గాని, పెడ్యులు దాఖలా స్థిరాస్తిని ఏకాండిగా గాని, బిట్లు, బిట్లు గా గాని మీ ఖర్చులతో సరియగు స్థాంపులపై క్రయ దస్తావేజు/దస్తావేజులు వ్రాయించి రిజిస్ట్రీ చేయించి యిచ్చుటకున్నా
- 5)
- 6) క్రయ దస్తావేజు/దస్తావేజులు రిజిస్ట్రీ కొరకు అవుసరమగు క్లియరెన్సు సర్టిఫికెట్లు, నో అబ్జెక్షన్ సర్టిఫికెట్లులను, ఇన్కంటాక్స్ క్లియరెన్సు సర్టిఫికెట్లులను ఈ లోగా నేను నా స్వంత పూచీ పై తెచ్చు కొనుటకున్నా
- 7) పైని వుదాహరించిన కేసు తీర్మానము పర్యంతము పెడ్యులు దాఖలా స్థిరాస్తిని మీ అందరి సమక్షములో గాని, మీలో ఏ ఆసామీ సమక్షములోనైనా లేదా మీరు నామినీగా సూచించే ఏ ఆసామీ సమక్షములో గాని, సరియగు లైసెన్సుడు సర్వేయరు చేత కొల్లలు కొల్పించుటకున్నా, ఆ ప్రకారము వచ్చు స్థిరాస్తికి శెంటు 1 కి పైని వివరించిన ప్రకారము నాకు క్రయధనము చెల్లించుటకున్నా
- 8) పైని వివరించిన 4 వ షరతు ప్రకారము నేను మీకు తెలియపర్చిన కాలము నుండి రెండు నెలలు లోగా నాటి పర్క ఏమైనా క్రయధనం బకాయి ఉన్నచో, సదరు క్రయధనమును నాకు చెల్లించి, క్రయ దస్తావేజు/దస్తావేజులు రిజిస్ట్రీ చేయించుకోలేని ఎడల, నాటి నుండి మీరు ఒక నెల అదనపు గడువు లోగా బకాయి వున్న క్రయధనముపై నెల 1కి నూట్కి రు.1/- ఒక రూపాయి చొ||న వడ్డీ కూడా అసలు క్రయధనముతో బాటుగా చెల్లించుటకున్నా, అప్పట్కి కూడా మీరు క్రయధనము చెల్లించక, క్రయ దస్తావేజు/దస్తావేజులు రిజిస్ట్రీ చేయించుకోలేని ఎడల మీరు నాటి సర్కి నాకు చెల్లించిన క్రయధనమును మీకు నాటి నుండి ఆరు మాసములులోగా మీకు నేను ఒకే పర్యాయముగాని, వాయిదాల పద్ధతిలో గాని పూర్తిగా ధనమును వాపసు చేయుటకున్నా, ఆ ప్రకారము ఒకవేళ నేను సదరు క్రయధనమును ఆరు నెలలు లోగా పూర్తిగా వాపసు చేయని ఎడల, నాటి సర్కి బకాయి వున్న క్రయధనము పై నెల 1కి

నూట్టి రు.1/- ఒక రూపాయి చొ||న వడ్డీతో సహా మరియొక మూడు నెలల
అదనపు కాలపరిమితి లోగా మీకు పూర్తిగా చెల్లించుటకున్న నిర్ణయము

16. The above clauses if translated are to the effect:-

- 1) ...
- 2) That the balance consideration should be paid by the plaintiffs after the case in S.R.No.11 (a)6/82 is decided or whenever the defendants demand for it;
- 3) That the said case will be attended to by the defendant with his own expenses and if necessary, the plaintiff should extend helping hand;
- 4) That after the case is decided, the defendants will inform in writing and thereafter within two months, the balance consideration should be paid and immediately thereafter the said property will be registered in their name;
- 5) ...
- 6) That the defendants will obtain no objection certificate, Income Tax certificate at their own expenses;
- 7) That after the case is decided, the land will be surveyed through a licensed surveyor and thereafter the consideration will be determined on the basis of per cent; and
- 8) That two months after the defendants informing in writing about the adjudication of the case, the plaintiff should pay the balance consideration within one month and if not, interest at 1% should be paid and if still the plaintiffs are unable to get the property registered by paying the balance consideration, the defendants will return the entire advance amount received by them.

17. Learned Counsel appearing for the petitioners/defendants, as already stated, submits that the suit is barred by limitation and the plaintiffs have no cause of action. According to the learned Counsel, the plaintiffs issued the notice finally on 08.04.1999 and filed the suit in the year 2008. Learned Counsel relies upon the following authorities:-

18. In MANJUNATH ANANDAPPA v. TAMMANASA³ the Supreme Court observed in paras 12, 13, 14 and 15 as under:-

"The basic fact of the matter is not in dispute. The agreement was entered into on or about 1.10.1978. Apart from the vague statements made in Paragraph 6 of the plaint as noticed hereinbefore, the plaintiff has not placed any material on record to show that at any point of time and far less within a period of 3 years from the date of the said agreement, he ever asked Defendant No. 1 to execute a deed of sale in his favour or tendered the balance amount of consideration to her. The plaintiff admittedly served a notice dated 8.8.1984 upon the Defendant No. 2 alone, that is much after the expiry of the said period of 3 years. He, only upon having come to learn that Defendant No. 1 had transferred the property in suit in favour of the appellant herein, filed the suit. Admittedly the Defendant No. 1 did not receive any notice.

Section 16 (c) of the Specific Relief Act reads thus:

"16. Specific performance of a Contract cannot be enforced in favour of a person-

(c) who fails to aver and prove that he has 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 terms of the performance of which has been prevented or waived by the defendant."

In terms of the aforementioned provision, it is incumbent upon the plaintiff both to aver and prove that he had all along been ready and willing to perform the essential terms of contract which were required to be performed by him.

Forms 47 and 48 of the Appendix A of the Code of Civil Procedure prescribe the manner in which such averments are required to be made by the plaintiff. Indisputably, the plaintiff has not made any averment to that effect. He, as noticed

³ (2003) 10 SCC 390

hereinbefore, merely contended that he called upon defendant No. 2 to bring defendant No. 1 to execute a registered sale deed. Apart from the fact that the date of the purported demand has not been disclosed, admittedly no such demand was made upon defendant No. 1. We may notice, at this juncture, that the plaintiff in his evidence admitted that defendant No. 1 had revoked the power of attorney granted in favour of defendant No. 2. In his deposition, he merely stated that such revocation took place after the agreement for sale was executed. If he was aware of the fact that the power of attorney executed in favour of defendant No. 2 was revoked, the question of any demand by him upon the defendant No. 2 to bring the defendant No. 1 for execution of the agreement for sale would not arise at all. Furthermore, indisputably the said power of attorney was not a registered one. Defendant No. 2, therefore, could not execute a registered deed of sale in his favour. The demand, if any, for execution of the deed of sale in terms of the agreement of sale could have been, thus, made only upon the Defendant No. 1, the owner of the property. The balance consideration of Rs. 10,000/- also could have tendered only to Defendant No. 1. As indicated hereinbefore, the purported notice was issued only on 8.8.1984, that is, much after the expiry of period of three years, within which the agreement of sale was required to be acted upon."

19. It may be stated here that in the authority referred to above, it was not the case where the plaint was sought to be rejected at the threshold. Therefore, the above authority will not be of any help to the petitioners/defendants in support of their contention that the plaint is liable to be rejected at the threshold on that ground.

20. Reliance is also placed upon HARDESH ORES (P) LTD. v. HEDE AND COMPANY⁴ wherein it is held by the Supreme Court in para 25 which reads as under:-

"The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of Clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from

⁴ (2007) 5 SCC 614

reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of Clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in *Liverpool & London S.P. & I Assn.Ltd. V. M.V.Sea Success I* (2004) 9 SCC 512) and *Popat and Kotecha Property v. State Bank of India Staff Assn.* (2005) 7 SCC 510.”

21. The facts of the instant case are that when the entire plaint is read, what could be culled out is that there was an agreement in the year 1994, payments were made till 1997, letters were addressed to the defendants to perform their part of contract, that the defendants were required to fulfil their part of obligations including succeeding in the litigation pending with the Government in respect of the suit schedule lands, that the defendants were required to inform the plaintiffs in writing about their having fulfilled the contractual obligation and in two months thereafter, the plaintiffs are to be ready with the balance consideration, that the defendants have not issued any such letter in writing as required informing the plaintiffs about their succeeding in the litigation with the Government and calling upon the plaintiffs to proceed with the transaction. The plaint averments further show that the defendants were not responding to the letters and instead they were trying to sell away the suit lands to others and this allegation is *prima facie* substantiated by the fact that on 14.09.2006 the defendants have entered into an agreement of sale in respect of the suit schedule lands with Kanumuri Subba Raju and three others. Therefore, the plaintiffs filed the suit for the relief of specific performance or in the

alternative for refund of advance money of Rs.7,06,000/- together with interest thereon and also sought for perpetual injunction restraining the petitioners/defendants from alienating the schedule lands.

22. When the above are the nature of the plaint averments, to say that it do not disclose any cause of action or that the suit is barred by limitation is not correct without there being a detailed enquiry and trial. It cannot be said that the plaintiffs have no cause of action to sue the defendants or that the suit is barred by limitation. These are the questions which need to be adjudicated after full fledged trial but the plaint cannot be rejected at the threshold. The Court below has rightly dismissed the application filed by the petitioners/defendants to reject the same and the said findings do not warrant any interference. There are no merits in the revision and the same is liable to be dismissed.

23. With regard to CRPMP No.3016 of 2016 filed by the third party for impleading him under Order I Rule 10 CPC., so far as the present revision is concerned, he has no *locus standi*. He is the subsequent purchaser having purchased the suit schedule property from the petitioners/defendants in the year 2010 when the suit is filed in the year 2008 and is in respect of the agreement of sale of the year 1994. However, it is open to the petitioner/third party/subsequent purchaser to avail the remedies as are available to him in accordance with law in the main suit in which trial has to commence. Therefore, the petition is dismissed.

24. In the result, the Civil Revision Petition is dismissed confirming the Order of the learned II-Additional Senior Civil Judge, Visakhapatnam, in I.A.No.104 of 2009, dated 19.08.2009. CRPMP No.3016 of 2016 is dismissed with liberty to the third party petition to avail the remedies as

are available to him in accordance with law in the main suit. The trial Court shall proceed with the suit in accordance with law and dispose of the same expeditiously uninfluenced by any of the observations made herein.

Miscellaneous petitions, if any, pending in this revision, shall stand closed.

M.S.K.Jaiswal, J

Date: 19th July, 2017

Dsr/smr

