

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL  
JUDGE, HUBBALLI**

Present:

**Sri. Yamanappa Karehanumanthappa,**  
Prl. Senior Civil Judge, Hubballi.

**O.S. No.421/2025**

**Dated this the 30<sup>th</sup> day of April - 2026**

**Plaintiff** : M/s. CPV Engineers Private Limited  
represented by its director Sri. D. Jaisingh  
S/o. Dowlatharam Singh.

**.Vs.**

**Defendants** : Smt. Pushpadevi W/o. Babulal Bafana  
and others.

**PARTIES TO IA No.IV**

**Applicants** : Smt. Pushpadevi W/o. Babulal Bafana  
and others.

**.Vs.**

**Opponent** : M/s. CPV Engineers Private Limited  
represented by its director Sri. D. Jaisingh  
S/o. Dowlatharam Singh.

**ORDER ON IA No.IV U/o.VII RULE 11(d) OF C.P.C.**

This I.A. is filed by the defendants No.1 to 5 U/o.VII Rule 11(d) of C.P.C. to reject the plaint as suit is barred by limitation.

2. In support of the application defendant No.4 sworn affidavit on his behalf and on behalf of defendant No.1 to 3 and 5. It is contended that plaintiff claiming to be the

director of M/s. CPV Engineer Private Ltd., has filed this suit for specific performance of alleged agreement of sale dated 05.10.1992 and 01.12.1997 on 04.09.2025 after lapse of 33 years claiming that he had paid entire consideration amount as long back as on 01.12.1997. He further contended that plaintiff in his plaint stated that after the death of Babulal on 3.01.2015 he was not aware of the details of legal representatives, but has issued notice on 29.08.2024 to the legal representatives i.e. present defendants No.1 to 5 without disclosing how and when he came to know about their details. The defendant No.4 has written a letter on 12.09.2024 to the counsel who had issued notice to the defendants requesting him to send the copy of the agreement of sale dated 01.12.1997. The plaintiff was well aware of the details of legal representatives, however after receipt of letter dated 12.09.2024 the plaintiff has filed the suit almost after a year on 04.09.2025. The reading of the plaint itself demonstrate that the suit is barred by limitation having filed the same after 33 years by pleading false facts. The cause of action stated by the plaintiff is only for the purpose of bringing the suit within time, but if the entire plaint is read, prima facie the suit is barred by limitation. The question of limitation is both of law and facts, but reading the plaint depict that the suit is barred by limitation. Hence, prayed to reject the plaint.

3. The counsel for plaintiff filed objection to said I.A. by denying the contents of the application as well as affidavit filed by the defendants. He has contended that the application is the outcome of dilatory tactics adopted by defendants. The relief claimed in the application does not attract the ingredients of Order VII Rule 11(d) of C.P.C. The plaint cannot be rejected on the ground of limitation as the limitation is a mixed question of law and fact and to ascertain the same, the trial is mandatory. He further contended that when the agreement of sale has not fixed any specific time for performance for contract, the limitation for filing a suit for specific performance of 3 years would start when the plaintiff has notice that performance is refused. If this aspect of matter is considered the present suit is well within the period of limitation. Hence, prayed to reject the application.

4. I have heard both side on this I.A. Perused the rulings, pleadings of the parties, I.A. and affidavit. The following points arise for my consideration:

1. Whether the defendants No.1 to 5 proves that the suit is barred by limitation U/o.VII Rule 11(d) of C.P.C.?

2. What order?

5. My answer to the above points are as under.

**Point No.1 : In the Negative.**

**Point No.2 : As per final order,  
for the following:**

## **REASONS**

6. **Point No.1:** Admittedly the suit is filed by the plaintiff for specific performance of contract. In the plaint he has pleaded that the suit property was originally belonging to KSSIDC Limited, Hubballi. It has sold the suit property in favour of M/s. Karnataka Steels, Hubballi i.e. a partnership firm represented by its partners by name Hirachand Mishrimalji Bafana and Babulal Dhingarmal Bafana. They agreed to sell the suit property in favour of M/s. CPV Engineers, Hubballi, for ₹8,00,051/- and executed agreement of sale dated 05.10.1992. The plaintiff has paid ₹75,000/- through cheque as sale consideration amount. No period was fixed in the agreement of sale to get the absolute sale deed executed and registered within a particular period of time as such the time is not the essence of contract. The plaintiff has personally approached the Babulal Dhingarmal Bafana on several occasions, he went on postponing the same, but he never refused to execute the sale deed in favour of plaintiff. In the meantime Babulal has breathed his last on 23.01.2015. The plaintiff was not aware of legal heirs of deceased Babulal. The plaintiff ascertained the legal heirs and issued a legal notice on 29.08.2024 and filed this suit.

7. It is well settled position of law that while considering the application U/o.7 Rule 11 of C.P.C. the Court has to consider the averments of the plaint and plaint alone. Except the plaint the Court cannot consider the written

statement or affidavit filed by the parties to reject the plaint. The Hon'ble Apex Court in **(2003) 1 SCC 557, between Saleem Bhai vs State of Maharashtra** and in landmark judgment **T. Arvindam vs T.V. Satyapal (1977) 4 SCC 467**, held that while deciding to accept or reject the plaint U/o.VII Rule 11 of CPC what can be seen by the court is only the averments made in the plaint. Defence in written statement of the defendant cannot be looked into. The Hon'ble Supreme Court recently in **(2020) 7 SCC 366, between Dahiben -vs- Arvindhbai Kalyanji Bansali**, explained relevant principles under VII Rule 11 and explained that "The true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application U/o.VII Rule 11 of CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

8. The said ruling is recently considered by Hon'ble Apex Court in **Geeta -vs- Nanjundaswamy, 2023 SCC Online SC 1407, decided on 31.10.2023**. So, this Court has to keep in mind the said settled position of law.

9. The main contention of the defendants No.1 to 5 is that suit is barred by law of limitation. The plaintiff has contended that the agreement of sale has not fixed any specific time for performance for contract, the limitation for filing a suit for specific performance of 3 years would start

when the plaintiff has notice that performance is refused. If this aspect of matter is considered the present suit is well within the period of limitation. So, it is well settled position of law that question of limitation is mixed question of law and fact. On this point I rely upon the citation reported in **(2018) 6 SCC 422, Chhotanben and another -vs- Kiritbhai Jalkrushnabhai Thakkar and others**, wherein Hon'ble Apex Court held as under:

“Civil Procedure Code, 1908 – Or.7 R.11(d) – Application for rejection of plaint – Adjudication as to – Relevant considerations therein – Plea as to rejection of plaint on ground of suit being barred by limitation – Tenability – Existence of triable issue with respect to that plea – Effect.

As per plaint of present suit, (i) plaintiff's (appellants herein) and original defendants No.1 and 2 were in joint ownership and possession of ancestral property in question which was inherited by them from their predecessor (father), (ii) plaintiff's had half-share in that property, (iii) without knowledge of plaintiffs, defendants 1 and 2 transferred said property vide a registered sale deed dt. 18.10.1996 in favour of defendants 4 to 6 after forging signatures/ thumb impressions of plaintiffs as witnesses on that deed, (iv) plaintiffs got knowledge about that fraudulent deed when on getting information from their community

members they immediately enquired about the matter and obtained a certified copy of registered sale deed from office of Sub-Registrar concerned, and (v) on getting knowledge about said fraudulent transaction, plaintiffs immediately filed instant civil suit (in year 2013) and that too within two days from refusal by original defendants 1 and 2 to refrain themselves from interfering with peaceful enjoyment of use and possession of ancestral property by plaintiffs.

In said suit, defendants 5 filing an application under Or.7 R.11(d) C.P.C. for rejection of plaint on ground that suit was barred by limitation having been of averments in plaint, held, which of the articles from amongst Arts.56, 68, 59, 65 or 110 or any other article of Limitation Act, 1963 will apply to present case was to be considered at appropriate stage – **Thus, issue regarding suit being barred by limitation was a triable issue in fact situation of present case – Consequently, plaint could not be rejected at the threshold in exercise of power under Or.7 R.11(d) CPC – Thus, affirming decision of trial Court in this regard, view taken by High Court to the contrary reversed.”**

10. The counsel for plaintiffs has relied the citation reported in 2010 (2) KCCR 954 (DB), Syed Zaheer and others -vs- C.V. siddaveerappa, wherein it is held as under:

“A. Limitation Act, 1963 – Article 54 – Specific Relief Act, 1963 – Sections 10 and 20 – Suit for specific performance of contract – Limitation for – when time begins to run – Held, the starting point of limitation for the suit for specific performance shall be the date fixed for performance or when the plaintiff has the notice of refusal of performance by the defendant. Article 54 of the Limitation Act specifies two points of time from which time begins to run for the purpose of computing the period of three years limitation with regard to filing suit for specific performance of contract. One is the date fixed for performance of the contract and two, if no such date is fixed, then when the plaintiff had notice of the performance being refused.”

11. The advocate for defendants relied the judgment of Hon'ble Supreme Court in Civil Appeal No.1525/2023, Indian Evangelical Lutheran Church Trust Association -vs- Sri. Bala and Co. I have gone through the judgment of Hon'ble Supreme Court. If the plaintiff filed any suit before filing this suit, then only the judgment of Hon'ble Supreme Court applicable as per Article 113 of Limitation Act. In the

present case the plaintiff has not filed any suit against the defendants based on the agreement of sale. The another judgment relied by the advocate for defendants is of Hon'ble Supreme Court reported in SLP No.2137/2025, Smt. Uma Devi and others -vs- Sri. Anand Kumar and others, wherein the Hon'ble Supreme Court held that the suit of the plaintiff was meaningless litigation, did not disclose the proper cause of action and barred by limitation, plaint can be rejected. The present case there is no limitation clause in the agreement of sale. Therefore, the judgment of Hon'ble Supreme Court is not applicable to the case on hand.

12. The another judgment relied by advocate for defendant is of Hon'ble Supreme Court reported in (2012) 8 SCC 706, Church of Christ Charitable Trust and Educational Charitable Society Represented by its Chairman -vs- Ponniamman Education Trust, wherein it is held that in case of suit for specific performance of agreement of sale of property, where cause of action was based on registered deed of power of attorney, same or registered copy thereof must be produced. In the agreement if date is one attracts bar of limitation, the plaint can be rejected. In the present case in the agreement of sale deed, there is no mention of limitation. Therefore, judgment of Hon'ble Supreme Court is not applicable to the case on hand.

13. The another judgment relied by advocate for defendant is of our Hon'ble High Court passed in CRP

No.77/2023, K.H. Hanumanthaiah -vs- Prakashchand and others, wherein it is held that as per terms of agreement of sale was to be executed within 11 months, the suit filed after expiry of 11 months is barred by law of limitation as per Article 54 of Limitation Act. In the present case there is no time fixed for execution of the sale deed. The another judgment relied by advocate for defendant is of our Hon'ble High Court of Karnataka reported in Laws(KAR) 2023-3-641, D.K. Kannan -vs- Ambarish Reddy, wherein Hon'ble High Court has held that on meaningful and not formal reading of the plaint, it is manifestly vexatious and meritless and not disclose clear right to show excersing of power under U/o.7 Rule 11 of C.P.C. could be resorted and where clever drafting has created an illusion of cause of action, same is required to be nipped in the bud. In the plaint there is a cause of action to file the suit. Therefore, the suit cannot be dismissed threshold. Hence, judgment of Hon'ble High Court is not applicable to the case on hand.

14. So, by considering the said citation and considering the averments of the plaint I hold that the question of limitation is mixed question of law and fact and only on the ground of limitation the plaint cannot be rejected. So, at this stage only on the basis of averments of the plaint it cannot be said that the suit is barred by law of limitation. So, considering the materials on record I hold that the application is filed by the defendants No.1 to 5 only in order

to drag on the matter. Hence, the said application is devoid of merits and liable to be rejected. Accordingly, I answer point No.1 in **Negative**.

15. **Point No.2:** In view of my answer to point No.1 as stated above, I proceed to pass the following;

**ORDER**

The I.A. No.IV filed by the defendants No.1 to 5 U/o.VII Rule 11(d) of C.P.C. is rejected.

The costs shall following the events.

(Dictated to the Stenographer directly on computer, script corrected directly on computer and then pronounced by me in the Open Court on this the **30<sup>th</sup> day of April - 2026**)

**(Yamanappa Karehanumanthappa)**  
**Pri. Senior Civil Judge, Hubballi.**