

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1451 OF 2025**

Deepak Aadgonda Patil

..Petitioner

Versus

Pramod Appaso Patil & Ors

...Respondents

Mr. Dilip Shinde, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 4th MARCH 2025

P.C.:

- 1.** Heard learned Counsel for the petitioner.
- 2.** The challenge in this Petition is to an order dated 21st October 2024 passed by the learned Civil Judge, Senior Division, Sangli, whereby an application preferred by the Petitioner-plaintiff to amend the Plaint so as to implead the subsequent transferees of defendant nos. 2 and 3 as party-defendants to the Suit and also seek the prayer for specific performance of the contract and, in the alternative, the possession of the suit property, came to be rejected.
- 3.** The petitioner had instituted a suit for declaration and injunction asserting that on 26th May 2003 defendant no.1 had entered into Agreement to Sale the suit plot and received consideration of Rs. 5,50,000/- from the plaintiff. Under the said Agreement, defendant no.1

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had delivered possession of the suit plot in part performance of the contract. Defendant No.1 committed default in executing the Sale Deed.

4. In the month of February 2005, the plaintiff realized that defendant no.1 had executed a Sale Deed of an area admeasuring 280.4 square meters out of the suit plot in favour of defendant nos. 2 and 3 on 31st August 2004. The said Sale Deed was illegal and void and did not bind the rights of the plaintiff. On the strength of the said Sale Deed, defendant nos. 2 and 3 were attempting to cause obstruction to the possession of the plaintiff. Hence the suit for injunction and declaration.

5. The plaintiff filed the instant application for amendment in the Plaint asserting that during the pendency of the Suit, defendant nos. 2 and 3 have, in turn, executed a Sale Deed of the said area admeasuring 208.4 sq meters out of the said plot in favour of the defendant nos. 1(d) and 1(e). It was, therefore, necessary to seek specific performance of the contract executed by defendant no.1 in favour of the plaintiff on 26th May 2003.

6. By the impugned order, learned Civil Judge, was persuaded to reject the application. Primarily on the ground that the relief claimed in the suit was barred by law of limitation.

7. Mr. Shinde, learned Counsel for the petitioner, submitted that a fresh cause of action arose when defendant nos. 2 and 3 executed Sale Deed in favour of defendant nos. 1(d) and 1(e) on 22nd July 2022. The

application for amendment was filed at a pre-trial stage. Therefore, the learned Civil Judge could not have rejected the application.

8. I am unable to accede to the submissions of the learned Counsel for the petitioner when the suit was instituted in the year 2006, the plaintiff had clear knowledge of refusal of the performance of the contract in as much as defendant no.1 had executed the Sale Deed in respect of a portion of the suit plot in favour of defendant nos. 2 and 3, on 31st August 2004.

9. Under Article 54 of the Limitation Act, the period of limitation for a suit for specific performance commenced with the date of notice of refusal. Therefore, it was incumbent upon the plaintiff to seek specific performance of the contract within three years from the date of the knowledge of refusal of the performance by defendant no.1.

10. Mr. Shinde's attempt to salvage the position by submitting that since defendant no. 1 had already sold the suit property, the plaintiff could not have instituted the suit for specific performance against defendant no.1, does not merit acceptance. Under Section 19 of the Specific Relief Act, Specific performance of a contract can be sought against a person claiming under a party to the contract by a title arising subsequently to the contract.

11. It is true that all amendments which are necessary for the determination of the real question in controversy are required to be

allowed. However, where the relief sought to be incorporated by way of amendment is explicitly barred by law of limitation, such an amendment cannot be allowed.

12. The learned Civil Judge has taken a correct view of the matter. There is no infirmity in the impugned order which warrants interference by this Court in exercise of supervisory jurisdiction.

13. The Petition thus dismissed.

[N. J. JAMADAR, J.]