

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 535 OF 2022

Mr. Ali Akbar Jafari

Age : 62 Years, Occupation: Business,
Having office at: 203, Akbar's Radiant Plaza,
327, M.G. Road, Pune – 411 001.

.. Applicant

(Orig. Defendant No.1
in SCS No.1296 of 2012)

Versus

1. Shri. Hiramam Tukaram Khandave

Age : 62 Years, Occupation : Agriculturist
& Business, Residing at: Survey No. 105,
Sant Nagar, Lohgaon, Pune – 411 047.

2. Shri. Hemant Bagareddy Matadoo

Age : 64 Years, Occupation : Agriculturist
& Business, Residing at : Bungalow No. 10,
East Street, Pune Cantonment,
Pune – 411 001.

3. Shri. Deepak Tukaram Khandave

Age : 59 Years, Occupation : Agriculturist
& Business, Residing at : Survey No. 105,
Sant Nagar, Lohgaon, Pune – 411 047.

4. Mrs. Rekha Balkrushna Khandve

Age : 61 Years, Occupation : Agriculturist
& Business, Residing at : Survey No.22,
Vadgaon Shinde Road,
Lohgaon, Pune 411 047.

(Orig. Plaintiffs in SCS
No.1450 of 2012)

5. Shri. Raymond Dara Doctor

Age : 69 Years, Occupation : Agriculturist
& Business, Residing at : A-3, Hermes House,
Convent Street, Pune – 411 001.

6. Shri. Mahmood Musavi

Age : Adult, Occupation : Business,
Residing at : A-4, New Nana Peth,
Padamji Park, Pune – 411 002.

.. Respondents

(Orig. Defendant Nos.2
& 3 in SCS No.1296 of 2012)

WITH
CIVIL REVISION APPLICATION NO. 545 OF 2022

1. **Mr. Ali Akbar Jafari**
Age : 62 Years, Occupation: Business,
Having office at: 203, Akbar's Radiant Plaza,
327, M.G. Road, Pune – 411 001.
2. **Ms. Vanessa D'souza**
Age : 55 Years, Occupation : Business,
Having office at: 206, Akbar's Radiant Plaza,
327, M.G. Road, Pune – 411 001.

.. Applicants

(Orig. Defendant No.1 &
2 in SCS No.1450 of 2012)

Versus

1. **Shri. Hiranman Tukaram Khandave**
Age : 62 Years, Occupation : Agriculturist
& Business, Residing at: Survey No. 105,
Sant Nagar, Lohgaon, Pune – 411 047.
2. **Shri. Hemant Bagareddy Matadoo**
Age : 64 Years, Occupation : Agriculturist
& Business, Residing at : Bungalow No. 10,
East Street, Pune Cantonment,
Pune – 411 001.
3. **Shri. Deepak Tukaram Khandave**
Age : 59 Years, Occupation : Agriculturist
& Business, Residing at : Survey No. 105,
Sant Nagar, Lohgaon, Pune – 411 047.
5. **Shri. Mahmood Musavi**
Age : Adult, Occupation : Business,
Residing at : A-4, New Nana Peth,
Padamji Park, Pune – 411 002.

(Orig. Plaintiffs in SCS
No.1450 of 2012)

.. Respondents.

(Orig. Defendant Nos.3 in
SCS No.1450 of 2012)

-
- Mr. S.C. Wakankar, Advocate for Applicants.
 - Mr. Sachin Gite, Advocate for Respondents.
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CORAM : MILIND N. JADHAV, J.
RESERVED ON : FEBRUARY 14, 2023.
PRONOUNCED ON : JUNE 05, 2023.

JUDGMENT:

1. Civil Revision Application No.535 of 2022 takes exception to the order dated 05.05.2022 passed by the 2nd Additional Judge, Small Causes Court, Civil Judge, Senior Division, Pune (for short “**the Trial Court**”) below Exhibit 131 in Special Civil Suit No.1296 of 2012. Exhibit 131 is an Application filed by Defendant No.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “**CPC**”) seeking rejection of plaint. This Application is filed on 13.10.2018. The only ground for filing this Application after 6 years of filing the Suit is that during pendency of the Suit the original Plaintiff assigned its right in the suit property to the present Plaintiffs and consequently the present Plaintiffs (Respondent Nos.1 to 4 herein) stood impleaded in place of Original Plaintiff (Hiranandani Properties Private Limited) pursuant to the order dated 06.11.2015 passed below Exhibit 65 by the learned Trial Court.

2. Civil Revision Application No.545 of 2022 takes exception to the order dated 05.05.2022 passed below Exhibit 160 in Special Civil Suit No.1450 of 2012.

3. Facts are identical in both the Suits. Impugned orders are also almost identical.

4. Mr. Wakankar, learned Advocate appearing for the Applicant (Original Defendant No.1) would contend that the Application below

Order VII Rule 11 of the CPC dated 12.11.2018 is filed by Defendant No.1, *inter alia*, contending that as a consequence of assignment by the Original Plaintiff in favour of the present Plaintiffs, it is seen that the present Plaintiff has stepped into the shoes of the Original Plaintiff and therefore their claims cannot be set to be in excess of the claims of the Original Plaintiffs. He would contend that in that view of the matter, the present Suit is not tenable as it is barred by the provisions of Section 34 of the Specific Relief Act, 1963 and more specifically the proviso thereunder. He would next contend that by virtue of impleadment of the present Plaintiffs into the shoes of the Original Plaintiff, the present Plaintiffs have failed to seek and pray for the consequential relief contemplated by proviso to Section 34 of the Specific Relief Act as the bar expressed thereunder is evident from the contents of the plaint itself. He would submit that the Suit filed by the Plaintiff is not for specific performance of the Development Agreement and the learned Trial Court has failed to consider the effect of notice of termination / revocation of the Development Agreement and Power of Attorney issued by Defendant No.1 to the Original Plaintiff. He would submit that the Original Plaintiff was aware that the Development Agreement and Power of Attorney were infact terminated and revoked by Defendant No.2 who is the original owner of the suit lands. He would submit that in that view of the matter, the Original Plaintiff did not seek the relief of specific performance of the Development

Agreement to ascertain its rights. He would submit that in view of the proviso to Section 34 of the Specific Relief Act once the assignee of the Original Plaintiff chooses not to seek the relief of specific performance of the Development Agreement, the Suit in the present form is not maintainable considering that there is a sale deed executed by the original owner in favour of Defendant No.1 (Applicant herein) on 30.07.2012 in respect of the very same suit land. He would submit that since the Original Plaintiff has failed to seek the relief of specific performance of the Agreement, though the same was available to it, present plaint is liable to be rejected. According to him, as on date, the period of limitation for seeking specific performance has also expired. He would submit that though Respondents have filed a reply to the present Application, they have not stated as to how the Suit without seeking the relief of specific performance and declaration about termination notice is maintainable. According to him the words used in the proviso to Section 34 is 'further relief' and not 'consequential reliefs' and therefore the plaint is clearly hit by the proviso to Section 34 of the Specific Relief Act.

5. In support of his above submissions, Mr. Wakankar has referred to and relied upon the following decision of the Supreme Court:-

- (i) ***Shakti Bhog Food Industries Ltd. Vs. Central Bank of India and Anr.***¹

¹ AIR 2020 SC 2721

6. *PER-CONTRA*, Mr. Gite, learned Advocate appearing for the Respondents at the outset would submit that the Application under Order VII Rule 11 is not maintainable as it was filed by the same Defendant No.2 on an earlier occasion under Exhibit 61 and it was rejected by the learned Trial Court by order dated 15.09.2015. The present Application has been filed thereafter by the same Defendant No.2 i.e. Applicant No.2 on 13.10.2018 under Exhibit 160. Under the said Application, Exhibit 160 the Applicant No.2 has erroneously contended that Suit of the Plaintiffs is allegedly barred by the proviso to Section 34 of Specific Relief Act. It is submitted that infact the contents of the plaint would reveal that the Suit is under Section 31 of the Specific Relief Act (cancellation of instrument) and further consequential relief's in the nature of Permanent Injunction are sought. He would submit that it is settled position of law that while deciding Application under Order VII Rule 11 of the CPC only the contents of the plaint have to be looked into and the defence of the Defendants in the written statement shall not be considered at the time of hearing of the said Application. In the present case, the plaint is completely silent about the alleged notice of termination dated 19.02.2009. It is only in the written statement, the Defendants have contended about the alleged notice of termination dated 19.02.2009. Hence, the same cannot be considered for the purpose of deciding the Application under Order VII Rule 11 of the CPC.

6.1. He would next submit that the Application below Exhibit 160 under Order VII Rule 11 of the CPC was also filed at a belated stage and that too after rejection of the earlier Application below Exhibit 61 and is therefore liable to be rejected. Moreover the present Respondents Application for intervention under Order XXII Rule 10 below Exhibit 65 is allowed by the learned Trial Court on 15.09.2015 and while allowing the said Application. The Trial Court has observed that various contentions and issues raised by both the parties be decided at the time of final trial. Under these circumstances, subsequent repetitive Application for rejection of plaint is therefore not at all maintainable. He would submit that the Suit has been filed in the year 2012, however, the present Application has been filed in the year 2018. In the meantime, the Defendants have also filed their say and written statement. According to him, the Application has been filed only to delay the proceedings before the learned Trial Court. The Plaintiff as well as the Defendant No.2 filed Application for seeking injunction below Exhibit 5 and Exhibit 81 respectively. Hearing on the said Applications for Temporary Injunction at Exhibit 5 and Exhibit 81 has been completed thrice, however, no order has been passed on the said Applications till date. Infact this Court by its order dated 15.11.2019 in Appeal from Order No.592 of 2017 has directed the Trial Court to conclude the hearing on the Exhibit 5 and Exhibit 81 Applications within the period of six months from the date of the

order. However, till the date no order has been passed on the said Applications. Hence, the Application filed by Defendant No.2 is only to protract the matter for one reason or the other.

6.2. In support of his submissions, he has referred to and relied upon the following decisions:-

- (i) *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Ors.*²;
- (ii) *P.V. Guru Raj Reddy and Anr. Vs. P. Neeradha Reddy and Ors.*³;
- (iii) *Popat and Kotecha Property Vs. State Bank of India Staff Association*⁴; and
- (iv) *N. Ravindran Vs. V. Ramachandran*⁵.

7. I have heard Mr. Wakankar, learned Advocate for Applicants and Mr. Gite, learned Advocate for Respondents and with their able assistance perused the pleadings in the present case. Submissions made by Advocates has received due consideration of this Court.

8. At the outset, it needs to be stated that the Application filed by the Revisional Applicant under Order VII Rule 11(d) on 13.10.2018 is the second Application preferred by Defendant No.1. It is seen that Defendant No.2 had on the earlier occasion under Exhibit 61 filed a

² (2021) 9 SCC 99

³ (2015) 8 SCC 331

⁴ (2005) 7 SCC 510

⁵ 2011 (3) CTC 153 (Madras HC)

similar Application which was rejected by the learned Trial Court vide order dated 15.09.2015, copy of which is annexed to the Affidavit-in-Reply. Be that as it may, in the present case to consider whether the Application under Order VII Rule 11(d) of the CPC is maintainable or otherwise, the facts will have to be appreciated. Reading of the Suit plaint gives the entire gist of the facts. For deciding an Application under Order VII Rule 11(d) of the CPC the Court is required to read the plaint as it is. In that view of the matter, on plain reading of the plaint the following facts are observed and are stated herein under:-

- (i) The suit property originally belonged to Defendant No.1 (present Applicant). Defendant No.1 and Defendant No.3 – Mehmood Musavi are partners of M/s. Radiant Builders. Defendant No.1 held negotiations with the Original Plaintiff (Hiranandani Properties Pvt. Ltd.) and claimed to be the owner of the suit property including several other properties in the vicinity which are the subject matter of another Suit between the parties bearing No.1450 of 2012. He proposed to sell the suit property to the Original Plaintiff (Hiranandani Developers Pvt. Ltd.).
- (ii) Record indicates that M/s. Radiant Builders, the partnership firm of which Defendant No.1 was the

partner was heavily indebted and recovery proceedings bearing No.P-166 of 2002 in Original Application No. 770-P/2001 were filed against M/s. Radiant Builders by Indusind Bank Limited. Record further indicates that the Suit property was mortgaged to Indusind Bank Limited by way of a collateral security for the loan facility availed by Defendant No.1 and M/s. Radiant Builders. Recovery proceedings were instituted and pending for recovery of an amount of approximately Rs.2.57 crores alongwith interest thereon.

(iii) Record further indicates that Defendant No.1 approached the Original Plaintiff and requested the Original Plaintiff to pay the outstanding amount / dues of Indusind Bank Limited. The Original Plaintiff was joined as a third party in the recovery proceedings and parties recorded Consent Terms dated 18.10.2004.

(iv) It is pertinent to note that Defendant No.1 admitted having received the entire consideration from M/s. Hiranandani Properties Pvt. Ltd. (Original Plaintiff) in respect of the suit property since all debts were paid in the recovery proceedings by the Original Plaintiff, attachment of the property was removed and the

property was released from attachment / mortgage.

- (v) It is pertinent to note that under the Consent Terms the judgment debtor (Defendant No.1 herein) undertook to execute all documents and also undertook that they shall not create any third party rights in the suit properties. Record further reveals that on 20.01.2005, Defendant No.1 entered into a Development Agreement with the Original Plaintiff i.e. Hiranandani Properties Pvt. Ltd. and also issued an Irrevocable Power of Attorney and possession letter of even date to the Original Plaintiff. It is seen that in view of the above documents having been executed and possession given all rights in respect of the suit property were transferred to the Original Plaintiff. It is vehemently submitted on behalf of Respondent Nos.1 to 4 that various clauses in the registered deed would clearly indicate that it is a complete transfer and conveyance of the suit property as contemplated under the provisions of Transfer of the Property Act. It is further seen that by a registered sale deed dated 20.03.2013 the suit property was transferred and sold by the Original Plaintiff to the present Plaintiffs alongwith possession

thereof.

- (vi) Record further indicates that when the Original Plaintiff learnt for the first time in October 2012 that Defendant No.1 had executed a fresh sale deed dated 18.10.2012 with Defendant No.2, the present Suits namely Special Civil Suit No.1296 of 2012 and Special Civil Suit No.1450 of 2012 were filed in the Trial Court.
- (vii) The suit property which is the subject matter of Special Civil Suit No.1296 of 2012 are five land parcels collectively ad-measuring 6 hectores 21 Ares situated at Village Charholi Budruk within the limits of Pimpri-Chinchwad Municipal Corporation, Taluka Haveli, District Pune whereas the suit property which is the subject matter of Special Civil Suit No.1450 of 2012 is a land parcel ad-measuring 5 hectores 35 Ares situated in the same jurisdiction. In so far as the suit property in Special Civil Suit No.1450 of 2012 is concerned, Defendant No.1 is the original owner of the suit property whereas in so far as the other suit proeprties are concerned, Defendant No.2 namely Raymond Dara Doctor is the original owner of the suit property. Save and except these two above differences rest of the facts

in both the Suit proceedings / CRA are absolutely identical.

- (viii) It is pertinent to note that the Trial Court passed a detailed order dated 15.09.2015 while allowing impleadment Application below Exhibit 65 whereby the present Plaintiffs were substituted in place of the Original Plaintiff (Hiranandani Properties Pvt. Ltd.). Perusal of the said order clearly shows that the learned Trial Court has given cogent reasons which are extremely necessary and relevant for consideration to decide the present Applications. The learned Trial Court has observed that there are multiple Suits pending between the parties in respect of the other properties. It has been noted that possession of the suit property has been delivered by the Original Plaintiff to the present Plaintiffs, correction deeds have been executed in favour of the present plaintiffs and deed of confirmation has been executed on 11.08.2015 in favour of the present Plaintiffs. On perusal of the plaint it is clearly seen that Plaintiffs are seeking declaration in respect of the sale deed dated 18.10.2012 executed between Defendant No.1 and Defendant No.2 as null

and void and that the same shall not be binding on the original Plaintiff as well as the present Plaintiffs. That apart, relief for permanent injunction against the Defendants is also prayed for. Once these averments are clearly made and such reliefs are specifically sought, the suit cannot be said to be barred by Section 34 of the Specific Relief Act. I am inclined to accept the submissions of the answering Respondents that the Suit is filed under Section 31 of the Specific Relief Act and therefore not barred by any law. Perusal of the reliefs / prayers prayed for in the Suit plaint show that Plaintiffs have not sought any declaration of their right, entitlement or title in respect of the suit lands. In the suit plaint, it is categorically pleaded that pursuant to the Consent Terms filed in the Debt Recovery Proceedings and the various undertakings given by the Defendants thereunder, the right title and interest in the suit land was transferred to the Original Plaintiff and in view thereof Defendant No.1 / Defendant No.2 did not have any authority in law to deal with the suit lands and therefore the Suit plaint seeks cancellation of the sale deed dated 18.10.2012 alongwith the prayer for declaration and injunction. The prayer for

declaration as sought for by the Plaintiffs is to adjudge the sale deeds dated 30.07.2012 and 18.10.2012 as null and void and not binding on the Original Plaintiff as well as the present plaintiffs.

9. In the above context, let us now come to both the impugned orders in the two Suits which have been passed on 05.05.2022 by assigning identical reasons. It is clearly seen that Plaintiffs have not approached the Trial Court with a prayer for declaration of their title or right in the suit property. The declaratory relief sought by the Plaintiffs is for declaring the subsequent sale deed as null and void and not binding on the Plaintiff / present Plaintiffs and cancel the same. Thus, it is clear that Plaintiffs / present Plaintiffs are not seeking any relief of specific performance and this is well supported by the averments in the plaint in both the Suits. In that view of the matter, the provisions of Section 34 of the Specific Relief Act much less the proviso thereunder does not apply. The title of Section 34 itself states that it is under the discretion of the Court as to the status or right. No such relief is prayed for in the Suit plaint for seeking declaration of status or right in the suit property.

10. I am fully in agreement with the reasons given by the learned Trial Court in paragraph Nos.9, 11 and 12 of both the impugned orders. For convenience and reference, paragraph Nos.9,

11 and 12 of the order dated 05.05.2022 passed below Exhibit 131 in Civil Revision Application No.535 of 2022 is reproduced below and it reads thus:-

“9. The defendant No.2 has raised contention that the suit is barred by provision of Sec.34 of Specific Relief Act.

Section 34 of Specific Relief Act runs as follows:

SECTION_34. Discretion of Court as to declaration of status or right-----

Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and then court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

*Considering the above provision, it can be said that the person which title has been denied can file suit for declaration of this title. The provision enumerated under Chapter XI of the Specific Relief Act are as under head of “**declaratory decrees**” which are pertaining to legal character or right as to any property. Considering this provision, I perused the plaint, the relief sought by plaintiff are pertaining to declaration of non-binding of sale-deeds and cancellation of sale-deed. The plaintiff is not came with prayer of declaration of his right to property or any legal character”.*

10.

11. *The suit is for declaration and cancellation of sale-deed and for injunction. From the prayers made therein shows that the plaintiff is only seeking the sale-deeds as null and void and non-binding upon the plaintiff. The plaintiff is not seeking the relief of specific performance and also his pleadings are not relating to the Specific Performance of the contract. As the suit is mainly based on prayer of declaration and injunction. Sec.34 of Specific Relief Act does not apply.*

12. *The defendant has also raised objection that the plaintiff is also failed to get permission Under Order II Rule 2 of Code of Civil Procedure. But the provisions of Order II Rule 2 apply to the subsequent suit and not the present suit. It has not been brought on record that the previous suit was filed and hence there is bar of Order II Rule 2 to the present case. Hence, the*

objections raised by the defendant No.1 about the rejection of the plaint in view of Sec.34 of Specific Relief Act does not stand here. Hence, the plaint is not liable for the rejection Under Provisions of Order VII Rule 11 of Code of Civil Procedure. Hence, I record my finding on point No.1 in negative.”

11. In this context, I would like to refer to the decision of the Supreme Court in the case of ***Frost International Limited Vs. Milan Developers and Builders Private Limited and Anr.***⁶ wherein the Supreme Court has laid thrust on reading the averments in the plaint for considering the Application under Order VII Rule 11 of the CPC in reference to deciding the same in respect of Section 34 of the Specific Relief Act. Paragraph Nos.41 to 45 of the decision of the Supreme Court are relevant and reproduced herein under:-

“41. The other contention of Defendant 1 is that from the pleadings and averments in the plaint and the prayers sought therein, it appears that only certain declaratory reliefs have been sought and further, consequential reliefs have been omitted to be prayed. Hence, the suit is barred under the provisions of the SR Act and is liable to be dismissed and the plaint is liable to be rejected under Order VII Rule 11 CPC.

42. In the objections filed to the application under order 7 Rule 11 CPC, it has been averred that the plaint averments would clearly show a cause of action for filing the suit and further that the suit is not barred by any law. Further, the declaratory reliefs have been valued properly and appropriate court fee has been paid. Hence, the application is liable to be rejected.

43. Thus, the main thrust of the application seeking rejection of the plaint is that apart from the fact that the plaint does not disclose a cause of action which has been negated by the Revisional Court and rightly so, the plaintiff has sought only declaratory reliefs and has not sought further or consequential reliefs. In the circumstances, the suit is barred under the provisions of the SR Act.

44. Section 34 of the SR Act reads as under:

“34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”

45. The proviso to Section 34 states that no court can make any declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. The said question will have to be considered at the time of final adjudication of the suit as the question of granting further relief or consequential relief would arise only if the court grants a declaration. If the plaintiff is unsuccessful in seeking the main relief of declaration, then, the question of granting any further relief would not arise at all. Therefore, omission on the part of the plaintiff in praying for further consequential relief, would become relevant only at the time of final adjudication of the suit. Hence, in view of the above, the plaint cannot be rejected at this stage by holding that the plaintiff has only sought declaratory reliefs and no further consequential reliefs.”

12. Thus on a holistic reading of the Suit plaint in present case it is clearly seen that the reliefs prayed for by the Plaintiffs / Original Plaintiff are not seeking any declaratory relief of title in respect of their entitlement to the suit lands. In that view of the matter, the provisions of Section 34 cannot apply to the present case. From reading the various facts stated in the pleadings it is clear that the plaint discloses a real cause of action. The averments made in the plaint if taken and proved to be correct in its entirety on the trial of the suit would undoubtedly result granting the reliefs prayed for by the Plaintiffs.

Therefore, the order dated 05.05.2022 passed by the learned Trial Court rejecting the Application filed below Order VII Rule 11 of the CPC deserves to be upheld.

13. I do not find any reason to interfere with the findings returned by the Trial Court in its order dated 05.05.2022 below Exhibit 131 in Special Civil Suit No.1296 of 2012 and below Exhibit 160 in Special Civil Suit No.1450 of 2012. Both orders are sustained.

14. As a consequence, both Civil Revision Applications are dismissed.

[MILIND N. JADHAV, J.]

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