

Regular Civil Suit No.420 of 2023**-::Order below Exh. 1 & 11 ::-**

1. The defendants have filed a present application under Order 7 Rule 11 of the Code of Civil Procedure, seeking the rejection of the plaint on The grounds. that the agreement to oral sell agreement of 1997, while the suit for specific performance was filed in 2023, rendering the suit time-barred according to the law of limitation.
2. The learned advocate of the defendants has argued that the agreement to sell or oral sell the property was executed in 1997, triggering a limitation period of three years for challenging the validity of the contract. The present suit was initiated in 2023, well beyond the statutory limitation period, it is also barred by the law of limitation. In light of these legal arguments, it is requested that the plaintiff's suit be rejected under Order 7, Rule 11 of the Code of Civil Procedure.
3. The plaintiff has submitted a written argument as well as orally argued that

the limitation is a mixed question of law and fact and the possession of the plaintiff is also a question of evidence. Therefore, the Hon'ble Court must have a frame issue and give opportunity to the plaintiff to prove his case. The plaintiff has argued that the plaint cannot be rejected under Order 7 Rule 11 as the issue of consideration is a mixed question of law and facts.

4. As the present application has been filed by the defendants relying upon the provision of O.7 R.11 of the Code of Civil Procedure 1908, it is therefore required to reproduce the provision of Order 7 Rule.11.

**Order-7, Rule-11. Rejection of
plaint.**

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 returned 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;
5. Heard the learned advocate for the applicant and perused the application as well as the averments made in the plaint.
6. From the pleadings it appears that the plaintiff has filed the present suit seeking specific performance of an alleged oral agreement to sell said to have been entered into in the year 1997. The plaintiff has pleaded that the cause of action arose when the Collector passed an order in Disputed Case No. 06/23 and consequently registered Entry No. 4614. On that basis the present suit has been filed.
7. The suit is for specific performance of contract, and the limitation for filing such a suit is governed by Article 54 of the Limitation Act,

1963, which prescribes a period of three years. The period of limitation begins to run from the date fixed for the performance of the contract, or where no such date is fixed, from the date when the plaintiff has noticed that performance is refused.

8. In the present case, the plaintiff has not disclosed the date of the alleged oral agreement to sell in clear terms, nor has the plaintiff pleaded the date on which the defendant refused to perform the alleged contract. It is also not averred that the plaintiff at any point of time called upon the defendant to perform the contract. In such circumstances, where no date for performance is pleaded and no refusal is pleaded, the limitation would ordinarily commence from the date of the alleged agreement itself. However, the plaint conspicuously omits to mention the precise date of such oral agreement.
9. Moreover, the plaintiff has also claimed an alternative relief seeking a declaration of ownership on the basis of adverse possession. However, a claim for specific performance of a

contract implies that the plaintiff's possession, if any, is permission. On the other hand, a plea of adverse possession requires that the possession must be hostile. Therefore, these two pleas are contradictory in nature and cannot be maintained together.

10. Further, there is no clear averment regarding the plaintiff's knowledge of the alleged oral agreement, nor have any allegations of fraud or concealment been made against the defendants. This calculated and clever drafting is an apparent attempt to avoid disclosing circumstances that could render the suit legally barred by the statute of limitations.
11. The period of limitation prescribed under Articles 54 and 58 of the Limitation Act, 1963 is three years, which begins to run from the date when the right to sue first accrues. In the absence of disclosure of the essential dates relating to the alleged agreement and refusal, the plaint fails to disclose a cause of action within the prescribed period of limitation.

12. In view of the above discussions, the suit is clearly barred by limitation. Therefore, the following order is passed :

-:: **ORDER** ::-

- The present application is allowed and the plaint is ordered to be rejected.
- No order as to cost.

Pronounced and signed in the open court today, 10th April, 2026.

[Mohammed Zaid M. Qureshi]
Addl. Senior Civil Judge
Kachchh @ Bhuj
Code No.GJ01472.