



ORDER BELOW EXH.44 IN SPECIAL CIVIL SUIT NO.183/2023

The present application has been filed by defendant Nos.2 to 5 for rejection of plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

2. Heard learned Advocate for the defendants and learned Advocate for the plaintiffs.

3. After going through the record, following points arise for my consideration and I have recorded my findings thereon for the reasons mentioned there under:-

Sr. No.	POINTS	FINDINGS
1)	Whether the plaint is liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 ?	No
2)	What order ?	The application is rejected.

REASONS

4. Learned Advocate for the defendants argued that, the present suit is filed by the plaintiffs for specific performance of contract. The present suit is filed on the basis of agreement to sell dated 29.11.2013. In the said agreement, it is specifically mentioned that the

sale-deed has to be executed before March 2014. The present suit is filed in the year 2022. The limitation for filing suit for specific performance is 03 years from the date fixed for performance. The present suit is barred by law of limitation. Hence, he prayed that the application be allowed and the plaint be rejected.

5. The learned Advocate for the plaintiffs argued that, they have filed the suit well within limitation and it is not time barred. The plaintiffs have made two prayers in the suit. Even if one prayer is barred by provision of any law, then the plaint cannot be rejected as other reliefs are not barred by law. Further, limitation is a mixed question of fact and law which cannot be decided at the threshold. Hence, he prayed that the application be rejected.

AS TO POINT NO.1 :-

6. It is settled position of law that while deciding an application for rejection of plaint, only the contentions of the plaint have to be read and not the defence put by the defendants in their written statement. The plaint has to be read as a whole. The main objection of the defendants is that the suit is barred by limitation.

7. Upon perusal of the plaint, it appears that the plaintiffs have filed the present suit on the basis of agreement to sell i.e. Visar Pavati dated 29.11.2013. It was agreed between the plaintiffs and defendant No.1 to purchase the suit property for Rs.1,95,00,000/-. The responsibility for measurement of the suit property and fixation of boundaries before the sale-deed was casted upon defendant No.1. Defendant No.1 failed to measure the suit property and therefore, sale-deed could not be executed. The plaintiffs paid Rs.33,24,000/- as an

earnest money to defendant No.1. The plaintiffs were always ready and willing to perform their part of contract. On 28.05.2021, the plaintiffs sent a legal notice to defendant No.1 to execute the sale-deed within 15 days from the receipt of notice. Defendant No.1 sent notice reply on 01.07.2021 and admitted the transaction dated 29.11.2013. In notice reply, defendant No.1 informed the plaintiffs to execute the sale-deed within 08 days from receipt of notice reply. The plaintiffs contacted defendant No.1 and asked for documents relating to measurement. However, defendant No.1 did not pay heed to their request. Recently, the plaintiffs got knowledge that defendant No.1 executed a sale-deed dated 27.01.2022 in favour of defendant Nos.2 to 5.

8. Perused the agreement to sell dated 29.11.2013. It appears that, defendant No.1 has accepted Rs.3,25,000/- as an earnest money and remaining consideration to be paid after measurement of the suit property. It was also mentioned in the agreement to sell that, the sale-deed to be executed before March 2014. The duty was casted upon defendant No.1 to measure the suit property. The plaintiffs alleged that defendant No.1 did not measure the suit property and therefore, the sale-deed could not have been executed before March 2014.

9. It is the contention of the plaintiffs that, in the year 2021, they sent the legal notice to defendant No.1. Defendant No.1 sent the notice reply and in the said notice reply he admitted the transaction dated 29.11.2013. He further informed the plaintiffs to get the sale-deed executed within 08 days from the date of receipt of notice reply. The plaintiffs asked for measurement documents. However, defendant No.1 did not pay heed to their request. In such circumstances, I am of opinion that the issue of limitation is a mixed question of fact and it cannot be

decided purely on the basis of law. It is necessary to adduce evidence with respect to the limitation issue. The power under Order VII Rule 11 of the Code of Civil Procedure is drastic in nature and it has to be exercised in a judicious manner.

10. The learned Advocate for defendant No.1 placed his reliance on the authority of the Hon'ble Supreme Court in the case of **Usha Devi & Ors. Vs. Ram Kumar Singh & Ors. reported in Civil Appeal No.8446 of 2024**. The authority is not related to rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure. The facts in the said authority were altogether different than the case in hand. Therefore, with respect to the authority cited supra, I am of opinion that it is not applicable to the case in hand.

11. The learned Advocate for the plaintiffs placed his reliance on the authority of the Hon'ble Supreme Court in the case of **Central Bank of India & Anr. Vs. Smt. Prabha Jain & Ors. reported in Civil Appeal No. 1876 of 2016**. However, the said authority is related to the SARFAESI Act and there were 03 distinct prayers. The present suit is for specific performance of contract and in alternative, refund of earnest money. Therefore, with respect to the authority cited supra, I am of opinion that it is distinguishable on facts and not applicable to the case in hand.

12. Upon perusal of the plaint and documents filed alongwith plaint, the issue of limitation appears to be mixed question of fact and law which requires thorough evidence. Therefore, I hold that the plaint is not liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure. Hence, I answer point No.1 in the negative.

AS TO POINT NO.2:-

13. In view of my finding as to point No.1, I hold that the application is liable to be rejected. The suit is at preliminary stage and therefore, I am not inclined to impose costs. Hence, in answer to point No.2, I pass the following order :-

ORDER

- (1) The application (Exh.44) is rejected.
- (2) No order as to costs.

Date: 09.06.2025
Wai.

(A. A. Pacharne)
Jt. Civil Judge Senior Division,
Wai.