

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

CIVIL REVISION APPLICATION NO. 559 OF 2025

Kiran Motiram Gaikwad ..Applicant

Versus

Bhumi Associates Through Its Proprietor Prakash ...Respondents
Nanji Patel & Ors

Mr. Sachin R Pawar, for the Applicant.

CORAM: N. J. JAMADAR, J.

DATE : 3rd DECEMBER 2025

ORAL ORDER:

1. Heard the learned Counsel for the Applicant.
2. The challenge in this Application is to an order dated 18th September 2024 passed by the learned Civil Judge, Junior Division, Bhiwandi, whereby the learned Civil Judge rejected an Application for rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code").
3. The Respondent No.1 has instituted a Suit for injunction on the strength of a purported verbal Agreement for Sale of the suit properties. The Respondent No.1 had made an assertion in the Plaint that the Respondent reserves the right to institute a Suit for specific performance of the contract, in the event the Defendants refused to perform the contract. It was asserted that the Defendants were seeking prospective

buyers for the sale of their respective portions of the subject premises, and, therefore, suit for injunction simplicitor was filed to restrain the Defendants from creating third party interest in the suit property and from forcibly dispossessing the Defendants.

4. The Defendant No.3 had filed an Application for rejection of the plaint on the ground that the Suit for injunction simplicitor without seeking the relief of specific performance was not maintainable and it was barred under Order II Rule 2 of the Code. It was further contended that the Plaintiff had neither given the correct description of the suit property nor annexed the map as warranted under the provisions of Order VII Rule 3 of the Code.

5. The learned Civil Judge was not persuaded to accede to any of the aforesaid contentions.

6. The learned Counsel for the Applicant submitted that the Respondent No.1 has resorted to clever drafting to institute a Suit for specific performance on the basis of alleged verbal Agreement. It was urged that, in a situation of the present nature, the bar under Order II Rule 2 of the Code may be attracted.

7. The learned Civil Judge has correctly appraised the nature of the Suit and the interdict contained under Order II Rule 2 of the Code.

8. The provisions of Order II Rule 2 of the Code indicate that, if a plaintiff is entitled to several reliefs against the defendant in respect of

the same cause of action, he cannot split up the claim so as to omit one part of the claim and sue for the other. If the cause of action is the same, the plaintiff has to place all his claims before the court in one suit as Order II Rule 2 is based on the cardinal principle that the defendant should not be vexed twice for the same cause of action. If the identity of causes of action is established, the bar under Order II Rule 2 will come into play and it will preclude the plaintiff from claiming the relief in the subsequent suit, which was omitted to be claimed in the earlier suit, without the leave of the Court. (**Deva Ram and Anr. V/s. Ishwar Chand and Anr.**¹

9. However, the omission to claim a relief in the first suit itself, cannot be a ground to reject the plaint. In a situation of the present nature, Order II Rule 2 has no application at all. In the event, the plaintiff institutes a subsequent suit for specific performance of the contract, the aspect of applicability of Order II Rule 2 may arise.

10. In the aforesaid view of the matter, the impugned order does not suffer from any jurisdictional error or material irregularity which would warrant the exercise of revisional jurisdiction.

11. The Application thus stands dismissed.

12. All contentions of the Petitioner are, however, kept open for consideration at the trial.

[N. J. JAMADAR, J.]

¹ (1995) 6 SCC 733