

**ORDER BELOW EXHIBIT 12 IN REGULAR CIVIL****SUIT No. 2/2023**

1. The present application was filed by the defendants under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 (hereinafter as 'CPC') for rejection on the basis that the suit is barred by Law of Limitation. The Learned Advocate for the defendant has submitted that the present suit is not tenable as the plaintiff had come before this court for specific performance of alleged agreement to sell of 2006 in year 2023. It is submitted that the contentions of agreement to sell is not admitted, but then also, the suit is barred by law of limitation as the plaintiff had filed suit after the lapse of 18 years from date of document and therefore, the suit is not tenable as it is barred by Limitation Act. Thus, prayed for rejection of suit Order VII Rule 11 (d) of C.P.C.
  
2. *Per Contra*, the learned Advocate for plaintiff had submitted reply vide Exhibit 18 wherein he

had negated the <sup>2/5</sup> contentions of present application. The Learned advocate had submitted before this Court that the plaintiff is in possession of suit property since 2006 and as the defendants were not agreed to execute registered sale-deed in favour of plaintiff, he had brought the suit in 2023. The Learned Advocate had prayed for rejection of the present application. The learned Advocate for plaintiff had relied on several authorities as mentioned in the written arguments vide exhibit 19.

3. Before going into the merits of the present case, this Court is of the view to deal with the law at hand. Order VII Rule 11 reads as:

***“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 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 comply with the provision of Rule 9.*

*Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”*

Perusing the said law, it transpires that suit can be rejected under the given conditions as per Rule 11. It provides that a suit can be rejected if it is barred by any prevailing law. This Court has heard the Learned Advocates for the parties and also had perused the record of present suit. The present suit is filed by the plaintiff for specific performance of contract, declaration and permanent injunction. It is well settled principle of law that when any application under Order VII Rule 11 of C.P.C. is to be decided, then the averment of the plaint is to be taken into consideration. At this juncture, it seems important to this court to mention that the plaintiff had filed present suit on the basis that the suit property is in his possession since 2006. Perusing mark 3/1, it

appears that it is alleged agreement to sell wherein it is mentioned that the possession was handed over to the plaintiff. Thus, *prima facie* it appears that the purchaser had acted as per alleged agreement to sell and had performed his part. Moreover, it is well settled principle of law that when the act of handing over possession is done at the time of agreement to sell, then, it falls under the purview of sale. Whether the agreement to sell was executed or not, whether the possession was handed over or not and whether the plaintiff had requested defendants for execution of registered sale-deed after demise of mother of defendant number 1 falls under the purview of mixed question of fact and law. Such issue can be resolved after recording of evidence. It is well settled principle of law that when any mixed question of fact and law appears on record, then suit cannot be dismissed under Order VII Rule 11 of CPC. Therefore, in the interest of justice, I pass the following order.

**::ORDER::**

- The present application is hereby rejected.

- No order as to cost.

21/07/2023

Nakhatrana

**(Romit Anilkumar Agrawal)**

Principal Senior Civil Judge  
Nakhatrana

**GJ0933**