

22.05.2026

Court No.5

D/L No.3

Sourav/

Suvayan/

S. Gayen

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

CO 51 of 2026

With

CAN 1 of 2026

Sri Ravindra Kumar Saraogi & Ors.

Versus

Jatiakali Enclave

Mr. Nilay Chakraborty

Mr. Sourav Lohani

...for the Petitioners

Mr. Rajat Das

Ms. Srijana Thapa

...for the Opposite Party

1. The petitioners/defendants have filed the present application being CO 51 of 2026 challenging the order passed by the learned Civil Judge (Senior Division), Jalpaiguri by Order No. 30 dated February 12, 2025 wherein the application filed by the defendants under Order 7 Rule 11 of the CPC was rejected.
2. Mr. Nilay Chakraborty, learned counsel appearing for the defendants/petitioners herein submits that the plaintiff/opposite party herein has filed the suit praying for a specific performance of contract with respect to the agreement dated August 25, 2021 of the suit property.

3. He submits that as per the agreement the opposite party agreed to sell the land measuring area of 3.09 acres @ Rs. 22,50,000/- per bigha. At the time execution of the agreement, the petitioners has paid the advance amount of Rs. 50,00,000/- (Rs. Fifty Lakhs only) with the condition that the balance amount shall be paid at the time of registration of the sale deed. He submits that though it is mentioned that the petitioners are ready to purchase the amount @ Rs. 22,50,000/- per bigha but the total sale of consideration has not been mentioned in the agreement. It is the further contention of the petitioners that some portion of land, i.e. 1 bigha out of total area of 3.09 acres is in occupation of third party, thus the deed cannot be executed in favour of the opposite party. Hence, the Court cannot grant decree for specific performance of contract.
4. In support of his submission, the learned counsel for the petitioners has relied upon Section 14(d) of the Specific Relief Act, 1963 wherein it is mentioned that a contract which is in its nature determinable, the contract not specifically enforceable. By referring the said provision, the learned counsel for the

petitioners submits that in the present case the total land is not free from all encumbrances and it is not possible for the petitioners to execute the deed. Thus, the Court cannot enforce the agreement by passing a decree of the specific performance of contract.

5. Learned counsel for the petitioners submits that the plaintiff/opposite party herein has also not disclosed the cause of action for filing of the suit. He further submits that in paragraph 13 of the plaint, the opposite party has mentioned that the cause of action for filing the suit arose with respect to the suit property which is located within the jurisdiction of this Court but the opposite party has disclosed when the cause of action arose for filing the suit and thus, the suit is not maintainable and is liable to be rejected.
6. The learned counsel for the petitioners submits that it was informed to the opposite party that it is not possible for the petitioners to execute the deed as some portion of the property in question is not free from all encumbrances. It was also informed to the opposite party that the petitioners are ready and willing to return the amount of Rs.

50,00,000/- by deducting 20% of the deed value as the opposite party is enjoying the interim order since the filing of the suit and the petitioners are not in a position to enjoy the property due to the interim order obtained by the opposite party.

7. In support of his submission, learned counsel for the petitioners has relied upon the judgment in the case of **Balram Singh vs. Kelo Devi** report in **(2024) 12 SCC 723** and submits that this Court even cannot grant the decree for permanent injunction wherein the first prayer of the plaintiff/opposite party is for grant of decree for specific performance of contract. The petitioners have further relied upon the judgment in the case of **Rajendra Bajoria & Ors. vs. Hemant Kumar Jalan & Ors.** reported in **(2022) 12 SCC 641** and submits that if clever drafting has been created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the Court should exercise its power under Order 7 Rule 11 of the CPC. Learned counsel for the petitioners submits that in the present case

also there is no specific cause of action has been disclosed by the opposite party for filing of the instant suit.

8. Learned counsel for the petitioner further submits that Clause 10 of the agreement provides that if any defects in the title are found in the property-in-question, the seller must refund the consideration with compensation if the purchase has suffered actual loss. He submits that in the present case also it was duly informed by the petitioners to the opposite party that some portion of the property is not free from all encumbrances and the defendant is not able to execute the deed and is ready to return the amount by deducting of 20 per cent of the total value but instead of the same the plaintiff has filed the present suit.
9. *Per contra*, learned advocate appearing for the plaintiff/opposite party submits that while deciding the application under Order 7 Rule 11 of CPC the Court has only to restrict with regard to the pleadings in the plaint. He submits that in the plaint, the plaintiffs have categorically in paragraph 13 has mentioned that the cause of action of the suit in respect of the suit property is located within the

jurisdiction of this Court and on August 25, 2021 when the plaintiff and the defendants of the suit making an advance amount had completed the oral agreement of the sale of the suit property. He submits that an agreement was reduced in writing and the plaintiff has paid the advance amount of Rs. 50 lakhs subsequently the plaintiff has several times informed the defendants that the plaintiff has ready and willing to purchase the property by executing the sale deed by paying the balance amount and the defendants have not come forward for registration of the sale deed. Thus the plaintiff has categorically mentioned about the cause of action in the suit.

10. Learned counsel for the plaintiff has draws attention of this Court to the agreement entered between the plaintiff and the defendants on August 25, 2021 wherein the defendants had agreed to sale the land measuring an area about 3.09 acres at the rate of Rs. 22,50,000/- per bigha and on the date of the agreement, the plaintiff has paid an advance amount of Rs. 50 lakhs. He further pointed out that in the agreement it is categorically mentioned that the defendants

being seller will be liable for solving all such claim at their own cost and only after such rectification the final payment shall be made by the purchaser to the vendor. He further submits that in the agreement it is also mentioned that the schedule land is to be demarcated and the cemented dhalai is to be carried out by the plaintiff and the defendants will be liable for solving any such claim of the said land at its own cost and only after such rectification the final payment shall be paid.

11. He submits that though in the agreement it is mentioned that the remaining balance amount shall be paid at the time of registration within a period of three months and accordingly the plaintiff has sent a notice to the defendants on February 21, 2022 calling upon the plaintiff to complete the deal for purchase of the land as per the negotiation of the sale consideration as soon as possible and once the demarcation and boundaries are determined, the plaintiff will be in a position to get the physical possession of the total land.

12. Learned counsel for the plaintiff in support of his submission has relied upon the judgment

in the case of ***Bhau Ram vs. Janak Singh & Ors.*** reported in ***(2012) 8 SCC 701*** and submits that it is settled law that while considering the application under Order 7 Rule 11 of CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. He further relied upon the judgment in the case of ***Eldeco Housing and Industries Limited vs. Ashok Vidyarthi & Ors.*** reported in ***(2024) 11 SCC 503*** and submits that the Court while invoking Clause (d) of Order 7 Rule 11 of CPC, only the averments in the plaint would be relevant. He further relied upon the judgment in the case of ***R Kandasamy (since dead) & Ors. vs. T.R.K. Sarawathi & Anr.*** reported in ***(2025) 3 SCC 513*** and submits that in the said case the Hon'ble Supreme Court has held that the maintainability of the suit is required to be raised in the first instance in the pleadings (written statement) and then only such plea can be adjudicated by the Trial Court on its merits as a preliminary issue under Order 14 Rule 2 of CPC. He submits that instead of taking the plea of maintainability, the defendants have

filed an application under Order 7 Rule 11 of CPC for rejection of the plaint and accordingly learned Trial Court has rightly rejected the application filed by the defendants.

13. Heard the learned for the respective parties.

Perused the materials on record and the judgment relied by the parties.

14. It is settled law that while deciding an application under Order 7 Rule 11 of CPC, the Court has only to look into the plaint and its averment and the document relied by the plaintiff. In the present case, it is the case of the plaintiff that the defendants are the owner of the suit property. On August 25, 2021, the plaintiff and the defendants have entered into a sale agreement with respect of the suit schedule property wherein the defendants being the owner of the property has agreed to sell the said land to the plaintiff for a sum of Rs. 22,50,000/- per bigha. At the time of execution of the sale agreement, the plaintiff has paid Rs. 50 lakhs as an advanced amount. In the agreement the description of the property has been categorically mentioned how the defendants have acquired the said land. In the agreement it is also mentioned that heritable

and transferrable right, title and interest there are free from all encumbrances. In paragraph 5(a) and 5(b) of the agreement, the defendants being the seller of the property has categorically stated that the seller will be liable for solving all such claims at their own cost and only after such rectification, final payment shall be paid by the purchaser to the vendors. On February 21, 2022, the plaintiff has sent a notice to the defendants informing the defendants that the plaintiff is ready to complete the deal for purchase of the land as per their negotiated sale consideration as soon as possible once the demarcation and the boundaries are determined, and the plaintiff will get the physical possession of land.

15. There are several correspondents were made between the parties. On May 9, 2022, the defendants by an email has informed the plaintiff that the plaintiff is not willing to complete the agreement and requested to share the bank details so that the defendants can return the advance amount received from the plaintiff after deducting 20 per cent of the sale value.

16. The defendants have also taken the plea at the time of hearing that the plaintiff has filed the suit on the basis of the sale agreement but the agreement is not registered and as such, without the registration or without impounding the said agreement, the Court cannot pass the decree for grant of specific performance.
17. It is the specific case of the plaintiff that the plaintiff has entered into an agreement and has paid balance amount and is ready and willing to pay the remaining amount subject to that the suit property should be made free from all encumbrances. It is the case of the defendants that the suit property is not free from all encumbrances. It is the case of the defendants that some portion of the suit property is occupied by some 3rd party, due to which the Court cannot pass an order for specific performance.
18. This Court failed to appreciate the submissions made by the learned counsel for the defendants. It is matter of Trial whether the land is free from all encumbrances or not. Merely on saying that the 3rd party is in occupation of the property, in an application under Order 7 Rule 11 of the CPC, the Court

cannot adjudicate the same. From the email dated May 9, 2022, it also reflects that the defendants are not ready to execute the deed and they intend to return the amount by deducting the 20 per cent of the deed value. It is also the matter of trial whether if the Court cannot pass a decree for specific performance, whether the plaintiff is entitled to get the balance amount back or the defendants are entitled to deduct 20 per cent of the deed value.

19. It is not the case of the defendants in the present case that the defendants are ready and willing to return Rs. 50 lakhs along with the interest. It is also not the case of the defendants that the plaintiff is enjoying the property. The only case made out by the defendants is that the defendants could not enjoy the property as the plaintiff has obtained an interim order from the Court. As per the agreement that the defendants will make all the necessary arrangements for getting the land free from all encumbrances and thereafter, the land will be handed over to the plaintiff and the plaintiff will get the land and the plaintiff will pay the total sale

amount at the time of registration of the said land.

20. In the present case, it is the case of the defendants that the land is not free from all encumbrances and it is admitted that the land has not been handed over to the plaintiff and thus this is the matter of trial whether the defendants intentionally have not handed over the land to the plaintiff or whether actually some 3rd party is in occupation of the property in question.

21. As regard to the cause of action is concerned, this Court finds that the agreement was entered between the parties on August 25, 2021 and on February 21, 2022, the plaintiff has sent a notice requesting the defendants that the plaintiff is ready to complete the deal for purchase of the land as per their negotiation as soon as possible and requested the defendants to demarcate the boundaries and physical possession be handed over to the plaintiff.

22. In paragraph 13 of the plaint, the plaintiff has categorically mentioned with regard to the cause of action. It is mentioned that the plaintiff got the notice dated February 25, 2022 and other information that the

defendants are intentionally making delay for the registration of the sale deed and the cause of action is still going on every subsequent dates.

23. Considering such averment made in the plaint, this Court finds that the plaintiff has categorically mentioned the cause of action for filing of the suit.

24. As regard to the registration of the sale agreement, this Court finds that the parties have acted upon the agreement as the defendants have received an advance amount of Rs. 50 lakhs. Whether the agreement can be admitted in evidence or not i.e., required to be considered at the time of evidence. Under order 7 Rule 11 of the CPC, this Court cannot adjudicate whether the agreement relied by the plaintiff is admissible or not.

25. Considering the above, this Court does not find any perversity in the Order No. 30 dated February 12, 2025 passed by the learned Civil Judge, Senior Division. Accordingly, the order dated February 12, 2025 is affirmed.

26. **CO 51 of 2026** along with **CAN 1 of 2026** is dismissed.

27. However, there shall be no order as to costs.

28. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Krishna Rao, J.)