

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1006 OF 2025

Rakeshsinh M. Chauhan Date of Birth :]
20.02.1967 Aadhar Card No. 215911641322]
Residing at House No. 1172-1-2 Kartavya,]
Near Father Anglo's English School, Silvassa]
396 230 Union Territory of Dadra & Nagar]
Haveli Daman & Diu] **...Appellant**

Versus

1) Mehulsinh Ishwarsinh Parmar An adult,]
Indian Inhabitant, Occ : Business, Residing at]
near Hotel Vandhara Kannadi Road, Near]
Reliance Industry, Torant Power House,]
Naroli, Union Territory of Dadra & Nagar]
Haveli, Daman & Diu]
2) Priyanksinh Ishwarsingh Parmar An adult,]
Indian Inhabitant, Occ : Business, Residing at]
near Hotel Vandhara Kannadi Road, Near]
Reliance Industry, Torant Power House,]
Naroli, Union Territory of Dadra & Nagar]
Haveli, Daman & Diu] **...Respondents**

Mr. Bhavesh Parmar a/w Mr. Rajesh Sahani, Mr. Devmani Shukla, Mr. Paramjeetsinh Parmar i/b Mr. Devmani Shukla, for the Appellant.
Dr. Sanjay Jain a/w Mr. Aayush Kedia, for the Respondents.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : April 6th, 2026
PRONOUNCED ON : April 17th, 2026

JUDGMENT:

1. First Appeal is at the instance of the original Plaintiff being aggrieved by the order and judgment dated 20th February, 2025

dismissing the suit in an application filed under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 (for short "**CPC**") on the ground that the suit does not disclose the cause of action and is barred by law of limitation.

2. Special Civil Suit No. 73 of 2023 was preferred seeking specific performance of an oral agreement for sale in respect of land bearing old survey no. 32/2 situated at village Athal, Dadra and Nagar Haveli. The Defendants filed their written statement and also filed an application seeking rejection of the plaint under Order VII Rule 11 (a) and (d). The Plaintiff opposed the application by filing its affidavit-in-reply vide the impugned order and judgment the suit came to be dismissed. Hence, the present First Appeal.

SUBMISSIONS :-

3. Mr. Parmar, Learned counsel for the Appellant submits that while exercising powers under Order VII Rule 11 of CPC it is only the pleadings in the plaint which are required to be looked into, and despite the said position, the Trial Court has relied upon the mutation entry of the year 2017 standing in the name of the Defendant, pleaded in the written statement. He would further submit that even while dealing with the aspect of limitation, the Trial Court has considered the pleading in the written statement about the alleged mutation entry of 2017 to support the finding that the suit is barred by limitation. He has taken this Court

in detail through the pleadings in the plaint and would contend that the cause of action is set out in paragraph 10 to 12 and 20 of the plaint which clearly shows refusal by the Defendants to comply with the oral agreement which took place only in the year 2023 post demise of their father on 18th January, 2016. He would submit that a meaningful reading of paragraph 3 and 7 of the plaint indicates that in the year 2012, when the oral agreement was entered into, the suit land was non-agricultural land which was thereafter converted into agricultural and just before the filing of the suit was once again converted into non-agricultural land.

4. He submits that as per Article 54 of the Limitation Act, 1963, the period of limitation starts from the date of refusal and paragraph 7 of the plaint clearly pleads that now the Plaintiff has learned that the land is again changed to non-agricultural purposes and the expression “now” means the year 2023, and that in 2023, the Defendants had refused to perform the oral agreement, and therefore, the suit was within limitation.

5. He submits that Order VII of CPC dealing with the aspect of plaint should be read together with Order IV dealing with the aspect of institution of suits and as per Order IV Rule 1(1), suit is instituted by presentation of plaint and as per Order IV Rule 2, the plaint does not get registered as suit till there is compliance of Order IV Rule 1(2) and

(3) which presupposes compliance with Order VI and Order VII of CPC as applicable. He submits that the power under Order VII Rule 11 of CPC can therefore only be exercised at the stage of compliance of Order IV and not after the issuance and service of summons as provided under Order V of CPC. In support he relies upon the following decisions :

i) Ramakant Ambalal Choksi vs Harish Ambalal Choksi

And Ors.¹

ii) Cuddalore Powergen Corporation Limited vs M/s

Chemplast Cuddalore Vinyls Limited And Anr.²

iii) M/s Bhagya Estate Ventures Private Limited vs

Narne Estates Private Limited And Anr.³

6. *Per contra*, Dr Jain, learned counsel for the Respondent would submit that in case of an oral contract, the Courts insist on strict pleadings and proof as to the existence and terms of the alleged contract. He submits that it was, therefore, necessary for the Plaintiff to plead the material facts as to the precise date, place and circumstances of the oral agreement, total consideration, time for performance or the basis on which time was not of essence, specific obligation of both parties, pleadings on readiness and willingness, etc. He submits that in the absence of material facts, the plaint does not disclose a complete cause of action, and is therefore liable to be rejected under Order VII

1 2024 INSC 913

2 2025 INSC 73

3 Civil Appeal No. 4570 of 2023 decided on 11/09/24 by Supreme Court.

Rule 11 of CPC. He would submit that in the present case, the Plaintiff has not even pleaded specific date of alleged oral agreement and only makes a reference to the year 2012. He submits that without pleading about the essential terms and conditions on which the purported oral agreement was entered into, a new condition is imposed in paragraph 9 of the plaint that the Defendants would be applying to the competent authority for requisite permission to sell the suit land to the Plaintiff.

7. He submits that the Trial Court has come to a specific finding that the 7/12 extract of the suit land which is stated in the plaint to be dated 18th August, 2022 is in fact a document of the year 2012. He submits that in case of an oral agreement Forms 47 and 48 of appendix A of CPC are prescribed which are statutory in nature. He submits that the plaint does not confirm to the prescribed format which specifically requires pleading about the date of the agreement, and therefore, an illusory cause of action is sought to be pleaded.

8. He would submit that there is no specific pleading bringing the claim within limitation as to how and when the right to sue first arose. He submits that the pleading are vague and cleverly drafted to create an illusory cause of action. He would submit that on the plaint's own showing that the claim is time barred as specific performance of the oral agreement of the year 2012 is sought by filing a suit in the year 2023. In support he relies upon the following decisions :-

i) Church of Christ Charitable Trust & Education

Charitable Society vs Ponniamman Education Trust⁴

ii) T. Arivandandam vs T. V. Satyapal And Anr.⁵

iii) Dahiben vs Arvinbhai Kalyanji Bhanusali (Gajra)⁶

iv) Canara Bank vs P. Selathal⁷

v) Pravin D. Thakker HUF And Ors. vs Rita J. Shah And

Anr.⁸

vi) Brij Mohan And Ors. vs Sugra Begum And Ors.⁹

vii) Mr. Asad Choudhari And Ors. vs Mr. Shakil Ahmed

Siddhiqui¹⁰

9. The points arising for determination is whether upon meaningful reading, the plaint fails to disclose a cause of action and is barred by law of limitation.

10. It is well settled that while adjudicating an application under Order VII Rule 11 of CPC, it is only the plaint and the annexures and documents annexed to the plaint which are germane and it is impermissible to look in extraneous material. In the present case, the Trial Court has taken into consideration the pleading in the written statement that the names of the Defendants were mutated in the year

4 (2012) 8 SCC 706

5 (1977) 4 SCC 467

6 (2020) 7 SCC 366

7 AIR Online 2020 SC 262

8 FA No. 897 of 2014 decided by Bombay High Court on 11th February, 2020

9 (1990) 4 SCC 147

10 2025:BHC-AUG:30917

2017 itself. However, in First Appeal, this Court can re-appreciate the entire material on record.

11. The Plaintiff came with the case that in the year 2012, the father of the Defendants with the consent of the Defendants orally agreed to sell the suit land, then converted into non-agricultural purpose to the Plaintiff at the rate of Rs. 2,500 per square meter for total consideration of Rs. 1,00,00,000/-, and in part payment, sum of Rs. 42,50,000/- was transferred on 30th August, 2012, 4th January, 2016 and 4th April, 2014. The father of the Defendants expired on 18th January, 2016 and after the death of the father, the Defendants were required to enter their names in the revenue records, which had, in the interregnum being converted from agricultural to non-agricultural and now again changed to non-agricultural purpose.

12. It is pleaded that the Plaintiff was in constant contact with both Defendants to get their names mutated in the revenue records and in the third week of August, 2022, Defendant No. 2 handed over 7/12 extract of the subject land dated 18th August, 2022 and assured the Plaintiff that after their names were mutated, they would be applying to the competent authority for requisite permission for sale.

13. In paragraph 10, the cause of action pleaded is the response dated 11th August, 2023 by the Defendants to the Plaintiffs public caution notice dated 8th August, 2023 where the Defendants denied any

transaction with the Plaintiff. It is pleaded in paragraph 20 that the Defendants failed to comply with the requisition of Plaintiff to complete the transaction contemplated under the oral agreement for sale through notice dated 25th September, 2023 and the Defendants by reply dated 11th August, 2023 to the caution notice dated 8th August, 2023 published by the Plaintiff denied the oral agreement for sale and thus refused to complete the said contract.

14. It is trite that cause of action is the set of facts that entitle the Plaintiff to seek the legal remedy. The Plaintiff seeks specific performance of an oral contract and the cause of action for seeking such relief must encompass the facts about existence of subsisting valid and concluded contract, the terms agreed upon by the parties, the rights and obligations of the parties and the breach of the obligation by the Defendants. It is only upon such facts being pleaded that the suit can be said to disclose a complete cause of action.

15. A holistic reading of the plaint would show that the plaint is a simple narrative of an oral agreement of the year 2012, the payment of part consideration and denial of the Defendant as to any such transaction. In fact given such denial, the plaint must necessarily set out in specific details the contractual agreement, the non compliance of the respective obligation first by the father and then by the Defendants. Instead the plaint does not even set out the date of the oral agreement

much less the contractual arrangement agreed upon. The plaint goes on to narrate about the conversion of the land without any pleading to show connection between the conversion and the term of contract. It is further pleaded that the Defendants were required to apply for sale permission after mutating their name in 7/12 extract without a bare pleading that the oral agreement contemplated obtaining of such permission by the Defendants. The position would have been different where the contract is written agreement as in that case, even if the terms are not set out in the plaint but referred to in the plaint, the document gets incorporated by reference in the plaint. (See **U.S. Sasidharan vs K. Karunakaran And Anr.**¹¹ and **Manohar Joshi vs Nitin Bhaurao Patil And Anr.**¹²)

16. The requirement of pleading the date of the agreement emanates from prescribed Form 47 and 48 of appendix A of CPC, which was considered by the Hon'ble Apex Court in the case ***Church of Christ Charitable Trust & Education Charitable Society vs Ponniamman Education Trust (supra)***. The Hon'ble Apex Court noted that failure to mention the date violates the statutory requirement of Form no 47 and 48 and if the date is one which attracts the bar of limitation, the plaint has to conform to Order 7 Rule 6 and specifically plead the ground on which exemption from limitation is claimed.

11 (1989) 4 SCC 482

12 (1996) 1 SCC 169

17. The essential terms of the contract and breach thereof are required to be pleaded to set the law in motion and to disclose a complete cause of action, which also triggers the starting point of period of limitation. All these facts were necessary to be pleaded in light of the position that the Plaintiff had filed the suit in the year 2023 claiming specific performance of an oral agreement of the year 2012.

18. In the case of ***Dahiben vs Arvinbhai Kalyanji Bhanusali (Gajra)*** (*supra*), the Hon'ble Apex Court has held in paragraph 23.3 and 23.11 as under:

"23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit no cause of action is disclosed or the suit is barred by limitation under Rule 11(d), the court will not permit the plaintiff to unnecessarily protect the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation so that further judicial time is not wasted.

23.11 The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn Ltd vs M.V Sea Success which reads as (SCC p 562 para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

19. The test is whether accepting the plaint in its entirety, the Court would be able to decree the suit even if the pleadings are non traversed. If it cannot be decreed, the plaint does not disclose a cause of action. As the Plaintiff seeks relief of specific performance of contract, the

Court would have to determine as to what are the fundamental terms of the contract, the time fixed for performance, the compliance of the obligation of the Plaintiff and the breach of their obligation by the Defendant. The plaint is bereft of any pleadings which would enable the Court to answer the relevant issues. *Sans* any such pleading, the Court would not be in a position to determine the respective rights and obligations of the parties and to come to a finding as to the breach by the Defendants entitling the Plaintiff to a decree of specific performance.

20. In the case of ***Brij Mohan And Ors. vs Sugra Begum And Ors. (supra)*** which was noted by this Court in the case of ***Pravin D. Thakker HUF And Ors. vs Rita J. Shah And Anr.(supra)*** the Hon'ble Apex Court has observed as under.

"there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the Plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the Plaintiffs to prove that there was consensus ad-idem between the parties for a concluded oral agreement for sale of "there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the Plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the Plaintiffs to prove that there was consensus ad-idem between the immovable property. Whether there was such a concluded oral contract or not would be a question of fact to be determined in the facts and circumstances

of each individual case. It has to be established by the Plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agreement incorporating such terms which had already been settled and concluded in the oral agreement."

21. The Hon'ble Apex Court has held that the Plaintiff is required to establish that the vital and fundamental terms for sale of the property were concluded by the parties orally. The observations of the Hon'ble Apex Court has to be understood to mean the material facts which is required to be pleaded by the Plaintiff while seeking specific performance of oral agreement.

22. The submission of Mr. Parmar is that pleadings as to the cause of action can be found in paragraph 10 to 12 and 20 of the plaint. The pleadings indicate denial of the Defendants of having any transaction as regards sale of the suit land to the Plaintiff. It is not only the denial of the transaction which constitutes the cause of action but every material fact pertaining to the transaction between the parties and the breach, which constitutes a cause of action for instituting suit for remedying the breach. In the absence of any such material pleading as regards the oral agreement, an illusory cause of action for seeking specific performance is shown to have arisen between the parties.

23. I am unable to hold that reading of paragraph 3 and 7 of the plaint indicates that the use of expression "now" indicates the year 2023

and the limitation period would commence upon the land again being converted into non agricultural land. There is no term of the oral agreement pleaded which imposes an obligation on the Defendants to maintain the status of the subject land as non agricultural.

24. As the plaint is bereft of details of essential terms of the contract, it is impossible to discern whether any time was fixed for performance of the contract failing which the period of 3 years for calculating the period of limitation under Article 54 from the date that the Plaintiff has noticed that the performance is refused would apply. There is not even a bare pleading that no time was fixed for performance of the contract and hence the limitation would commence from the date of refusal of performance.

25. The Trial Court has noted that the pleading about the 7/12 extract dated 18th August, 2023 pleaded in paragraph 9 is in fact of the year 2012. The incorrect pleading in respect of 7/12 extract was in order to bring the suit within limitation by demonstrating that even in the year 2022, the suit land was standing in the name of the deceased father of the Defendants and that the Defendants failed to get their names mutated in the revenue records pursuant to which the sale deed could be executed by the Defendants. The pleading in paragraph 9 also imposes a new condition for the purpose of limitation that the Defendants would be applying to the competent authority for requisite

permission to sell the suit land to the Plaintiff without a bare assertion of the same being term of contract. The limitation pleaded is from the date of denial of the Defendants to the transaction for sale of the land. Article 54 provides for a limitation of 3 years from the date fixed for the performance, and if no such date is fixed, then when the Plaintiff has noticed that the performance is refused. To bring the suit within the period of limitation of 3 years by reason of the refusal of performance by the Defendants on 11th August, 2023, it was essential to plead the fundamental terms of the oral contract and to show that there was no date fixed for performance of the contract. Considering the pleadings in the plaint, the Plaintiff has attempted to bring his suit within the period of limitation by referring to the conversion of land, the absence of mutation of the Defendants in the revenue records and the added condition of seeking permission for sale by the Defendants, without pleading that such conditions were part of the oral agreement between the Plaintiff and the deceased father of the Defendants.

26. A holistic reading of the plaint does not disclose cause of action for seeking specific performance of the agreement of the year 2012. The suit has been filed in the year 2023 and from the plaint's own showing is barred by law of limitation due to failure to plead the essential terms of the contract. The reliance on the 7/12 extract, pleading an incorrect date and extending the performance of the

contract till the names of Defendants is mutated in the revenue record, is with the intent to bring the suit within limitation.

27. Though, it is sought to be contended that the suit cannot be rejected under Order VII Rule 11 of CPC after the issuance of service of summons as provided under Order V of CPC, it is well settled by judicial pronouncement that the suit can be rejected at any stage of the plaint. This Court is bound by the judicial pronouncements and judicial discipline requires that the decision be followed. I am, therefore, unable to accept or deal with the contentions as to whether the power under Order VII Rule 11 can be decided only pre-issuance and service of summons.

28. Dealing with the decisions cited by the learned counsel for the Appellant in the case of ***Ramakant Ambalal Choksi vs Harish Ambalal Choksi And Ors. (supra)***, the Hon'ble Apex Court considered the meaning of the expression 'perverse' in light of proceedings arising out of Exhibit 5. There is no quarrel with the said proposition, however, the same is irrelevant for the purpose of deciding the present Appeal.

29. The decision in the case of ***Cuddalore Powergen Corporation Limited vs M/s Chemplast Cuddalore Vinyls Limited And Anr. (supra)*** was cited in the context of the meaning attributed to the phrase "cause of action". There is not dispute with the said proposition.

30. The decision in the case of ***M/s Bhagya Estate Ventures Private***

Limited vs Narne Estates Private Limited And Anr. (supra) was cited in support of the contention that none of the decisions considered the issue as to whether the difference in the phraseology in Order VII which speaks of the plaint and the provisions of Order IV which provides for the institution of suits, the power can be exercised at the stage of compliance of Order IV and not after reaching stage of Order V. The decisions of the Hon'ble Apex Court would bind this Court and the Hon'ble Apex Court in ***M/s Bhagya Estate Ventures Private Limited vs Narne Estates Private Limited And Anr. (supra)*** considered the stage at which the application seeking rejection of the plaint can be filed and entertained which can be at any time before conclusion of the trial. This Court is respectfully bound with the said decision.

31. In light of the above, as the plaint does not disclose a cause of action and a plain reading of the plaint indicates that the suit is barred by law of limitation, the power under Order VII Rule 11 of CPC has been rightly exercised by the Trial Court.

32. Resultantly, Appeal fails and stands dismissed. Interim applications do not survive for consideration and stands disposed of. Needless to clarify that the dismissal of the First Appeal doesn't preclude the remedy, if available, under Order VII, Rule 13 of CPC.

(SHARMILA U. DESHMUKH, J.)