



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12947 OF 2023

Haji Abdul Rashid Haji
Mohd Hussain

.. Petitioner

Versus

Abdul Muqeet Abdul Gaffar
Chawalwala and others

.. Respondents

Shri Pathan Hamjakhan I., Advocate for the Petitioner.

CORAM : SHAILESH P. BRAHME, J.
DATE : 08TH DECEMBER, 2023.

FINAL ORDER :

. Heard the learned counsel for the petitioner.

2. The petitioner is challenging order dated 16.06.2023 passed below Exhibit 29 in R.C.S. No. 384 of 2020 by the learned 02nd Joint Civil Judge Junior Division, Nanded. The petitioner is the original defendant, whose application U/O VII Rule 11 of the Code of Civil Procedure (for short 'Code') has been rejected by the impugned order.

3. The respondents have filed suit for injunction founded on the agreement to sale executed by the petitioner on 18.05.2011. An earnest amount is stated to have been paid to the petitioner and the respondents are put in possession of the suit land. As

such possession was obstructed by the petitioner, is the cause of action to file the suit. It is relevant to notice that it is stated in the plaint that the total consideration was fixed to Rs. 1,54,00,000/- and earnest amount of Rs. 10,00,000/- was paid by the respondents.

4. As the suit is for injunction, the Court fees of Rs. 200/- is stated to have been affixed. There is reference of agreement in the plaint. The suit is contested by the petitioner by filing written statement as well as counter claim. It is held in the impugned order that the suit is only for the injunction and considering the averments in the plaint no case is made out for passing order U/O VII Rule 11 of the Code.

5. The learned counsel for the petitioner submits that an agreement to sell dated 18.05.2011 is unregistered and suit for injunction cannot be filed. The limitation prescribed in the agreement of seven years that is upto 18.05.2018 has not been adhered to by the parties. The suit is barred by limitation and this aspect is totally overlooked by the learned Judge. The agreement is further objected because it is stated to have been executed on 18.05.2011. However, franking appears to be dated 23.05.2011. The learned counsel submits that the impugned order is perverse and unsustainable.

6. The suit is for perpetual injunction and for that purpose fixed court fees of Rs. 200/- is affixed which is apparent. The total consideration fixed between the parties and the valuation of

the property as such is irrelevant in a suit for perpetual injunction. This is not a suit for specific performance of contract. Therefore, submission of the learned counsel regarding court fees cannot be countenanced.

7. The next submission that the suit is barred by limitation cannot be gone into in an enquiry U/O VII Rule 11 of the Code. It does not fall within the ambit of said provision. For the enquiry the averments of the plaint are relevant. The objection of limitation is mixed question of fact and law, which can be dealt with during the course of trial.

8. Further submission of the learned counsel that agreement is unregistered one and suit for injunction cannot be filed is also devoid of merits. There is no requirement of law that for filing suit for injunction the registration of the document is *sine-qua-non*. The factor of possession is relevant. However, this type of objection also does not fall within the subject of Order VII Rule 11 of the Code.

9. Except law of limitation no provision is pointed out by the learned counsel to hold that suit in question is barred by any statutory provision. The learned Judge has rightly considered the matter. No interference is called for. The writ petition is dismissed.

[SHAILESH P. BRAHME, J.]