

MHKO070024132024

**Order below Exh.11 in Special Civil Suit****No.89/2024.**

Mahavir Patil.

Vs.

Devgonda @ Ajit Patil and others.

Defendant No.3 has filed the present application for the rejection of the plaint vide O.7 R.11(d) of the Code of Civil Procedure on the ground that it is barred by law. The plaintiff has filed his say (Exh.18) and objected to the application.

2. Heard both sides. Perused the record. In view of the application, say and argument advanced by the parties, the following points arise for my determination, and I proceed to record my findings thereon for the reasons as follows -

Sr. No.	Points for determination	Findings
1.	Whether the plaint is liable to be rejected on the ground that it is barred by limitation vide O.7 R.11(d) of the Code of Civil Procedure ?	No.
2.	What Order?	As per final order.

REASONS**As to Points No.1 and 2 :-**

3. The learned advocate for defendant No. 3 has submitted that the plaintiff has instituted the present suit for specific performance of the agreement to sell dated 10.12.2016. Therefore, it was incumbent upon the plaintiff to institute the suit within a period of three years from the date of execution of the said agreement. However, the present suit has been instituted on 08.11.2024 and is, therefore, barred by limitation.

On the other hand, the learned advocate for the plaintiff has submitted that the agreement to sell dated 10.12.2016 does not specify any date for performance of the contract. Hence, as per Article 54 of the Limitation Act, the period of limitation commences from the date when the plaintiff has notice of refusal of performance. He further submitted that the plaintiff issued a notice calling upon the defendant to execute the sale deed on 02.05.2024. Thereafter, on 29.09.2024, the defendant replied to the said notice and refused to execute the sale deed. Therefore, the limitation to institute the present suit commenced on 29.09.2024, and the suit filed on 08.11.2024 is within the prescribed period of limitation.

4. The plaintiff has filed the present suit for specific performance of the contract. Therefore, the provisions of Article 54 of the Limitation Act are applicable for determining the period of limitation for filing the present suit. Article 54 prescribes a period of limitation of three years for a suit for specific performance, which commences from the date fixed for performance of the contract, and where no such date is fixed, from the date when the plaintiff has notice that the performance is refused. In the present suit, it is not disputed by the parties that the agreement to sell does not prescribe any specific time limit for performance. Therefore, in view of the provisions of Article 54 of the Limitation Act, the period of limitation in the present suit commenced from the date on which the plaintiff had notice of the refusal of performance.

5. In order to determine the date on which the plaintiff had notice of refusal of performance of the contract, it is necessary to consider the averments made in the plaint. Admittedly, while deciding an application filed under Order VII Rule 11 of the Code of Civil

Procedure, the Court cannot take into consideration the averments made in the written statement or the documents produced by the defendants. Therefore, for the purpose of deciding the present application, the scrutiny must be confined to the averments made in the plaint. In the plaint, it is specifically averred that on 02.05.2024, the plaintiff issued a notice calling upon the defendant to execute the sale deed in his favour. The defendant replied to the said notice on 29.09.2024 and denied execution of the alleged agreement to sell. On that date, the cause of action to institute the present suit arose. Thus, the plaint specifically discloses the date, i.e., 29.09.2024, on which the plaintiff had notice of the defendant's refusal of specific performance. Hence, the period of limitation to institute the present suit commenced from the date 29.09.2024. The present suit was instituted on 08.11.2024. Therefore, it is clear that the suit has been filed within the period of limitation.

6. The learned advocate for the defendant has submitted that the period of three years from the date of execution of the agreement to sell expired on 09.12.2019. However, till 02.05.2024, the plaintiff did not issue any notice demonstrating his readiness and willingness to perform his part of the contract. It is contended that the plaintiff has failed to establish that he was always ready and willing to perform his contractual obligations and, therefore, the suit is barred by limitation. On the contrary, the plaintiff has pleaded the date of their knowledge of the refusal to execute the sale deed by the defendants as 29.09.2024. These pleadings disclose that there is a dispute between the parties regarding the date on which the limitation to institute the present suit commenced. Therefore, it is evident that, in the present suit, the issue of limitation is a mixed question of fact and law. It is well settled that when the issue of limitation is a mixed question of law and fact and

cannot be decided without affording the parties an opportunity to lead evidence, the plaint cannot be rejected summarily. Hence, in the present suit, the plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure.

7. The defendant has relied upon the judgment in Pydi Ramana @ Ramulu v. Davarasety Manmadha Rao, Civil Appeal No. 434 of 2013, decided on 10.07.2024. However, the said decision is clearly distinguishable on facts. In that case, the issue of limitation was adjudicated after the parties had led evidence and upon conclusion of the trial. In the present case, the trial has not yet commenced, and the application has been filed at the threshold under Order VII Rule 11 of the Code of Civil Procedure. Therefore, the ratio laid down in the said judgment is not applicable to the facts of the present case and does not assist defendant No. 3.

8. In view of above discussion, it is clear that the application is liable to be rejected. Hence, I answer Point No.1 in the negative, and in answer to Point No.2, I pass the following order :-

ORDER

The application (Exh.11) is rejected.

Date- 28/01/2026.

(P. A. Patil)
Jt. Civil Judge Senior Division,
Jaysingpur.