**Special Civil Suit No. 231 of 2023**

**ORDER BELOW APPLICATION EXH. 28**

**1.** The defendants have filed this application at Exh.28 under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908, praying for the rejection of the plaint on two grounds: first, that the plaint does not discloses a clear and valid cause of action under Order VII Rule 11(a) of the CPC; and second, that the suit is, on the face of the plaint, barred by the law of limitation under Order VII Rule 11(d) of the CPC.

**2. Case of the Defendants and Arguments in Support of the Application:**

**2.1** The defendants submit that the plaintiff has instituted the present suit for specific performance solely on the basis of a half-page receipt/chitthi dated 31/05/2008, bearing documentary mark 3/6, which only acknowledges receipt of Rs. 10,00,000/- and contains an averment that defendants no. 1 and 4 agreed to sell their share of the suit land. The defendants point out that the said receipt does not identify the suit property by its survey or block number, does not state the total agreed sale consideration, and is completely silent on the terms, conditions, and timeline of performance. Therefore, the defendants contend that the said receipt does not, on its face, constitute a concluded contract for sale of immovable property, and no cause of action for specific performance arises therefrom.

**2.2** The defendants further contend that the receipt mark 3/6 as filed by the plaintiff has been tampered with and altered. According to the defendants, the original receipt pertained to a separate transaction in respect of Survey No. 312, in which the plaintiff was acting as a broker/intermediary, and the relevant particulars of the suit land bearing Survey No. 451 have been fraudulently inserted by the plaintiff by way of subsequent additions and amendments. In support of this contention, the defendants have placed on record colour xerox copies of the alleged original receipt at Exh.8.1 and Exh.8.2, which the defendants submit shows the receipt in its unadulterated form without any reference to an agreement to sell the suit property.

**2.3** The defendants urge that the foundational receipt bearing mark 3/6 is insufficiently stamped and is also an unregistered document. Therefore, it is legally inadmissible as evidence under Section 35 of the Indian Stamp Act, 1899, and no decree for specific performance can be passed on the basis of such a document. In this regard, the defendants rely upon the judgment of the Hon'ble Supreme Court in ***Bidyut Sarkar & Anr. v. Kanchilal Pal (Dead) through L.Rs. & Anr., 2024 Supp. SAR (Civ.) 563,*** wherein the Hon'ble Supreme Court, in a suit for specific performance, upheld the finding of the Trial Court that an agreement to sell which was insufficiently stamped was rightfully barred from being admitted in evidence in the absence of payment of requisite stamp duty and penalty as certified by the Collector, and consequently held the entire suit to be unenforceable since the foundational document was legally inadmissible. The defendants also place reliance on the judgment in ***Balram Singh v. Kelo Devi, 2022 Live Law (SC) 800***, to urge that no decree for specific performance can be passed on the basis of an unregistered agreement to sell.

**2.4** On the question of limitation, the defendants submit that the suit has been filed on 21/08/2023 while the alleged receipt is dated 31/05/2008, making the suit approximately 15 years old from the date of the foundational document. Under Article 54 of the Limitation Act, 1963, the period of limitation for a suit for specific performance of a contract is three years. Since the receipt does not specify any date for performance, the three-year period would begin to run from the date when the plaintiff had notice that performance was refused. The defendants argue that the plaintiff cannot, through cleverly drafted averments, construct an artificial cause of action after a gross delay of 15 years, and the suit is *ex-facie* time-barred. Reliance is placed on ***T. Arivandnam v. T.V. Satyapal, (1977) 4 SCC 467,*** wherein the Hon'ble Supreme Court held that the court has the power to nip in the bud a suit that is based on an illusory cause of action engineered through clever and misleading drafting, and directed that such a plaint be rejected; and on ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706***, wherein the Hon'ble Supreme Court reiterated that the cause of action must be clearly and explicitly set out in the plaint and a court retains the power to reject a plaint where the cause of action is illusory or non-existent. The defendants also place reliance upon the decision in ***Savitaben Bachubhai Trivedi v. Trivedi Romaben, R/SCA No. 8131 of 2025 (Hon'ble Gujarat High Court)*** and judgment of the Hon'ble High Court for the State of Telangana in ***Dodda Gandhi Prasad v. Siripurapa Sudarshana Rao, 2025 LawSuit (TS) 283.***

**2.5** On the aforesaid grounds, the defendants pray that the application Exh.28 be allowed and the plaint in Civil Suit No. SPCS-231/2023 be rejected with costs.

## 3. Reply of the Plaintiff and Arguments in Opposition to the Application:

**3.1** The plaintiff has filed a detailed written reply to this application at Exh.30, denying all the contentions raised by the defendants. The plaintiff submits that the receipt/chitthi dated 31/05/2008 bearing mark 3/6 is true, genuine, and legally binding. According to the plaintiff, the said receipt records the total agreed sale consideration at Rs. 25,00,000/-, of which Rs. 10,00,000/- was paid as earnest money on 31/05/2008, with the balance of Rs. 15,00,000/- to be paid at the time of execution of the sale deed after the defendants fulfil their agreed obligations.

**3.2** The plaintiff submits that the agreed obligations of defendants no. 1 and 4 included obtaining non-agricultural permission from the Collector, securing title clearance, and sub-dividing the suit plots before registration. The delay in execution of the sale deed was entirely attributable to the defendants, who repeatedly cited internal family disputes and the pendency of the non-agricultural application as grounds for deferring performance. The plaintiff was informed by defendant no. 1 as recently as 20/12/2022 that an application for non-agricultural permission had been filed before the Collector. It was only upon verification of revenue records that the plaintiff discovered that the suit land had been clandestinely transferred by defendants no. 2 to 7 in favour of defendants no. 8 to 13 vide Registered Sale Deed No. 38258/2023 dated 19/07/2023. The present suit was filed immediately thereafter on 21/08/2023.

**3.3** On the enforceability of the agreement, the plaintiff places reliance on the landmark judgment of the Hon'ble Supreme Court in ***S. Kaladevi v. V. Somasundaram, (2010) 5 SCC 401***, wherein the Hon'ble Supreme Court, while dealing with a suit for specific performance of an alleged agreement to sell immovable property, held that even an oral agreement to sell is legally enforceable and a suit for specific performance can be maintained on the basis of an oral agreement under Section 10 of the Specific Relief Act, 1963. The Hon'ble Supreme Court held that there is no requirement under the Specific Relief Act that an agreement to sell must be in writing, and that the question of whether a valid agreement oral or written exists is a question of fact to be determined at trial. The plaintiff urges that if even an oral agreement is enforceable, the alleged inadequacy of the receipt whether as to stamp, registration, identification of property, or terms cannot by itself be a ground for rejection of the plaint at the threshold stage under Order VII Rule 11.

**3.4** On the question of limitation, the plaintiff submits that under the second limb of Article 54 of the Limitation Act, 1963, where no date is fixed for performance, the period of limitation begins to run only from the date when the plaintiff has notice that performance has been refused. The plaintiff had no such notice until July 2023, when the unauthorized sale deed was discovered. In this regard, the plaintiff also relies upon the ratio laid down by the Hon'ble Supreme Court [in the case reported as *Amlatshah* citation to be independently verified before reliance is placed thereon] to the effect that where no time limit is fixed for performance under an agreement to sell, the limitation period can only commence from the date of knowledge of the denial of execution of the sale deed. The suit was filed on 21/08/2023, which is within three years of the plaintiff's knowledge of the denial of performance in July 2023, and is therefore within limitation.

**3.5** The plaintiff further submits that the question of whether the document mark 3/6 is genuine or has been tampered with as alleged by the defendants through Exh.8.1 and 8.2 is a pure question of fact that can only be determined after the recording of oral and documentary evidence at trial. The defendants' documents cannot be examined at the stage of Order VII Rule 11, and this contention cannot be a ground for rejection of the plaint.

**3.6** On the above grounds, the plaintiff prays that the application Exh.28 be rejected with costs.

**4. Points for Determination:**

1. Whether the plaint fails to disclose a cause of action and is therefore liable to be rejected under Order VII Rule 11(a) of the CPC?
2. Whether the suit is, on the face of the plaint, barred by the law of limitation and is therefore liable to be rejected under Order VII Rule 11(d) of the CPC?
3. What order?

**5. Answers to the Points for Determination:**

1. In the negative,
2. In the negative,
3. As per the final order.

**6. Provision of Order VII Rule 11 of the CPC, Brief Facts of the Plaint, and Appreciation:**

**6.1 Provision of Order VII Rule 11 of the CPC:**

Order VII Rule 11 of the Code of Civil Procedure, 1908 reads as under:

> "The plaint shall be rejected in the following cases:
> (a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;
(e) where it is not filed in duplicate;
(f) where the plaintiff fails to comply with the provisions of Rule 9."

## 6.2 Brief Facts of the Plaint:

The plaintiff has filed the present suit for specific performance of an alleged agreement to sell, declaration, and permanent injunction in respect of land bearing Survey/Block No. 451/Paki-1, Final Plot No. 22 in T.P. Scheme No. 3, admeasuring 5101 sq.m., situate at Moje Village Kudasan, District Sub-District Gandhinagar. The plaintiff's case, as set out in the plaint, is that defendants no. 1 and 4 agreed to sell their share of the suit land for a total consideration of Rs.25,00,000/-, of which Rs.10,00,000/- was paid as earnest money on 31/05/2008 and acknowledged by means of the receipt/chitthi bearing mark 3/6. The balance of Rs.15,00,000/- was to be paid at the time of execution of the registered sale deed, after the defendants fulfilled their obligations of obtaining non-agricultural permission from the Collector, securing title clearance, and sub-dividing the suit plots. According to the plaint, the defendants repeatedly deferred performance on one pretext or the other, including citing family disputes. Defendant no. 1 as recently as 20/12/2022 informed the plaintiff that an online application for non-agricultural permission bearing No. 30603202205891 had been filed before the Collector. Thereafter, the plaintiff, upon verifying revenue records, discovered that defendants no. 2 to 7 had, without the knowledge or consent of the plaintiff and in breach of the agreement, executed a Registered Sale Deed No. 38258/2023 dated 19/07/2023 in favour of defendants no. 8 to 13. The suit was filed on 21/08/2023 seeking specific performance, a declaration that the sale deed No. 38258/2023 is void as against the plaintiff, and a permanent injunction.

**6.3 Appreciation — Scope of Enquiry under Order VII Rule 11:**

The settled position in law is that at the stage of an application under Order VII Rule 11 of the CPC, the Court is required to confine its examination strictly to the averments made in the plaint and the documents filed therewith by the plaintiff. The defence raised by the defendants in their written statement or application, the documents filed by the defendants, and the rival version put forward by the defendants are entirely irrelevant at this stage and cannot be taken into consideration. The plaint averments, for the purpose of this enquiry, must be taken as true and correct. The Court cannot conduct a mini-trial or embark upon an inquiry into the merits at this preliminary stage. Only if the plaint, read as a whole and in a meaningful manner, does not disclose a cause of action, or if the suit appears from the plaint itself to be barred by law, can the plaint be rejected under the above provisions.

Reading the plaint as a whole in the present case, the plaintiff has pleaded a specific bundle of facts: an agreement to sell evidenced by the receipt mark 3/6, payment of earnest money, agreed obligations cast upon the defendants as conditions precedent to execution of the sale deed, the defendants' continued assurances of performance over the years including an application for non-agricultural permission as recently as December 2022, and the ultimate discovery of the unauthorized transfer of the suit land to third parties in July 2023. These facts, taken at face value, constitute a detailed and sequential factual matrix from which a cause of action for specific performance, declaration, and injunction arises.

**7. Discussion on Rival Submissions and Authorities:**

**7.1 On the Alleged Insufficiency of the Receipt and its Stamp/Registration:**

The defendants' primary contention is that the half-page receipt/chitthi mark 3/6 is insufficiently stamped and unregistered and therefore cannot constitute the basis of a suit for specific performance. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Bidyut Sarkar v. Kanchilal Pal, 2024 Supp. SAR (Civ.) 563***. In that case, the Hon'ble Supreme Court, at the conclusion of a full-fledged trial where evidence had been adduced and examined, upheld the Trial Court's finding that an agreement to sell, being insufficiently stamped, was inadmissible as evidence under Section 35 of the Indian Stamp Act, 1899, and that since the foundational document was legally inadmissible, the entire suit was unenforceable. The Hon'ble Supreme Court held that the failure to pay requisite stamp duty rendered the claim unenforceable. Similarly, in ***Balram Singh v. Kelo Devi, 2022 Live Law (SC) 800***, the Hon'ble Supreme Court observed that on an unregistered document, a decree for specific performance cannot be passed.

On the other hand, the learned Advocate for the plaintiff has relied upon the judgment of the Hon'ble Supreme Court in ***S. Kaladevi v. V.R. Somasundaram & Ors., (2010) 5 SCC 401***. On a perusal of the said judgment, it appears that the Hon'ble Supreme Court has authoritatively held that an unregistered agreement to sell is admissible in evidence in a suit for specific performance. The Hon'ble Supreme Court has further held that even an oral agreement to sell is legally enforceable, provided its execution and terms are proved in accordance with law. In the present case, the document produced at Mark 3/6 is admittedly unregistered and is not executed on stamp paper. However, in view of the ratio laid down by the Hon'ble Supreme Court in **S. Kaladevi** (supra), such document cannot be discarded at the threshold merely on the ground of non-registration or insufficiency of stamp, so far as its admissibility in a suit for specific performance is concerned, subject to compliance with the provisions of the Stamp Act, if applicable. Therefore, at this stage, the decisions relied upon by the defendants in ***Bidyut Sarkar v. Kanchilal Pal, 2024 Supp. SAR (Civ) 563****, and as well as* ***Balram Singh v. Kelo Devi, 2022 LiveLaw (SC) 800***, are not applicable at this stage. Applying this ratio, even if the receipt mark 3/6 were held to be deficient in form, stamp, or registration, that by itself cannot be a ground for rejection of the plaint under Order VII Rule 11, because the plaintiff can still lead evidence to establish an oral agreement at trial. The cause of action for specific performance, declaration, and injunction as set out in the plaint is therefore legally cognizable and cannot be non-suited at the threshold.

**7.2 On the Alleged Fraudulent or Doubtful Nature of the Receipt:**

The defendants have filed colour xerox copies of the alleged original receipt at Exh.8.1 and Exh.8.2 and contend that the receipt mark 3/6 has been tampered with and additions have been made by the plaintiff. This contention goes to the heart of the dispute on merits. Whether the document mark 3/6 as filed by the plaintiff is genuine and unaltered, or whether it has been tampered with and amended as alleged by the defendants, is a pure question of fact. This question can only be resolved after recording of oral evidence of the parties and witnesses, and after examination of the original documents, if necessary, by a handwriting expert or document examiner. No such determination is possible or permissible at the stage of Order VII Rule 11, where the Court is confined to the plaint and the plaintiff's documents. The defendants' documents at Exh.8.1 and 8.2 cannot be looked into at this stage. This contention, therefore, does not assist the defendants in this application.

**7.3 On the Question of Limitation:**

The defendants' most emphatic ground is that the suit is barred by limitation under Article 54 of the Limitation Act, 1963. The defendants point to the 15-year gap between the receipt dated 31/05/2008 and the suit filed on 21/08/2023. Article 54 of the Limitation Act, 1963 reads as under:

> "54. For specific performance of a contract. Three years. The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

In the present case, the receipt/chitthi dated 31/05/2008 does not specify any date for performance. Therefore, the first limb of Article 54, which runs from the date fixed for performance does not apply. The applicable limb is the second: limitation begins to run only from the date when the plaintiff has notice that performance is refused. The plaintiff has specifically pleaded in the plaint that the defendants continued to give assurances of performance, that defendant no. 1 as recently as 20/12/2022 gave an intimation about the non-agricultural permission application pending before the Collector, and that the plaintiff first had notice of the defendants' refusal to perform and their breach of the agreement only upon discovering the Registered Sale Deed No. 38258/2023 dated 19/07/2023 upon verification of revenue records. The suit was filed on 21/08/2023. If these averments are taken as true as they must be at the stage of Order VII Rule 11 the limitation period began to run only in July 2023 and the suit filed in August 2023 is well within the three-year period prescribed under Article 54.

This view is fortified by the principle laid down by the Hon'ble Supreme Court in the case of ***P. Kumarakurubaran Versus P.Narayanan & Ors., Civil Appeal No. 5622 of 2025 (Arising from SLP (C) No. 2549 of 2021)*** to the effect that where no time limit is fixed for performance under an agreement to sell, the period of limitation commences only from the date when the plaintiff has knowledge of the denial of the execution of the sale deed. Whether the plaintiff truly had no notice of denial of performance before July 2023, which the defendants seriously dispute is itself a triable issue of fact. For the purpose of Order VII Rule 11(d), the limitation bar must be starkly and demonstrably apparent from the face of the plaint itself, without the need for any inquiry. Where the plaint sets out a factual narrative that, if taken as true, brings the suit within limitation, the plaint cannot be rejected on this ground at the threshold stage.

The reliance placed by the defendants on ***T. Arivandnam v. T.V. Satyapal, (1977) 4 SCC 467***, is noted. In that case, the Hon'ble Supreme Court directed rejection of a plaint which was based on an entirely illusory and non-existent cause of action engineered through deliberate and clever drafting, where the plaint contained no real content and was filed solely to harass the defendant. The ratio of that judgment applies where the cause of action is, on the face of the plaint itself, so completely untenable and fabricated as to be non-existent. In the present case, the plaintiff has set out specific and sequential facts, including dated transactions and communications, giving rise to a cause of action which is not illusory. The ratio in *T. Arivandnam* is therefore not attracted. Similarly, the ratio in ***Church of Christ Charitable Trust v. Ponniamman Educational Trust, (2012) 8 SCC 706***, which requires the cause of action to be clearly discernible from the plaint, is satisfied in the present case.

The learned advocate for the defendants has further relied upon the judgment of the Hon'ble High Court for the State of ***Telangana in Dodda Gandhi Prasad v. Siripurapa Sudarshana Rao, 2025 LawSuit (TS) 283***, and argued that since the plaintiff has not served any notice upon the defendants demanding specific performance of the alleged agreement prior to instituting the suit, the suit is not tenable on that ground as well. This Court has carefully considered the aforesaid judgment of the Hon'ble Telangana High Court. However, the position of law stated in the said judgment is entirely different from the proposition for which it has been cited by the learned advocate for the defendants. The factual matrix and the legal question involved in the said case are distinguishable from the facts of the present case. The said judgment, therefore, does not assist the defendants and cannot be made applicable to the facts and circumstances of the present suit.

**7.4 Conclusion:**

In view of the above analysis, this Court is of the considered opinion that the plaint in the present suit discloses a triable cause of action for specific performance, declaration, and permanent injunction. The argument of the defendants regarding the sufficiency of stamp and registration is a question that goes to the admissibility of the document at the stage of evidence and cannot result in rejection of the plaint at this threshold stage, particularly in view of the ratio in ***S. Kaladevi v. V. Somasundaram*** that even an oral agreement to sell is legally enforceable. The question of whether the receipt mark 3/6 is genuine or has been tampered with is a pure question of fact that can only be determined after evidence is recorded. The suit does not appear on the face of the plaint to be barred by the law of limitation, since the plaintiff has specifically pleaded that notice of refusal of performance was received only in July 2023, and this factual assertion requires examination at trial. Neither of the twin grounds under Order VII Rule 11(a) and Order VII Rule 11(d) is made out on the face of the plaint. The application Exh.28 is therefore liable to be rejected. In view of the above discussion, the application Exh.28 filed by the defendants is devoid of merit and the following order is passed in the interest of justice:

## ORDER

**(1)** The application Exh.28 filed by the defendants under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 is hereby **rejected**.

**(2)** The costs of this application shall be the costs in the cause.

Order is pronounced in the open Court on today this 31st day of July, 2026

Date :- 31/07/2026
Place :- Gandhinagar

**(MEHUL GIRISHBHAI SHAH )**
Judge Code-GJ00962
Principal Senior Civil Judge,
Gandhinagar

*J.V.Soni*