

**ORDER BELOW EXH. 41**

Defendants have filed present application Under Section 9 of C.P.C for dismissal of suit.

2. Advocate Shri R.D. Shirsath for defendants argued that, the plaintiff has filed present suit for Specific Performance of Contract, on the basis of agreement to sale dtd. 29.03.2000. However, the suit is filed on 19.06.2019. That as per Article 54 of Limitation Act, the period for execution of contract is 3 years from the date of agreement. As said period is lapsed in 2003. Now the suit is not within limitation. Hence, prayed to dismiss the suit.

3. It is argued by Advocate Shri S.R. Jadhav for plaintiff that in agreement to sale dated 29.03.2000 no time limit is mentioned for execution of the sale deed, therefore there is no bar of limitation to the suit. Moreover, in said suit the plaintiff is claiming injunction alongwith Specific Performance of Contract, therefore said application is not maintainable. Only to prolong the matter, the defendants have filed present application, so prayed to reject the same.

4. Perused the application, say, plaint and the documents filed alongwith the plaint. On perusal of agreement to sale, it appears that the plaintiff alongwith two others have entered into an agreement with the defendant no.1 on 29.03.2000. However, the suit is filed on 19.06.2019. Considering the averments, the main issue to be decided in the suit would be the date from which the limitation started for execution of sale deed. Which can be decided only after adducing evidence. Now it is settled principle that the issue regarding limitation is a mixed question of law and

facts. Therefore, it would not be proper to dismiss the suit at threshold by exercising the power under section 9 of C.P.C. Hence, I pass following order:-

**ORDER**

Application is hereby rejected.

Date : 21.01.2021.

(Smt. P. T. Shejwal-Kale)  
Jt. Civil Judge Senior Division  
Vaijapur.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	:	G.K. Jadhav
Court	:	Smt. P. T. Shejwal-Kale, Jt. C.J.S.D., Vaijapur.
Date of Order	:	21.01.2021
Order signed by the P.O.	:	21.01.2021
Order uploaded on	:	21.01.2021