

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 434 OF 2024

Vaibhav Navnath Lohokare

Age- 33 years, Occ-Agri.

R/o- Near Samaj Mandir,

Thobade Vasti, Degaon Road,

Solapur, District - Solapur

...Applicant

Versus

1. Uttam Digambar Navghare

Age-55 years, Occ- Agri,

R/o – 218/83 Adarsh Nagar, Near MIDC,

Solapur, District -Solapur.

2. Arvind Sopan Zol,

Age-60 years, Occ- Agri,

R/o – Washimbe, Taluka-Karmala,

District -Solapur.

3. Subhash Abasaheb Salunkhe,

Age-74 years, Occ- Agri,

R/o – Ketur, Taluka-Karmala,

District -Solapur.

...Respondents

Mr. R.M. Haridas a/w Mr.Sumit Khaire i/b Mr.Prasad Kulkarni for the Applicant.

Mr. I.M. Khairdi i/b Mr. M.S. Mulla for Respondent No.1.

CORAM : M.M. SATHAYE, J.

DATE : 20th MARCH 2025

JUDGMENT

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the parties. Applicant is Defendant No. 3 and Respondent No.1 is the only contesting Respondent being sole Plaintiff in the suit.

SNEHA
NITIN
CHAVAN

Digitally signed by
SNEHA NITIN
CHAVAN
Date: 2025.03.21
16:17:14 +0530

2. This Revision Application is filed challenging the order dated 06.05.2024 passed by the Civil Judge, Junior Division, Mohol, District - Solapur below Exh. 35 in Regular Civil Suit No. 318 of 2022. By the said impugned order, the application filed by the present Petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC' for short) is rejected. The said application was made on 2 grounds, viz. that the plaint does not disclose any cause of action and it is barred by law of limitation.

3. Perusal of the plaint shows that the suit is filed for declaration that the Sale Deed dated 21.05.2013 executed by Defendant No. 1 in favour of Defendant No.2 and Sale Deed executed by Defendant No. 2 in favour of Defendant No.3 dated 29.09.2022 are hollow, without possession, without consideration, null and void and not binding on Respondent No.1. The prayer for perpetual injunction is also sought seeking protection of the alleged possession of the Plaintiff.

4. Mr. Haridas, learned counsel for the Applicant invited the Court's attention to the averments in the plaint contending as under. That according to the Plaintiff himself, the transaction between the Plaintiff and Defendant No.1 about suit property is stated to have started in May, 2000 whereunder Rs.4,00,000/- are stated to have been paid in cash and it is averred that in July 2001 a Power of Attorney was executed. That an Agreement to Sale dated 10.08.2007 is also stated to have been executed by Defendant No.1 in favour of the Plaintiff, which was sought to be breached. That it is the Plaintiff's own case that a suit being Special Civil Suit No. 278 of 2008 for specific performance and permanent injunction was filed and which was dismissed for default on 07.12.2010 as the Plaintiff remained absent. That according to the

Plaintiff, the property was sold by Defendant No.1 in favour of Defendant No.2 on 21.05.2013 and thereafter, the property was sold to Defendant No.3 on 29.09.2022. He submitted that with such averments and the dates mentioned by the Plaintiff himself, the suit filed in November 2022 is *ex-facie* beyond the period of limitation for challenge to 2013 sale deed and consequently for 2022 sale deed also. That the Plaintiff having failed in suit for specific performance, cannot claim any other right in the property and certainly not consequential relief against Defendant Nos. 2 and 3 being subsequent purchasers. That the prayers of declaration about subsequent sale deeds, are without cause at the instance of the Plaintiff. That a party claiming to be in possession on the basis of agreement to sell does not get any right, title and interest in the property, especially having failed in specific performance suit and therefore, on the basis of such agreement to sell, the Plaintiff cannot said to have any cause against Defendant No.3. He has relied upon the Judgments of **Dahiben v/s. Arvindbhai Kalyanji Bhanusali (Gajra) dead through Lrs and Others (2020) 7 SCC 366** and the Judgment of **Kaushaliya v/s Jodha Ram and Others (2019) 20 SCC 277** in support of his case.

5. On the other hand, Mr. Khairdi, learned Counsel for the Respondent No.1 supported the impugned order. He submitted that limitation being a mixed question of fact and law cannot be considered at the stage of Order VII Rule 11 of the CPC in the teeth of averments that Plaintiff was not aware of the 2013 sale deed. He further submitted that Defendant No.3 being stranger to the transaction between the Plaintiff and Defendant No. 1, can not seek rejection of plaint especially when Defendant No.1 is absent and has not filed any written statement so far. It is also submitted that the cause of action disclosed in the plaint

paragraph 7 is in October 2022 that the Plaintiff was obstructed during cultivation in the suit property by Defendant No.3 and some other persons. He has relied upon a short order of the Hon'ble Supreme Court in **Gurdev Singh v/s. Harvinder Singh - 2022 LiveLaw (SC) 963**.

6. I have considered the rival submissions and perused the record.

7. At the outset, it is noted that there is no dispute about the proposition made by the learned Counsel for the Respondent that 'plaintiff's entitlement or likelihood of success to any relief cannot be a ground to reject the plaint at the threshold' as observed by the Hon'ble Supreme Court in **Gurdev Singh (supra)**.

8. Perusal of the impugned order shows that the aspect as to whether the Plaintiff can have any cause of action against Defendant No.3, in the teeth of his averment that his suit for specific performance against Defendant No.1 was dismissed for default way back in the year 2010, has not been considered by the learned Trial Judge. It is also not clear from the impugned order whether such argument was made before the Trial Court. A proposed purchaser under Agreement to Sell is entitled to only specific performance of the agreement as clearly provided in Section 54 of the Transfer of Property Act that a contract for sale itself does not create any interest in or charge on the property involved. This is a material consideration in the facts of this case since Plaintiff's suit for specific performance has been dismissed and he is asking for prayers which are in the nature of consequential reliefs. Therefore it must be seen what cause a Plaintiff such as present Respondent No.1 can maintain against subsequent purchasers.

9. In the Judgment of the Hon'ble Supreme Court in **Dahiben (supra)**, it is observed that the documents filed along with the plaint are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). Rule 11(a) is about the plaint disclosing cause of action. In the said Judgment, Hon'ble Supreme Court has also clarified that the underlying object of the said provision is that the Court would not permit the Plaintiff to unnecessary protract the proceedings and it would be necessary to put an end to the sham litigation, so that judicial time is not wasted. It is also observed that the whole purpose of conferment of powers under the said provisions is to ensure that the litigation which is meaningless and bound to prove abortive, should not be permitted to waste judicial time of the Court. Useful reference can be made to paragraph 23.3, 23.4 and 23.8 of the said Judgment of the Hon'ble Supreme Court. About cause of action, it is observed by Hon'ble Supreme Court in para 24.4 that if by clever drafting of the plaint it has created the illusion of cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest. Same view is re-iterated by the Hon'be Supreme Court in the case of **C.S.Ramaswami Vs. V. K. Senthil and Ors (2022 SCC OnLine SC 1330)** in paragraph 7.8, about limitation too, that plaintiffs can not be permitted to bring the suits within the period of limitation by clever drafting.

10. Viewed in the light of what is narrated above, the impugned order does not indicate that the documents filed along with application are considered. If the copies of sale deeds produced with revision application are produced by the Plaintiff alongwith the suit, they also must be considered, especially because they are apparently registered sale deeds having material bearing on the issue of knowledge to

Plaintiff. The application is also not considered from the perspective of what cause a Plaintiff can maintain on the strength of mere agreement to sell *vis-a-vis* subsequent purchaser like the Petitioner/Defendant No.3.

11. In the aforesaid facts and circumstances and for the reasons recorded above, in my view, the impugned order requires interference and re-consideration of the application below Exh.35 is necessary.

12. Hence following Order :

- A) Revision Application is allowed.
- B) The impugned order is quashed and set aside. The application below Exh. 35 is restored to file of the Trial Court, to be decided in accordance with law, after considering the documents produced along with plaint.
- C) Rival contentions on the scope of Order VII, Rule 11 are kept open.
- D) Rule is made absolute in above terms with no order as to costs.
- E) All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)