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

## CIVIL REVISION APPLICATION NO. 373 OF 2026

M/s. Ganesh Realities ..Applicant

Versus

M/s. Kaivalya Enterprises ...Respondent

Mr. Suresh M Sabrad a/w Mr. Vikram N Walawalkar, Mr. Amey Sawant, Ms. Neha Parte, Ms. Eshwaree Kudalkar i/b Mr. Pratik Sabrad, for the Applicant.

Mr. S G Karandikar, a/w Mr. Chetan A Alai, Mr. Pranit L Pawar, for the Respondent.

CORAM : N. J. JAMADAR, J.
DATE : 18th August 2026

SAINATH SANJAY BODKHE
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Date: 2026.08.24 20:59:18 +0530

ORDER :-

**1.** Heard, Mr. Sabrad, the learned Counsel for the Applicant, and Mr. Karandikar, the learned Counsel for the Respondent.

**2.** This Civil Revision Application is directed against an order dated 22nd January, 2025 passed by the Civil Judge, Senior Division, Pune in Special Civil Suit No. 1787/2024 whereby an application preferred by the applicant/defendant for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code, 1908"), came to be rejected.

**3.** The Respondent/plaintiff instituted the suit seeking specific performance of the purported contract to sell the

Defendant's 5/7th share in the land bearing Survey No.69 at Hissa No.4/1 admeasuring 54 R situated at Village Kothrud, Pune ("the suit property").

**4.** Late Prabodh Bhaskar Mhatre was one of the co-owners of the suit property. The legal representatives of late Prabodh Mhatre executed a sale deed in respect of the share of late Prabodh Mhatre in the suit property on 19th May, 2012. Purushottam Bhaskar Mhatre, another co-owner, had sold his share in the suit property in favour of Chhaya Dattatray Botre who, in turn, sold the said 1/7th share in the suit property in favour of the plaintiff, under a registered sale deed dated 24th March, 2022.

**5.** The other five co-owners executed a sale deed of their share in the suit property in favour of the defendant on 15th May, 2015.

**6.** The plaintiff, thus, became owner of 2/7th share and the defendant owned 5/7th share in the suit property, which has been reserved in the development plan by Pune Municipal Corporation for PMT-2 and for 12 mtrs. service road.

**7.** The plaintiff claimed to have approached the defendant in the month of April, 2023 to purchase its 5/7th share in the suit property so as to obtain TDR from Pune Municipal Corporation

in respect of the entire suit property. After negotiations, the defendant agreed to sell its 5/7th share in the suit property in favour of the plaintiff for a consideration of Rs. 8,50,00,000/- (Rupees Eight Crores Fifty Lakhs). Thereafter, the plaintiff claimed to have taken steps towards the performance of the said contract to evict the occupiers and remove the illegal encroachment over the suit property. A joint application was also filed by the plaintiff and defendant for the measurement of the suit property.

**8.** The plaintiff claimed, in breach of the said contract, the defendant moved the Pune Municipal Corporation to obtain TDR in respect of its share in the suit property, and the plaintiff became aware of the same upon the publication of public notice dated 07th October, 2024 by the Pune Municipal Corporation. Asserting that, the defendant had resiled from its promise, the plaintiff instituted the suit for specific performance of the contract and the consequential reliefs.

**9.** The applicant/defendant filed an application for rejection of the plaint on the ground that, the suit was bad for non-joinder of necessary parties in as much as the plaintiff had not impleaded Chhaya Botre, the vendor of 1/7th share, though a dispute has arisen between the plaintiff and the said Chhaya

Botre, and Pune Municipal Corporation. Secondly, the plaint did not disclose a cause of action.

**10.** By the impugned order, the learned Civil Judge rejected the application.

**11.** Mr. Sabrad, the learned Counsel for the applicant, submitted that, the plaint lacks essential pleadings to sustain a suit for specific performance. The date of alleged oral agreement for sale, the date on which the plaintiff demanded the performance of the contract and the date of refusal of performance of contract by the defendant are conspicuous by their absence in the plaint. It was submitted that, the pleadings in the suit for specific performance should conform to Form No.47 prescribed in the Code. In the absence thereof, it cannot be said that, the plaint disclosed a cause of action. Mr. Sabrad placed a strong reliance on the judgment of the Supreme Court in the case of ***Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust***[1]***.***

**12.** In opposition to this, Mr. Karandikar would submit that, in the plaint the plaintiff had furnished all the particulars of the contract for sale of the defendant's 5/7$^{th}$ share in the suit property. Laying emphasis on the joint application for

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**1** (2012) 8 SCC 706

measurement, Mr. Karandikar would submit that, it cannot be said that, the averments in the plaint regarding the oral agreement are without any material to *prima facie* substantiate the said claim. The aspect as to whether the plaintiff succeeds in establishing the said case is wholly irrelevant at the stage of consideration of prayer for rejection of the plaint.

**13.** It is well recognized that, at the stage of consideration of the prayer for rejection of the plaint, only the averments in the plaint and the documents annexed with it are required to be read. The defence of the defendant is not at all germane. Undoubtedly, the plaint is required to be read as a whole and in a meaningful manner and not in a formalistic manner. It is equally well settled that, the provisions contained in Order VII Rule 11 of the Code, 1908 have been made to nip in the bud a vexatious and fruitless proceeding. The said provision serves a definite purpose.

**14.** In the case of ***Church of Christ Charitable Trust & Educational Charitable Society (supra)***, on which reliance was placed on behalf of the applicant, the Supreme Court observed that, the statutory forms require the date of agreement to be mentioned to reflect that it does not appear to be barred by limitation. In addition to the same, in a suit for specific

performance, there should be an agreement by the defendant or by a person duly authorised by a power of attorney executed in his favour by the owner. In that case, the plaintiff had failed to produce the power of attorney purportedly executed by the Defendant No.1 in favour of the Defendant No. 2 on the strength of which, the Defendant No.2 had entered into an agreement for sale in favour of the plaintiff. As neither the documents were filed alongwith plaint nor the terms thereof had been set out in the plaint, the Supreme Court directed the rejection of the plaint.

**15.** Adverting to the previous pronouncement in the case of ***T. Arivandandam vs T. V. Satyapal & anr.***[2], the Supreme Court emphasized that, the trial Court must read the plaint in a meaningful and not in a formalistic manner and if the plaint is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the trial Court shall exercise its powers under Order VII Rule 11 of the Code, 1908.

**16.** There can be quarrel with the aforesaid preposition of law. However, from a meaningful reading of the plaint in the instant case, is become evident that, the plaintiff has set up a case of oral agreement for sale. The period during which such

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**2** 1977 4 SCC 467

agreement was arrived at between the parties is disclosed. The consideration at which the defendant agreed to sell its 5/7$^{th}$ share in the suit property is mentioned. The further steps taken by the plaintiff towards the performance of the said contract, including a joint application for measurement filed by both the parties, have been specifically spelled out. In the backdrop of the aforesaid pleadings, it would be hazardous to come to the conclusion that, the plaint does not disclose a cause of action.

**17.** The other ground pressed into service on behalf of the defendant for rejection of the plaint, namely, non-joinder of the necessary parties, does not, even if the case of the defendant is taken at par, furnish a justifiable ground for the rejection of the plaint. Therefore, this Court does not find any jurisdictional error or material irregularity in the exercise of jurisdiction by the trial Court.

**18.** The Civil Revision Application, thus, stands rejected.

[N. J. JAMADAR, J.]