



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO.111 OF 2025

APPLICANT

(Ori. Defendant No.1)

:- Vinayak S/o Ganesh Gogte,
Age-71, Occupation-Retired, R/o. Plot
No.35, Flat no.401, 4th Floor, Park View
19, Madhav Nagar, Nagpur-10

..VERSUS..

RESPONDENTS

(Ori. Plaintiff)

:- 1 Shri Makarand S/o Anand Pande, Age-
65 years, Occupation-Service, R/o.
“Samadhan”, 110, Shankar Nagar,
Nagpur - 440010

(Ori. Defendant No.2)

2 Shri Dilip S/o Suresh Pagay, Age-Adult,
Occupation-Business, R/o. Plot
No.123, Shankar Nagar, Nagpur -
440010

(Ori. Defendant No.3)

3 Smt. Kanchan W/o Dilip Pagay, Age-
Adult, Occupation-Household, R/o.
Plot No.123, Shankar Nagar, Nagpur-
440010

WITH

CIVIL REVISION APPLICATION NO.74 OF 2025

APPLICANT

(Ori. Defendant No.2)

:- 1. Shri Dilip Suresh Pagay, Age – Adult,
Occ-Business, R/o. Plot No.123,
Shankar Nagar, Nagpur - 440010

(Ori. Defendant No.3)

2. Smt. Kanchan Dilip Pagay, Age – Adult,
Occu – Household, R/o. Plot No.123,
Shankar Nagar, Nagpur - 440010

..VERSUS..

RESPONDENTS :- 1 Shri Makarand S/o Anand Pande, Age-64 years, R/o. "Samadhan", 110, Shankar Nagar, Nagpur – 440010

(Ori. Plaintiff)

2 Vinayak S/o Ganesh Gogte, Age-Adult, Occu-Retired, R/o. Plot No.35, Flat no.401, Park View 19, Madhav Nagar, Nagpur-440010 (present address)

Mr. P M. Shukla, Advocate for applicant in CRA No. 111 of 2025.
Mr. R. R. Pimpalkhute, Advocate for the applicant in CRA No.74 of 2025.
Mr. Sanjay Puranik, Advocate for Respondent No.1 in CRA No.74 of 2025
Mr. P M. Shukla, Advocate for respondent No.2 in CRA No.74 of 2025

CORAM : **ROHIT W. JOSHI, J.**

DATE : **26.11.2025**

ORAL JUDGMENT :

1) Heard.

2) Civil Revision Application No.74 of 2025 is filed challenging order dated 07.05.2025 passed by the learned 4th Joint Civil Judge, Senior Division, Nagpur on application at Exh.13 in Special Civil Suit No.445 of 2023, thereby rejecting the application for rejection of plaint filed by the defendant Nos.2 and 3 in the said suit. Civil Revision Application No.111 of 2025 is filed by defendant No.1 in the said suit, whose application for rejection of plaint filed vide Exh.43 came to be rejected by the

learned Trial Court vide order dated 07.05.2025.

3) The respondent No.1 is the original plaintiff. He has filed a suit against applicant in Civil Revision Application No.111 of 2025 i.e. the original defendant No.1 and applicants in Civil Revision Application No.74 of 2025 i.e. defendant Nos.2 and 3, being Special Civil Suit No.445 of 2023 *inter alia* seeking declaration of preemptory right to purchase the suit property from defendant No.1 and also to challenge sale deed dated 06.05.2022 with respect to the suit property executed by defendant No.1 in favour of defendant Nos.2 and 3.

4) It is the case of the plaintiff that he and defendant No.1 were co-owners of NIT Leasehold Plot No.110, bearing CTS No.1685, admeasuring 316.597 Sq. Mts., situated at Mouza-Ambazari, Shankar Nagar, Nagpur alongwith a double storied residential house standing thereon. It is stated that both, plaintiff and defendant No.1 had 50% undivided share in the suit property. The contention of the plaintiff is that defendant No.1 vide letter dated 09.02.2022 offered to sell the suit property i.e. 50% undivided share of the defendant No.1 in the aforesaid property at relevant market value.

5) The plaintiff has stated that the offer given by defendant No.1 was accepted by him vide reply dated 21.02.2022. It is not in dispute that after receipt of letter dated 21.02.2022, defendant No.1 issued letter dated 11.04.2022 to the plaintiff offering to sell the suit property for a consideration of Rs.2,37,50,000/-. In response to the letter dated 11.04.2022, the plaintiff issued letter dated 25.04.2022 to defendant No.1 disputing that the market value of the suit property was Rs.2,37,50,000/- as contended by the defendant No.1.

6) Perusal of the letter dated 25.04.2022 issued by the plaintiff indicates that the plaintiff contended that both the parties i.e. plaintiff and defendant No.1, knew and understood that prevailing market value of the suit property was to be calculated and determined as per the ready reckoner rates. The plaintiff offered to purchase the suit property for a consideration of Rs.84,52,000/-, Rs.65,25,000/- for the land and Rs.19,27,000/- for the building.

7) The plaintiff further states that despite the aforesaid communication dated 25.04.2022 sent by him to defendant No.1, thereby agreeing to purchase the suit property for a consideration of Rs.84,52,000/-, the defendant No.1 has sold the suit property

to defendant Nos.2 and 3 vide sale deed dated 06.05.2022 for a consideration of Rs.92,00,000/-.

8) It is in these set of facts that the declaratory relief of existence of peremptory right of purchase and cancellation of sale deed executed by defendant No.1 in favour of defendant Nos.2 and 3 is sought by the plaintiff.

9) As stated above, defendant Nos.1,2 and 3 filed separate applications for rejection of plaint vide Exh. 13 and 43. Both these applications have been rejected by the learned Trial Court vide order dated 07.05.2025.

10) Perusal of orders passed by the learned Trial Court will demonstrate that the learned Trial Court has observed that the entitlement of plaintiff to purchase the suit property is a triable issue and therefore the plaint could not be rejected under Order VII, Rule 11 of the CPC. The learned Trial Court has further observed that the defendants could not point out any statutory provision demonstrating that the suit was barred by law. The learned Trial Court has also observed that the plaint averments sufficiently demonstrated a cause of action. In the light of such observations, the applications for rejection of plaint are rejected.

11) Perusal of the orders will demonstrate that the learned Trial Court has not dealt with the plaint averments in a proper perspective to consider as to whether a cause of action is made out by the plaintiff or not. The learned Trial Court has not adverted to the aforesaid four communications which are the foundation of the claim of the plaintiff to contend that there was a concluded contract between the parties on the basis of which the right of preemption is claimed by the plaintiff.

12) The aforesaid letters, are referred in paragraph Nos.5 and 6 of the plaint and are filed on record by the plaintiff.

13) Since this Court is dealing with an order passed on application under Order VII, Rule 11 of the Code of Civil Procedure, 1908, the plaint averments and contents of the documents relied upon by the plaintiff, particularly the four letters in question, are taken on their face value.

14) Before dealing with the matter, it is necessary to deal with the term, 'cause of action'. This term is not defined under the CPC or any other statutory provision. However, judicial precedents have consistently laid down that the term cause of action means a fact or a bundle of facts, which, if not rebutted by

the defendant, would offer plaintiff right to seek decree from a Court of competent jurisdiction in accordance with law.

15) In this context, that one has to see, as to whether plaint can be rejected for want of cause of action. It is apparent from the reading of plaint and letter dated 09.02.2022 issued by defendant No.1 to the plaintiff that defendant No.1 had made an offer to the plaintiff to purchase his 50% undivided share in the building at the prevailing market value. Other two options were also given which are not relevant for the purpose present revision application. It needs to be stated that the market value was not specified by defendant No.1 in the letter dated 09.02.2022.

16) It is also clear that defendant No.1 agreed to purchase the suit property at, 'reasonable prevalent market price'. However, the market price is not specified by the plaintiff in his letter dated 21.02.2022. It is further necessary to state that in paragraph 6 of the letter dated 21.02.2022, the plaintiff has made a request to defendant No.1 to finalize other terms of the contract so as to conclude the deal. This indicates that the contract between the parties was not concluded and there was merely a broad understanding under which the plaintiff accepted offer of defendant No.1 to purchase the suit property at reasonable prevalent market price. As regards other terms, there was no

discussion or agreement between the parties. Such other terms may include the time for making payment of entire sale consideration, schedule of payment, responsibility to complete formalities for execution of sale deed and such other aspects which are implicit in every transaction of sale and purchase of immovable property.

17) Further, it is also not in dispute that defendant No.1 offered to sell the suit property to the plaintiff for a consideration of Rs.2,37,50,000/- vide letter dated 11.04.2022. In the considered opinion of this Court, this was the first concrete offer which defendant No.1 has made to the plaintiff. The earlier offer was only for a broad understanding to find out as to whether the plaintiff would be ready and willing to purchase the suit property at the prevailing market rate which was not specified in the earlier letter. The plaintiff has sent reply to letter dated 11.04.2022 vide reply dated 25.04.2022, refusing to purchase the suit property for consideration of Rs.2,37,50,000/-

18) The plaintiff has offered to purchase the suit property for a consideration of Rs.84,52,000/-. It is thus not in dispute that the plaintiff did not accept the offer of defendant No.1 and rather made a counteroffer vide letter dated 25.04.2022, which was not accepted by defendant No.1. Thus, it is clear that, there is no

concluded contract between the parties.

19) It will also be pertinent to state that in the letter dated 25.04.2022, the plaintiff has stated that the market value was to be determined based on ready reckoner rates. By now, it is very well known and well settled that ready reckoner rates are fixed only for fiscal purpose of collecting stamp duty and do not reflect the correct market value. Perusal of paragraph No.2 at Page 3 of the reply dated 25.04.2022 issued by defendant No. 1 will indicate that the offer to purchase the suit property for Rs.84,52,000/- is made on the basis of ready reckoner rates. The amount of sale consideration as Rs.84,52,000/- is computed on the basis of ready reckoner. As stated above, this counter offer is not accepted by the defendant.

20) The plaintiff is not claiming any statutory right of preemption. The right of preemption that the plaintiff claims is a contractual right. However, there is no concluded contract between the parties.

21) The contention of the learned Advocate for the plaintiff that since both parties had agreed for sale and purchase of the suit property at, 'prevalent market price', there was a concluded contract and the prevalent market price of the suit property could

be determined by the learned Civil Court is recorded only to be rejected. The Court of law can only enforce a contract which is concluded if it is otherwise enforceable in law. A Court of law cannot determine the terms of contract between the parties.

22) Likewise, apart from sale consideration, admittedly, as is apparent from the letter dated 21.02.2022 issued by defendant No.1 there was no discussion, let alone consensus between the parties with respect to other terms and conditions of the proposed sale transaction.

23) Having regard to the aforesaid, in the considered opinion of this Court, the plaint averments, taken on their face value and particularly in the light of the four letters which are the foundation of the plaint, do not make out any cause of action in favour of the plaintiff, and as such, the plaint is liable to be rejected for want of cause of action under Order VII, Rule 11 (a) of the Code of Civil Procedure, 1908.

24) The impugned orders at Exh.13 and Exh.43 are therefore, unsustainable and is liable to be quashed and set aside.

25) In view of the reasons recorded above, Civil Revision Applications are **allowed** in the following terms:-

- i. Orders below application at Exh. 43 and application at Ex.13 in Special Civil Suit No.445 of 2023

passed by the learned 4th Joint Civil Judge, Senior Division, Nagpur are quashed and set aside.

ii. Applications at Exh. 43 and Exh.13 in Special Civil Suit No.445 of 2023 passed by the learned 4th Joint Civil Judge, Senior Division, Nagpur are **allowed**.

iii. Complaint in Special Civil Suit No.445 of 2023 pending on the file of 4th Joint Civil Judge, Senior Division, Nagpur is rejected.

Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

Tanmay..