

ORDER BELOW EXH. 19 & 25 IN Spl.CS No. 313/2024

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The application under Exh.19 is filed by defendant No. 1/1 and application under Exh.25 is filed by defendant no.1/2 under Order VII Rule 11 of The Civil Procedure Code, 1908 (to be referred as The C.P.C. for the sake of brevity) for the rejection of the plaint.

NATURE OF SUIT:

2. The present suit is filed for declaration, specific performance, permanent injunction and other reliefs.

CONTENTS IN THE APPLICATION VIDE EXH.19:

3. It is contented by the said defendant that the plaintiffs have approached the court with regard to specific performance of contract/agreement dated 15/07/2011 after 14 years. However, the suit does not fit within the law of limitation as per Article 54 of the Limitation Act. The suit of specific performance has to be filed within 3 years from the cause of action. Hence, the plaint has to be rejected under order 7 Rule 11 of the CPC and hence, has prayed for the same.

CONTENTS IN THE APPLICATION VIDE EXH.25:

3. It is contented by the said defendant that the plaintiffs have themselves admitted the facts that, the suit property are acquired property by the Government and hence the suit property are not in possession of the plaintiff but are in possession of the state. They have also stated that, the said suit is barred by law of limitation and not filed

within the period of 12 years, also the plaintiff have not included the officers of CIDCO in the said suit. Hence, he has prayed the plaint be rejected on the ground of non - joinder of necessary parties and that the suit is barred by limitation. Hence, the plaint be rejected under Order 7 Rule 11 of the CPC.

CONTENTS IN THE SAY VIDE EXH.24 AGAINST THE APPLICATION VIDE EXH.19:

4. The plaintiffs filed their say vide Exh.24 and have stated that the said application is false and not correct. The suit has been filed within limitation. The application is baseless. The plaintiff have stated in the plaint that, they had sent notice to the defendant on 11/03/2024 with regards to agreement dated 15/07/2011 and categorically mentioned in para no.21. Hence, for the reason mentioned herein and in the say have prayed to reject the present application.

CONTENTS IN THE SAY VIDE EXH.27 AGAINST THE APPLICATION VIDE EXH.25:

5. The plaintiffs filed their say vide Exh.27 the plaint cannot be rejected only the ground of misjoinder of necessary party. After receiving the permission from CIDCO, construction of ground and first to fourth floor have already been completed. They further stated that, the said application is false and not correct. The suit has been filed within limitation. The application is baseless. The plaintiff have stated in the plaint that, they had sent notice to the defendant on 11/03/2024 with regards to agreement dated 15/07/2011 and categorically mentioned in para no.21. Hence, for the reason mentioned herein and in the say have

prayed to reject the present application.

ARGUMENTS ADVANCED BY THE LD. ADVOCATES FOR DEFENDANT NOS 1/1 & 1/2

6. The Ld. Advocate for the defendants argued that as per Order 7 Rule 11 (d) of The C.P.C. the suit was not filed within limitation and is bad for non joinder of necessary parties.

ARGUMENTS ADVANCED BY THE LD. ADVOCATE OF THE PLAINTIFFS:

7. The Ld. Advocate for the plaintiff argued that, even though the agreement was of the year 2011, the CC was obtain in 2015 and OC in the year 2024. The condition in it are not fulfilled till date and hence the agreement still survives and so does the suit. Hence, the suit is not barred by the Limitation Act.

8. Considering the pleadings of the plaintiff and the defendants and arguments put forth by the Ld. Advocates of the plaintiff & the defendants, the following points arise for my consideration and I have recorded my findings on those points.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaint is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure 1908?	In the Negative.
2.	What order?	<u>As per the final order.</u>

REASONS**AS TO POINT NO. 1:**

1. For the purpose of deciding the present application, it is necessary to look into the provision as provided under The C.P.C., Order VII Rule 11 which provides for rejection of plaint. It is necessary to peruse the said Rule, before I move on to decide the said application.

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 returned 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 :

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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.

APPLICATION TO BE DECIDED BASED ON AVERMENTS IN THE PLAINT:

9. The settled principle of law says that the application under Order VII Rule 11 of The C.P.C. has to be decided only based on the averments in the plaint. Reliance is placed upon the following authority:

Saleem Bhai Vs. State of Maharashtra, AIR 2003 SC 756

It has been that the application for rejection of plaintiff has to be decided based on averment in the plaint and the pleas taken by the defendant are wholly irrelevant at that stage and directing the defendant to file written statement without deciding an application under Order 7 Rule 11 is procedural irregularity touching the exercise of jurisdiction in the court.

10. Needless to say, such an application has to be decided based on the averments and not going into the merits of the case. Hence, keeping the same as base, I proceed forward to decide the application resting my back on the foundation of the structure in the present case being Order VII Rule 11 of The C.P.C and the above mentioned principle rested in authority. Along with the same, it is also necessary that the following principle cited in the authority be kept in mind while deciding the application.

Sopan Sable Vs. Asst Charity Commissioner [(2004) 3 SCC 137], it is held that,

The real object of Order 7 Rule 11 is to keep out of Courts, irresponsible law suits. For the purpose of deciding an application under clauses (a) and (d) of Order 7 Rule 11, the averments in the Plaint are germane. In exercise of its jurisdiction under Order 7 Rule 11 what is required is a meaningful and not a formal reading of the Plaint and clever drafting which creates an illusion of a cause of action ought not to detract from the jurisdiction of the Court on an application for rejection.

11. Connecting the nexus of the above principles with the facts of the present case, plaintiff has submitted that, the suit property is the ancestral property of the plaintiffs which was acquired by the state. Plaintiff Nos.1 to 4 were to develop the property by themselves. However, due to certain difficulties it was handed over to the defendants for developing the property. Accordingly, an agreement on 15/07/2011 was notarized bearing no.2415/2011. It was decided that, after obtaining permission from CIDCO within a period of 48 months from them the defendant should hand over 50 % of the property lock and key basis and accordingly 63,00,000/- was given by the defendants to the plaintiffs. It was also decided by the said agreement that, after obtaining CC within a period of 36 Months they should act as per the agreement for giving the 50% of the share of the suit property and if not the period to be extended by 12 months by both. Till date 90% construction is complete. Plaintiff

Nos.5/1 to 5/4 had filed a suit for partition and other reliefs against plaintiff Nos 1 to 4 and the defendants bearing Spl.C.S.No. 482/2011 and the said suit was compromised on 15/02/2024. Plaintiff Nos. 5/1 and 5/2 sent a notice for compliance of the agreement dated 15/07/2011 on 11/03/2024. However, even after receiving the said notice the defendant started selling the property to third persons and hence the present suit was filed. The defendants have delayed giving possession of 50% of the construction by five years. On the other hand the plaintiff have fulfilled the conditions of the agreement but the defendants have not. Hence, the present suit has been filed for declaration, specific performance of contract and permanent injunction.

11. The Ld. Advocates for defendant have submitted that, the suit is barred by limitation. The Ld. Advocate for plaintiff submitted that, there is averment with regard to the document and the suit is filed within limitation. However, i am of the opinion that, question of limitation is a mixed question of law and facts. On reading of the plaint prima-facie it cannot be said that the suit is barred by limitation. It can be determined only after due consideration of the evidences, both oral and documentary, after a full fledged trial and the issue would be decided on consideration of the evidences to be adduced by both sides.

12. The Ld. Advocate for defendant no.1/2 has submitted the following citations.

1. J.S. Yadav Vs. State of U.P. and Ors. IN THE SUPREME COURT OF INDIA IN CIVIL APPEAL No. 3299 OF 2011 (ARISING OUT OF SLP (c) NO.16427 OF 2009) it is held by the Hon'ble Apex Court that,

32. *No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order I Rule 9, of the Code of Civil Procedure, 1908 provide that implement of a necessary party is mandatory and in case of non-joinder of necessary party, the plaintiff/Petitioner may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the Court, be it a Plaintiff or a Defendant, otherwise the proceedings will have to fail. In Service Jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person is terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the Plaintiff/Petitioner succeeds, it may not be possible for the Court to issue direction to accommodate the Petitioner without removing the person who filled up the post manned by Plaintiff/Petitioner. (Vide: Prabodh Verma and Ors. Etc. v. State of U.P. and Ors. Etc. MANU/SC/0061/1984 : AIR 1985 SC 167; Ishwar Singh and Ors. V. Kuldeep Singh and Ors. MANU/SC/0525/1995 (Supp) 1 SCC 179; Tridip Kumar Dingal and Ors. V. State of West Bengal and Ors. MANU/SC/8382/2008 : (2009) 1 SCC 768; State of Assam V. Union of India and Ors. MANU/SC.0635/2010 : (2010) 10 SCC 408; and Public Service Commission, Uttaranchal V. Mamta Bisht and Ors. MANU/SC/0410/2010 : AIR 2010 SC 2613. More so, the public exchequer cannot be burdened with the liability to pay the*

salary of two persons against one sanctioned post.

33. *The Appellant did not implead any person who had been appointed in his place as a Member of the Commission. More so, he made it clear before the High Court that his cause would be vindicated if the Court made a declaration that he had illegally been dislodged restrained to continue as a Member of the Commission. In view of the above, he cannot be entitled for any other relief except the declaration in his favour which had been made herinabove that the impugned Notification dated. 28.05.2008.*

2. Chuba Temsu Ao and Ors. Vs. Nangponger and Ors.

In the High Court of Gaurati, CR No.3(K)/93, decided on 22.02.1994, it is held by the Hon'ble Apex Court that,

The Court concluded that the objection for non-joinder is not consumptive to the suit. The court held that if a necessary party is not added in a suit then the suit shall be dismissed as per Order 1, Rule 9 of the Code of Criminal Procedure. The Court relied on the judgment rendered in Udit Narain Singh V. Additional Member Board of Revenue. Revision petition allowed.

10. *In Udit Narain Singh, Malpaharia, appellant v. Additional Member Board of Revenue Bihar respondents MANU/SC/0045/1962 it has been held at page 788;*

“ A NECESSARY PARTY is one without whom no order can be made effectively. A PROPER PARTY is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question

involved in the proceeding.”

11. *From the above settled position of law, it is clear that if in a suit a necessary party is not added the suit shall be dismissed not for the reasons of non-joinder of mis-joinder of the parties because no effective order can be passed and consequently no relief can be granted to the parties on records.*

13. In relation to the authorities so cited by the Ld. Advocate for the defendant. It is necessary to note that, both the authorities of Hon'ble Apex Court and Hon'ble High Court respectively, they were relation to this suit with stands dismissed in case of non joinder of parties. The words specifically used by the Hon'ble Apex Court and Hon'ble High Court is in relation to the dismissal the suit. In case of the present suit, it is at a very initial stage. As an application for rejection of plaint has been filed which is extremely different than dismissal of the suit which usually arises in the case mentioned above after necessary evidences has been introduced and trial has been concluded. Hence, these authorities cited above, with utmost respect, are not applicable in the present case as the facts and circumstances are not applicable to the present facts and circumstances and even the stage of the suit in the above cited authorities was after evidence and the present suit stands at a very initial stage.

14. Hence, a plaint explicitly cannot be rejected on the ground of non joinder of necessary parties if it discloses a cause of action. It is necessary that, the plaintiff should be afforded an opportunity to add such party rather than having the plaint rejected outright. The issue of non joinder of party should be addressed at a later stage, typically during

the framing of issues or trial, rather than at the initial stage of plaint rejection. Non joinder of necessary parties if any, does not warrant immediate rejection of plaint.

15. Based upon the pure reading of plaint, I arrive at a conclusion that, the trial court, in the present instance, is not surrounded by circumstances so fit, so as to exercise the powers conferred under Order VII Rule 11 of The C.P.C. Clause (d) of Rule 11 of Order VII of The C.P.C applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. Although, it is the substance and not merely the form that has to be looked into, the pleading construed stands without addition or subtraction of words or change of its apparent grammatical sense and the intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. It is, in my opinion a case where the suit from statement in the plaint cannot be said to be barred by law. Disputed questions cannot be decided at the time of considering the application filed under Order 7 Rule 11 of the CPC. As the settled principle of law is that the statement in the plaint without addition or subtraction must show that is barred by any law to attract application of Order VII Rule 1 of The C.P.C. In view of which and laying my hands on all the discussions made about, I answer point No. 1 in the negative.

AS TO POINT NO 2:

16. The gamut of the discussion made in point No. 1, is that the applications are liable to be rejected and hence in view of the same,

I proceed to pass the following order answering point No. 2.

ORDER

- i) The application vide Exh. 19 and 25 are rejected.
- ii) No order as to cost.

Sd/-

Date: 06/08/2025

(Uma Y. Borade-Kapoor)
4th Jt. Civil Judge, S. D.,
Panvel.