

...1... **Regular Civil Suit No. 12/2018**
CNR:MHNS13-000073-2018

Order Passed Below Exh. 47
Draupadabai Vs. Rajendra and others

This is an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. It is the contention of defendants no. 1 to 4, 7, 10, 23, 26 to 28 that, the plaintiff has presented the suit on the basis of agreement to sale dated 23/03/1994, Kabja Pavati dated 26/08/1994 and Bharana Pavati dated 26/09/1994. All these documents are not accepted by these defendants. They have contended that, all the above three documents do not bear signature / thumb impressions of these defendants. They have denied that, the transaction of the sale of suit property taken place and they have received any sort of amount from the plaintiff. Further it is contended by them that, the suit is presented after the lapse of 23 to 24 years from the date of execution of agreement to sale. The present suit would have to be filed within three years and therefore, the same has to be rejected.

2] In spite of ample opportunity, the plaintiff failed to submit her say. Thus, in view of order dated 05/09/2018 passed below Exh. 47 this application proceeded without say of the plaintiff.

3] Heard the learned advocate Shri. S. G. Kothule for defendants no. 1 to 4, 7, 10, 23, 26 to 28 and the learned advocate Shri. R. T. Chavan for the plaintiff. Perused the plaint and matter on record.

4] It appears that, the ground of limitation argued on behalf of these defendants seeking rejection of plaint requires to be considered in detail. A contract is an agreement based upon sufficient consideration to

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do or not to do a particular act. The party on whom this contractual obligation rests must not fail to discharge such obligation. In case of his failure the other party will have a right to sue for a specific performance of the contract.

5] **Article 54 of the Limitation Act** which describes the period of limitation for filing suit for specific performance reads as under :

54	<i>For specific performance of a contract</i>	<i>Three years</i>	<i>The date of fixed for the performance or , if no such date is fixed when the plaintiff has noticed that performance is refused.</i>
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6] Mere reading of the Article 54 of the Limitation Act would show that, if the date is fixed for the performance of the agreement then non-compliance of the agreement on the date would give a cause of action to file suit for specific performance within three years from the date so fixed. However, when no such date is fixed, limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that, the defendant has refused the performance of the agreement.

7] In the present matter these defendants have denied the transaction about agreement to sale dated 23/03/1994, Kabja Pavati dated 26/08/1994 and Bharana Pavati dated 26/09/1994. As per their contention, all these documents do not bear their signatures/ thumb impression. This fact requires detail scrutiny of evidence.

8] It is an undisputed fact that, the agreement to sale is dated 23/03/1994. On the perusal of said agreement to sale it appears that, in para no. 5 of said agreement, it is specifically mentioned that, vendor is having responsibility to get all the required permissions about sale from competent authorities.

9] Further it is also necessary to read para 7 of the said agreement to sale which is reproduced below :

"(७). परवानगी आले नंतर आम्ही तुम्हांस लेखी कळविले नंतर (लेखी नोटीसीव्दारे) तुम्ही मुदतीत उर्वरित रक्कम घेवुन आला नाही व व्यवहार पुर्ण करुन घेतला नाही तर तुम्हांस मिळकत खरेदी मागण्याचा हक्क व अधिकार राहणार नाही. मात्र तुम्ही मुदतीत उर्वरित रक्कम घेवुन आला व आम्ही व्यवहार पुर्ण करुन देण्याची टाळाटाळ करु लागल्यास सदर व्यवहार हा तुम्ही योग्य कोर्टाकडुन पुर्ण करुन घ्यावा त्या खर्चाची / परीनामांची जबाबदारी आमची राहिल."

10] Wordings of above para 7 itself show that, after getting permission firstly, vendors would issue notice and if the vendee i.e. Draupadabai fails to pay the remaining amount within fix period, then she would not be entitled to claim specific performance. But in the present matter uptill now vendors have not issued notice to the plaintiff after getting permission from competent authorities as contended in para 7 of the agreement to sale.

11] The plaintiff has specifically pleaded that, at the time of agreement to sale she has paid Rs. 27,000/- to the vendor and thereafter on 26/09/2014 she paid Rs. 33,000/- out of remaining Rs. 47,000/- to vendors no. 1 to 10 of agreement to sale in the presence of witnesses. Thereafter time to time she has paid Rs. 10,000/- by hand to defendants.

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From the contents of the plaint it appears that, the plaintiff has performed her part of performance of contract.

12] The learned advocate for these defendants placed reliance upon the ratio laid down in case of **Rajendra Bhaiyyaji Zade and others Vs. Harbanssingh Jaswantsingh Siddhu and others reported in 2018(4) Bom. C. R. 143** wherein it was held by the Hon'ble Bombay High Court that, *“While considering question whether a plaint deserves to be rejected as being barred by limitation, averments made in plaint in entirety need to be looked at, presuming them to be correct.”* Further it was also held by the Hon'ble Bombay High Court therein that, *“The defendant earlier filed suit in 1994 against plaintiff claiming that, she would be absolute owner and in exclusive possession of suit property. Filing of such suit was threat in clear and unequivocal terms and first cause of action arose at that time itself. At that time plaintiff did not file any suit or counter claim. Subsequent dismissal of suit in default would not have any impact on question of approval of any cause of action for first time. Present suit filed in the year 2011 after the period of limitation, suit is barred by limitation.”*

13] The learned advocate for these defendants also placed reliance upon deposition of Shobha Macchindra Gangurde at Exh. 58 in R.C.S. No. 197/1994, deposition at Exh. 64 of Bhagwan Uddhav Gangurde in R.C.S. No. 197/1994 dated 01/11/2006 and certified copy of Judgment dated 22/11/2006 in R.C.S. No. 197/1994 which is filed alongwith list of documents at Exh. 54 in this proceeding.

14] It is epochal to note that, on the perusal of all the above

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documents, it reveals that, in the said matter vendors of agreement to sale dated 23/03/1994 have not denied the execution of sale deed even Bhagwan has specifically mentioned that, defendants no. 8 to 19 of the said R.C.S. No.197/1994 have obtained Rs. 27,000/- from the plaintiff on 23/03/1994 and thereafter on 26/09/1994, they have received Rs. 33,000/- i.e. remaining amount of the agreement to sale from the plaintiff and thereafter time to time remaining amount is also paid by the plaintiff and thereby the total amount of Rs. 70,000/- is received by them. This shows that, vendors of agreement to sale have not denied the execution of agreement to sale dated 23/03/1994 and that they have received the total amount of Rs. 70,000/- as consideration of the contract of sale. Therefore, it reveals that, facts of the present matter are altogether different from that of the above cited case, hence with due respect the same is not applicable to the facts of present matter.

15] The learned advocate for these defendants argued that, the present suit is vexatious and meritless. It does not disclose the cause of action. To support his argument he placed his reliance upon the ratio laid down in case of *Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal reported in LEX (SC) 2017 4 82* wherein the Hon'ble Apex Court held that, *"If on entire and meaningful reading of plaint it is found that, the suit is manifestly vexatious and meritless in the sense of disclosing any right to sue, Court should exercise power under Order VII Rule 11 of the CPC."*

16] It is settled principle of law that, averments of the plaint have to be read as a whole to find out whether averments disclose a cause of action or whether the suit is barred by any law. It is epochal to note that,

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question as to whether suit is barred by any law, would always depend upon the facts and circumstances of each case. As discussed above vendors of the agreement to sale were having responsibility to get the permission from the competent authorities as specifically expressed in the agreement to sale. There is nothing on record that, defendants have obtained permission from competent authorities. The plaintiff has specifically mentioned the cause of action in para no. 15 of the plaint to present the suit. The plaintiff has specifically mentioned in the plaint that, defendants issued public notice in *Dainik Deshdoot* paper dated 14/08/2017 for title verification of the suit property. Also the plaintiff has given reply to the same by public notice dated 19/08/2017. Thereafter on 28/07/2017 and 19/09/2017 defendants send reply notices to the learned advocate Shri. Akbar Saiyyad and advocate Shri. Kothule respectively. Moreover defendants received notices sent by the plaintiff on 24/11/2017 and avoided the execution of sale deed. On the perusal of plain reading of the plaint itself it appears that, the plaintiff has shown the cause of action to present this suit. Thus, facts of the present matter are altogether different than that of the above cited case law. Hence, with due respect the said ratio is not applicable to the facts of present matter.

17] In *Chand Rani Vs. Kamal Rani, MANU/SC/0285/1993* the Hon'ble Apex Court held that, “*In the case of sale of immovable property time is never regarded as the essence of the contract. In fact there is presumption against time being the essence of the contract.*”

18] An intention to make time the essence of the contract must be expressed in unequivocal language. As the point of limitation is

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concerned the suit for specific performance has to be filed within reasonable time which depends upon facts and circumstances of each case. Even if it is not of the essence of the contract the same has to be performed in a reasonable time, if the conditions are :

- 1] from the express terms of the contract ;
- 2] from the nature of the property ; and
- 3] from the surrounding circumstances, for example : the object of making the contract.

19] From the contents of plaint itself it is clear that, when defendants issued public notice in *Dainik Deshdoot* paper on date 14/08/2017 for title verification of the suit property and when they issued notices through advocates on 28/08/2017 and 11/09/2017, the plaintiff noticed that, defendants refused the performance of the agreement to sale dated 23/03/1994. Thus, at that time the cause of action to present the suit arosed. Therefore, considering the pleading of the plaintiff and the facts on record, I pass the following order :

ORDER

- 1] Application (Exh. 47) stands rejected.

Date : 26/10/2018

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(S. N. Hurgat)
Joint Civil Judge Junior Division,
Pimpalgaon (B)