

MHRG110000032023



ORDER BELOW EXH. 26 IN R. C. S. NO. 86/2021
(Passed on 19.08.2023)

This is an application filed by the defendant under Order VII Rule XI of the Civil Procedure Code (for short the 'Code') for rejection of the plaint.

2. The defendant stated that, the plaintiffs filed present suit for specific performance of the so-called agreement dated 29.06.2001, the plaintiffs contended in the plaint that, father of the defendant entered into the so-called agreement on 29.06.2001. The defendant has demanded or claimed the fulfillment of the said agreement till the defendant's father was alive. Its alone raise question mark about the contents of the plaint.

3. The defendant further stated that, without prejudice to the rights of the defendant, the defendant states that, as the suit of the plaintiffs when read in full, the so-called agreement is dated 29.07.2001, limitation period for the so-called agreement was till 28.07.2004.

4. The plaintiffs were not registered the so-called agreement or any such demand not made by the plaintiffs to the defendant till filing the suit. From this it can be seen that, firstly the right of the plaintiffs to specific performance of the so-called agreement has been terminated in the year 2004. The plaintiffs

were not registered the so-called agreement or any such demand not made by the plaintiffs to the defendant till filing the suit. From this it can be seen that, firstly the right of the plaintiffs to specific performance of the so-called agreement has been terminated in the year 2004.

5. According to the so-called contention of the plaintiffs. Some amount of the so-called agreement has been paid to the father of the defendant in the year. Considering, these contentions of the plaintiffs, all the rights and power of specific performance of the so-called agreement have been terminated in the year 2005. Considering the above aspects, the plaint liable to be reject. Lastly, the defendant pray to allow the application.

6. The plaintiffs filed say at Exhibit. 28 and denial all the contents of the application. Further, the plaintiffs contented that, the agreement which is subject matter of the suit is for a sum of Rs. 27,000/-. The plaintiffs have given stamp and court fees as per the provision of law. The agreement which is subject of the suit, Contains a condition of sale deed on bringing sale permission. The defendant has not obtained sale permission. In such circumstance, the agreement on which suit is based not barred by limitation period. Because the agreement depend upon fulfillment of condition for bringing sale permission.

7. So obtaining sell permission is condition precedent, when sell permissions is brought, the period of limitation will start. The plaintiffs contended that, issue of limitation is mixed question of fact and law. Hence, application is liable to reject.

8. Further the plaintiffs contended that, the agreement made on 29.01.2001, the new amendment of the Registration Act applicable on or after on 22.09.2001, the new amendment of Registration Act is in prospective nature and not retrospective. Therefore, the new amendment not affected agreement which is in favour of the plaintiffs. Considering, all above aspect the application liable to be rejected.

9. Heard both the sides at sufficient length.

10. Considering the Plaint and after hearing both the sides following points arose for my determination and I answer the same with reasons as under -

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether case is made out to reject the plaint under Order VII Rule XI of the code. ?	No.
2.	What Order ?	..As per final Order.

REASONS

11. **AS TO POINT NO. 1 AND 2 :-**

At the outset, it is worthwhile to discuss the provisions of Order VII Rule XI of the Code wherein it is provided the plaint shall be rejected in the following cases-

- (a) whether it does not disclose a cause of action;
- (b) where the relief claimed is under-valued, and plaintiff, on being required by the Court to so 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 plaintiff is written 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 plaintiff to be barred by any law

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

12. Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers 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 papers, 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.

13. It is settled law that, it cannot be laid down as proposition of law under Order VII Rule XI (d) that plaintiff cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case where the plaintiff averment itself indicate the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue.

a) Though the plea of limitation is always mixed question of law

and facts, in the instance case, the entire perusal of the plaint averments itself clearly shows that the suit itself is barred by limitation. At such time suit shall fall within the ambit of order VII Rule XI of the code for rejection of plaint.

14. According to the defendant, the plaintiffs stated that, father of defendant entered into the so-called agreement on 26.06.2001. But, during lifetime of his father the plaintiffs not demand for specific performance. Hence, limitation period for the so-called agreement was till 28.07.2004. Now, there is bar of limitation.

15. Learned counsel of the defendant relied upon the following judgment. Raghwendra Sharan Singh V/s. Ram Prasanna Singh (Dead), CIVIL APPEAL NO. 2960/2019, (Arising out of SLP (C) No. 20068 of 2013, decided on 13 March, 2019.

16. On other hand, the plaintiffs specifically contents in the plaint and the present application that, in the agreement mentioned that “the sale deed executed after bringing sale permission by the defendant”. But, the defendant failed to do so. Hence, after obtaining permission period of limitation will start.

17. Learned counsel of the plaintiff relied upon the following judgments.

a) Ramisetty Venkatanna and ors V/s. Nasyam Jamal Saheb and ors, CIVIL APPEAL NO. 2717/2023, decided on 28 April, 2023.

b) Shakti Bhog Food Industries Ltd V/s. The Central Bank of India and ors, Civil Appeal No. 2514 of 2020, (Arising out of SLP (C) No. 30209/2017) and Civil Appeal No. 2515 of 2020 (Arising out of SLP (C) No. 30210/2017).

18. I have gone through above these judgments, I discuss the principles laid down by the Hon'ble Apex court as under :-

i) In the case of Raghwendra Sharan Singh V/s. Ram Prasanna Singh (Dead), CIVIL APPEAL NO. 2960/2019, (Arising out of SLP (C) No. 20068 of 2013, decided on 13 March, 2019. The Hon'ble Apex Court observed that, considering the averments in the plaint if it found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11 (d) of the Code of Civil Procedure.

ii) In the case of Ramisetty Venkatanna and ors V/s. Nasyam Jamal Saheb and ors, CIVIL APPEAL NO. 2717/2023, decided on 28 April, 2023. The Hon'ble Apex Court held that, the plaint ought to have been rejected in exercise of powers under Order VII Rule XI (a) and (d) of the Code of Civil Procedure. being vexatious, illusory cause of action and barred by limitation.

iii) In the case of Shakti Bhog Food Industries Ltd V/s. The Central Bank of India and ors, Civil Appeal No. 2514 of 2020, (Arising out of SLP (C) No. 30209/2017) and Civil Appeal No. 2515 of 2020 (Arising out of SLP (C) No. 30210/2017). The Hon'ble Supreme Court has clarified as to when the three-year limitation period contemplated under Article 113 of the Limitation Act, 1963

commences. It has also reiterated the importance of considering the averments made in a plaint as a whole while determining an application for rejection of plaints under Order VII Rule 11 of the Code of Civil Procedure.

19. It is clear from the above judgments of the Hon'ble Apex court that, plaint to be rejected if it is vexatious, illusory cause of action and barred by limitation and plaint can be rejected if suit is clearly barred by limitation. Above said principles laid down by the Hon'ble Court is not helpful to the defendant.

20. It is worthwhile to mention here that, the basic postulate underline in clause (a) and clause (b) of Rule 11 Order 7 is that, while deciding the application of rejection of plaint under said provision, the court is required to see only averments made in the plaint and documents, if any, annexed to the plaint.

21. In other word, it can say that, court require to see averments in plaint and documents filed along with plaint. The court can look into documents filed by the plaintiffs.

22. Considering the application and pleading, in this matter, for issue of limitation, it is necessary to look into agreement filed along with plaint. So, I am looking minutely into copy of agreement.

23. On perusal of copy of the agreement, it appears that, it is unregistered document, therein mention after getting permission of sell, the defendant is execute the sale deed. It appears that, time is not fixed.

24. It is important to mention here that, Article 54 of the limitation Act stipulates that, the limitation for filing the suit for specific performance of the contract is three years from the date fixed for the performance or if no such date is fixed, then the plaintiffs has noticed that performance is refused.

25. It appears that, the date of performance of contract not mention in agreement. Hence, period of limitation start from the time when the plaintiffs have noticed that performance is refused. The plaintiffs contended in the paragraph No. 9 in the plaint that, they sent the notice to the defendant on 14.07.2021 for specific performance, the answer given by the defendant through learned counsel on 29.07.2021 and refused to performance.

26. Considering, the contents of plaint, copy of agreement it not appear on face of case that, the suit is barred by limitation.

27. Whether the plaintiffs are asked for specific performance of the said agreement till father of the defendant was alive or not ? Whether the plaintiffs were and are ready and willing to perform their part of contract from date of agreement of up to the date of filing of the suit or not ? These questions needs full fledged trial and evidence. This is not the stage to go into the details and merits of the case. Whatever, will be final decision of the suit.

28. The defendant has raise second objection in the present application is that, the so-called agreement is dated 29.07.2001 as per the plaintiffs. The plaintiffs were not registered the so-called

agreement or any such demand not made by the plaintiffs to the defendant till filing the suit. Hence, right of the plaintiffs to specific performance of the so-called agreement has been terminated in the year 2004.

29. It is worthwhile to discuss here that the judgment of the case R. Hemalatha vs Kashthuri, in the case of **R. Hemalatha vs Kashthuri, CIVIL APPEAL NO. 2535/2023 (@SLP (C) No. 14884/2022), decided on 10 April, 2023.** The Hon'ble two Judges bench of the Hon'ble Apex Court held that, the unregistered document in question, namely the unregistered agreement to Sell in question, shall be admissible in evidence in a suit for specific performance. The proviso is an exception to the first part of Section 49 of the Registration Act.

30. Now, it is crystal clear that, unregistered agreement to sell is an admissible evidence in suit for specific performance. Hence, I not found any substance in the submissions of the defendant that, the plaintiffs were not registered the so-called agreement or any such demand not made by the plaintiffs to the defendant till filing the suit. Hence, right of the plaintiffs to specific performance of the so-called agreement has been terminated in the year 2004.

31. In the light of aforesaid discussion and the provisions mention as above and considering the principles laid by the Hon'ble Apex court in above judgments in my view the application is liable to reject. Hence, I pass the following order :

..10..

R. C. S. No. 86/2021
Pandurang and 1 V/s. Sada

ORDER

1. Application Exh. 26 is hereby rejected.
2. Costs in cause.

Mangaon,
Date : 19.08.2023.

(G. C. Fulzalke)
Joint Civil Judge Junior Division,
Mangaon, Dist. Raigad.