

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 516 OF 2018**

Shri Baburao Pandurang Paymal ... Applicants
and Others

Vs.

Shri Rajaram Ganpati Ghatge ... Respondent

Mr. Manoj Patil for the Applicant.

Mr. Drupad Patil for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 18th JUNE 2025

ORDER :

1. This civil revision application is filed by the defendants to challenge the dismissal of the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") for rejection of the plaint. The suit is filed for specific performance of the agreement dated 13th January 2011.

2. Learned counsel for the applicants submits that the time was the essence of the contract between the parties, and the suit agreement provided that the sale deed had to be executed within three months. He submits that the suit filed on 12th October 2017 is therefore barred by limitation. He

submits that the cause of action pleaded is not a complete and meaningful cause of action, and the pleadings are only cleverly drafted to bring the suit within the limitation. Therefore, he submits that the plaint is liable to be rejected on the grounds of limitation and no cause of action.

3. To support his submissions, learned counsel for the applicants relied upon the decision of this court in the case of ***Naginchand s/o. Devichand Buccha vs. Vinod s/o. Tarachand Gupta and Others***¹. He submits that in the said case, this court rejected the plaint on the point of limitation on the ground that the suit was barred by limitation in view of Article 54 of the Limitation Act, 1963.

4. Learned counsel for the respondent-plaintiff submits that in the terms and conditions of the suit agreement, the period for execution of the sale deed was dependent on taking steps to enter the names of heirs and legal representatives of the original owner in the revenue record as specifically provided in the agreement. He submits that the agreement did not provide any date for executing the sale deed. Hence, the decision relied upon by the learned counsel for the applicants would not be of any assistance in

¹ 2018 (1) Mh. L. J. 433

the different facts of this case. He submits that the execution of the sale deed in the present case would depend upon the performance of the other obligations on the part of the vendors.

5. Learned counsel for the plaintiff further relies upon specific pleadings in the plaint, which explain the cause of action and the period of limitation based on the terms and conditions of the agreement and the subsequent events. He therefore submits that the pleadings in the plaint warrant a trial as the plaintiff would be entitled to lead evidence in support of them.

6. I have perused the papers of the civil revision application. Learned counsel for the plaintiff is right in pointing out the terms and conditions of the contract. The contract does not provide for a particular calendar date for executing the sale deed; the execution of the sale deed depends upon the performance of the other terms in the contract.

7. The pleadings in the plaint comprise a complete cause of action by narrating the dates and events with reference to the terms and conditions of the contract. The cause of action

is also specifically pleaded with material particulars. Thus, the pleadings in the plaint comprise a complete cause of action that would warrant a trial.

8. In the decision of this court in the case of ***Naginchand s/o. Devichand Buccha***, the agreement provided for the execution of the sale deed on a particular calendar date. Hence, in view of the terms and conditions of the contract in that case, this court held that the suit was barred by limitation and thus rejected the plaint. In view of the different facts of the present case, the decision relied upon by the learned counsel for the applicants would not be of any assistance to the arguments raised on behalf of the applicants.

9. The impugned order records reasons for rejection of the application by examining the pleadings and relevant legal principles for deciding the application under Order VII Rule 11 of the CPC. The reason recorded in the impugned order that time is not the essence of the contract in the present case is with reference to the contents of the plaint and the terms and conditions of the suit agreement relied upon by the plaintiff.

10. I do not find any illegality or perversity in the reasons

recorded in the impugned order. The Civil Revision Application is devoid of any merits. Hence, the Civil Revision Application is dismissed.

11. In view of the dismissal of the Civil Revision Application, pending applications, if any, are disposed of as infructuous.

12. Needless to record that observations in this order and the impugned order are at the stage of deciding the application under Order VII Rule 11 of the CPC. If any issue of limitation is framed, the rival contentions of the parties on the merits in the suit are kept open.

[GAURI GODSE, J.]