



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

CIVIL REVISION APPLICATION NO. 36 OF 2025

Akash Kailashchandra Agrawal
and another .. Applicants

Versus

Prabhakar Shankar Kharat and others .. Respondents

Shri Mahesh R. Sonwane, Advocate for the Applicants.
Shri P. C. Bhagure, Advocate for the Respondent Nos. 1 to 4-D.
Ms. Akshara S. Madake, Advocate for the Respondent Nos. 5 to
14.
Shri M. G. Deokate, Advocate for the Respondent Nos. 15 and 17.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR ORDER ON : 03.11.2025
ORDER PRONOUNCED ON : 11.11.2025

FINAL ORDER :-

. Heard both sides finally with consent.

2. Applicants have taken exception to the order dated 06.12.2024 passed below Exhibit 36 by the Trial Court in R.C.S. No. 298 of 2004 rejecting the application U/O VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C. P. C."). Applicants are original defendant Nos. 11 and 12. The respondent Nos. 1 to 4 are the original plaintiffs of R.C.S. No. 298 of 2024 filed for declaration, perpetual injunction and specific performance of contract.

3. Learned counsel Mr. M. R. Sonawane for the applicants submits that the cause of action is illusory and created by cleaver drafting. There is no legal right for filing suit. He would submit that suit is barred by limitation because specific performance is founded on agreement to sale dated 25.10.1977 and sale deed dated 29.05.1978 is challenged after 46 years. He would submit that from 1959 to 1977 no steps were taken for seeking specific performance of contract and totally vexatious suit has been filed. It is submitted that sale deed was executed by the defendant Nos. 1 to 3 in favour of the applicants on 14.08.2024 and the cause of action shown to be of 16.08.2024, is illusory and fictitious. Considering the inordinate delay, the finding that limitation is mixed question of law and facts is perverse.

4. It is further submitted that the declaration for possessory title is misconceived. The suit is barred by principles of res-judicata in view of decree passed in R.C.S. No. 55 of 1978, R.C.S. No. 56 of 1978 and R.C.S. No. 57 of 1978. It is further submitted that no court fees has been paid as per Sec. 6(iv)(ha) and Sec. 6(iv)(d) of the Maharashtra Court Fees Act.

5. Reliance is placed on various judgments of the Supreme Court and this Court.

6. Learned counsels Ms. Akshara Madake appearing for respondent Nos. 5 to 14 and Mr. M. G. Deokate learned counsel

appearing for the respondent Nos. 16 and 17 adopt the submissions of the applicants.

7. Learned counsel Mr. P. C. Bhagure appearing for the respondent Nos. 1 to 4-D opposes the submissions and supports the impugned order. He would submit that no provision has been pointed out by the applicants to hold that suit is barred by law. It is submitted that the respondent Nos. 1 to 4 are in possession since 25.10.1977 continuously. Their possession and claim was not challenged by the vendor of the applicants. The suit is filed to protect the possession. It is submitted that a full fledged trial is required and plaint cannot be rejected at the threshold.

8. Having considered rival submissions of the parties the controversy remains to the extent of land Sy. No. 92, which was originally belonging to Santuba Khalse. He had handed over possession to Ganpat Gajare vide agreement to sale dated 22.06.1959. Thereafter Babu S/o Ganpat Gajare executed agreement to sale on 29.10.1977 in favour of the respondent Nos. 1 to 4.

9. The respondent Nos. 1 to 3 had filed R.C.S. No. 55 of 1978, R.C.S. No. 56 of 1978 and R.C.S. No. 57 of 1978 for possession. Those were decreed and decree was upheld upto High Court. R.C.S. No. 298 of 2024 is filed by the respondent Nos. 1 to 4 for declaration that sale deed dated 29.05.1978 as well as 16.08.2024

are bad in law and for declaration of possessory title in their favour. They have also solicited injunction and alternatively decree for specific performance of contract on the basis of agreement dated 25.10.1977.

10. It is contended by the applicants that the daughters of original owner Santuba sold suit lands to the respondent Nos. 1 to 3, who are the vendors. Thereafter, applicants purchased the suit lands vide sale deed dated 16.08.2024. It is contended that no title was transferred either to the vendor of the plaintiffs or plaintiffs. It is their case that entire suit is vexatious, without any cause of action and hopelessly barred by limitation.

11. I have gone through the plaint carefully. Meaningful reading of the plaint especially para Nos. 6, 7 and 16 indicate that a cause of action has been stated. The sale deed was executed on 14.08.2024 and it was registered on 16.08.2024. Even if it is accepted that the incident of 16.08.2024 is fictitious, it does not become illusory due to cleaver drafting. The cause of action is bundle of facts. The incident of threats of 16.08.2024 would not be the sole decisive factor.

12. Learned counsel for the applicants harped on want of legal right to institute a suit. The title does not get transferred by way of agreement of sale dated 22.06.1959 and 25.10.1977. The defective title cannot be a ground for rejection of plaint. The sale deeds executed by daughters of Santuba on 29.05.1978 transfers

the title to the respondent Nos. 1 to 3. Thereafter, on 16.08.2024 the title gets transferred to the applicants. At this juncture it is difficult to come to the conclusion that there exists no legal right and the cause of action is illusory. The Trial Court is right in observing that a full fledged trial is required to decide the entitlements of the parties.

13. The respondent Nos. 1 to 4 are said to have given possession vide agreement to sale dated 25.10.1977. They did not prefer any suit for specific performance of contract soon thereafter. In suits for possession filed by them bearing R.C.S. No. 55 of 1978, R.C.S. No. 56 of 1978 and R.C.S. No. 57 of 1978, agreement of 25.10.1977 has been relied on. The decree is confirmed upto High Court. I am of the considered view that at this juncture no conclusive finding can be given regarding rival claims of the parties. The relief of specific performance is regulated by Article 54 of the Limitation Act and the date of agreement to sale is not the sole decisive factor. The alternative relief cannot be said to be barred by time at this juncture.

14. The sale deeds executed on 29.05.1978 in favour of the respondent Nos. 1 to 3 are challenged after 46 years by present suit. Apparently the submission of the learned counsel Mr. Sonawane is attractive to hold that plaint is barred by law. However, I am guided by the law laid down by the Supreme Court in the matter of Central Bank of India Vs. Prabha Jain reported in *2025 INSC 95* stipulating that partial rejection of plaint is not

permissible. Similar principle can be made applicable to the alternate relief of specific performance of contract.

15. The limitation is mixed question of law and facts. It depends on facts and circumstances of each case. I am of the considered view that a meaningful reading of the plaint do not show that it is either barred by limitation or any other provision of law. Learned Judge has rightly held that unless full fledged trial is conducted the suit cannot be dismissed.

16. R.C.S. No. 55 of 1978, R.C.S. No. 56 of 1978 and R.C.S. No. 57 of 1978 were filed for possession by the respondent Nos. 1 to 3. Those were decreed and decree was confirmed upto High Court. In the present suit the respondent Nos. 1 to 4 are seeking declarations, injunction and specific performance of contract. Their claim needs to be tested on the principle of *res-judicata* in the full fledged trial. It is not possible to accept the submission that plaint is liable to be rejected on the said fact.

17. My attention is adverted to the reliefs claimed in the plaint and the clause of Court Fees. The respondent Nos. 1 to 4 – plaintiffs are challenging sale deeds dated 29.05.1978 and 16.08.2024. Though the objection regarding court fees was taken by the applicants, it was dealt with very cursorily by the learned Judge. The point needs to be decided after full fledged trial. It is kept open as to whether Sec. 6(iv)(ha) or Sec. 6(iv)(d) of the Maharashtra Court Fees Act is attracted or not. Even if it is

found that requisite court fees has not been paid by the plaintiffs, the plaint cannot be rejected *ipso facto*.

18. Learned counsel for the applicants has relied on the judgments which are referred in paragraph No. 22 of the impugned order. The principles laid down therein cannot be disputed. The applicants are unable to make out a case that plaint is liable to be rejected under Order VII Rule 11 of C.P.C. Trial Court has rightly dealt with those judgments. I am unable to be persuaded by learned counsel to take any different view.

19. Further reliance is placed on the latest judgment dated 07.01.2025 of the Apex Court in Diary No. 38616 of 2018 in the of **Indian Overseas Bank Vs. M. A. S. Subramanian and others** to buttress a submission that agreement to sell does not confer title. The proposition is a trite law. But this is not useful to claim rejection of the plaint. Further reliance is placed on the judgment of the Coordinate Bench in the matter of **Pushpraj Surajprasad Modh Vs. Sayyad Altaf Sayyad Wazir and others** reported in *2000 (4) Mh.L.J. 492* and in the matter of **Sardar Gurpreetsingh Gurnamsingh Pander Vs. Sangeeta Bhagchand Bhavle and others** reported in *2022(2) Mh.L.J. 130*. I have already observed that the issue of deficit court fees is kept open and it is to be adjudicated during the course of trial. Hence, these judgments are also not helpful to the applicants.

20. I do not find that there is any perversity or patent illegality

in the impugned order.

21. Civil Revision Application is dismissed.

[SHAILESH P. BRAHME J.]

bsb/Nov. 25