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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 604 OF 2024

Santosh Parshuram Avhad and anrApplicants

Vs.

Dhanajiulhasrao Deshmukh and orsRespondents

Mr. Jitendralal Gorane a/w Ms. Vidya Gorane, Mr. Abhijit Devkhile
for the applicants

CORAM : GAURI GODSE, J.

DATE : 30th JUNE 2025

ORDER:

Heard learned counsel for the applicants. This Civil Revision Application is filed by the original defendant nos. 5 and 6 to challenge the order dismissing the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC'). Defendant nos. 5 and 6 are purchasers from the original owners, defendant nos. 1 to 4.

Learned counsel for the applicants submits that the suit filed by respondent no. 1 on 6th May 2024, for specific performance of

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an agreement dated 16th October 2002 is barred by limitation. He, further submits that the plaint is bereft of any pleadings regarding readiness and willingness to perform the contract as contemplated under clause (c) of Section 16 of the Specific Relief Act, 1963. He submits that the plaint does not contain material particulars for seeking specific performance of the contract. Learned counsel for the applicants relies upon Form No. 47 and and Form No. 48 of Appendix-A of the Code of Civil Procedure, 1908. He submits that the pleadings for seeking specific performance as contemplated in the said forms is absent in the present case. He submits that in the absence of material particulars, there is no meaningful cause of action for seeking specific performance. Hence, the application is liable to be rejected for want of cause of action and the prayers being barred by limitation.

To support his submissions, learned counsel for the applicants relies upon the decision of the Hon'ble Apex Court in the case of *The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. M/s. Ponnamman Educational Trust represented by its*

Chairperson/Managing Trustee¹. He submits that in the case before the Hon'ble Apex Court, the rejection of the plaint by the High Court was confirmed on the ground of shortfall in the claim regarding averments as required in Form No. 47 and 48 of Appendix-A of CPC. He submits that in view of the similar facts in the present case, legal principles settled by the Hon'ble Apex Court squarely apply and support the arguments raised on behalf of the applicants. He, therefore, submits that the plaint in the present case is also liable to be rejected.

Learned counsel for the applicants submitted that for want of any specific pleadings and any prima facie case, the Trial Court had rightly dismissed the application seeking interim relief of temporary injunction during the pendency of the suit. He submits that the reasons recorded for rejecting the application for temporary injunction would also support the applicants' contentions that the plaint is liable to be rejected at the threshold.

I have carefully perused the pleadings in the plaint and the reasons recorded by the Trial Court to reject the application under Order VII Rule 11 of CPC. In the impugned order, the learned

¹ Civil Appeal No. 4841 of 2012 dated 03/07/2012

Judge has referred to the date of the agreement and the relevant paragraphs pleaded by the plaintiff to seek specific performance. The prayers for specific performance are based on a notice dated 27th January 2020 issued by the plaintiff calling upon the defendants to obtain necessary permission from the competent authority. In paragraph 2 of the plaint, the plaintiff pleaded that pursuant to a registered agreement dated 16th October 2002, the defendants agreed to convey the suit land in favour of the plaintiff for an amount of Rs. 1,02,000/-. The plaintiff contended to have paid an amount of Rs. 51,000/- and the balance consideration was to be paid at the time of execution of the sale deed after the defendants receive the permission from the competent authority regarding change in the tenure of the suit land. The plaintiff pleaded that as per the terms and conditions of the agreement, there was no time period agreed between the parties for obtaining necessary permission. According to the plaintiff's pleadings, the entire responsibility regarding permission for change in the tenure of the land was upon the defendants. In paragraph 3, the plaintiff pleaded that time and again the defendants were called upon to perform their part of the contract and ultimately, the balance

consideration amount was also paid in the presence of two witnesses.

The plaintiff further pleaded that he was put in possession on payment of the balance consideration amount and he had incurred expenses on the development of the property. Since the defendants refused to comply their part of the contract, the plaintiff ultimately issued notice dated 27th January 2020 and thereafter, filed the suit as the notice was not complied by the defendants. Based on these pleadings, a prayer for specific performance of the contract is made. Defendant nos. 1 to 4 had entered into a sale deed dated 29th January 2024 in favour of defendant nos. 5 to 6. Hence, by way of amendment, the plaintiff also prayed for a declaration that the sale deed executed during the subsistence of the suit agreement would be illegal and not binding upon the plaintiff. Hence, with these pleadings, the plaintiff also sought a prayer for declaration challenging the sale deed in favour of defendant nos. 5 and 6.

While rejecting the application under Order VII Rule 11, the learned Judge has referred to the relevant pleadings. The learned

Judge has also considered the relevant decisions of the Hon'ble Apex Court relied upon by the parties. The learned Judge held that based on the pleadings for seeking a prayer for specific performance, the plaintiff has relied upon a notice issued to defendant nos. 1 to 4 and in view of the subsequent sale deed, by way of amendment, prayer for cancellation of documents is also made. Thus, considering the pleadings, the learned Judge refused to reject the plaint at the threshold.

In view of the material particulars pleaded in the plaint as recorded in the preceding paragraphs, it cannot be said that the pleadings would not warrant a trial. The particulars regarding payment of earnest amount are pleaded in the plaint. The plaintiff's theory regarding handing over possession on payment of balance consideration amount is on the ground that the same was in the presence of two witnesses. Form No. 47 and 48 relied upon by the learned counsel for the applicants requires the plaintiff to plead readiness and willingness to perform the contract. Clauses in the stipulated Form No. 48 requires the plaintiff to plead the dates and particulars of the amounts paid or demanded.

In the facts of the present case, the pleadings regarding payment of earnest amount at the time of execution of the registered sale deed are pleaded in paragraph 2. The theory of subsequent payment of balance consideration amount and possession is also pleaded in the subsequent paragraphs. Considering the material particulars pleaded in the plaint, in the present case, it would warrant a trial as the plaintiff would be entitled to lead evidence to support the pleadings in the plaint. I do not find any substance in the arguments raised on behalf of the applicants that particulars of the dates and events are not pleaded as contemplated under Form No. 48. The dates required to be pleaded as contemplated under clause 2 and 3 of Form No. 48 are with reference to the amounts claimed to have been paid by the plaintiff and the dates regarding demand made by the plaintiff for transfer of the property and refusal, if any, by the defendants.

In the present case, the plaintiff has pleaded payment of initial amount, dates and particulars of the execution of the agreement and the particulars of the dates calling upon the defendants to perform their part of the contract. The pleadings

regarding readiness and willingness as pleaded in paragraph 3 cannot be discarded at the threshold as the plaintiff would be entitled to lead evidence to support his pleadings. Thus, in view of the different facts of the present case, the decision of the Hon'ble Apex Court relied upon by the learned counsel for the applicants would not be of any assistance to the arguments made for rejection of the plaint at the threshold.

So far as the cause of action and limitation is concerned, in view of the pleadings as discussed in the preceding paragraphs, the issue of limitation would be a mixed question of law and facts for which the plaintiff would be entitled to lead evidence. Hence, the plaint cannot be rejected at the threshold in the present case.

Civil Revision Application is devoid of any merits. For the reasons recorded above, Civil Revision Application is dismissed.

[GAURI GODSE, J.]