

ORDER PASSED BELOW EXH.17

From the contention of application and say filed by the plaintiffs following points arises for my determination and I have recorded my findings thereon for the reasons stated as under.

Sr. No.	Points	Findings
1	Whether the plaint is liable to be rejected as per the provisions of Order 7 Rule 11 (b)(c) (d) of the Civil Procedure Code as prayed ?	No
2	What order?	As per final order

REASONS

As to point nos. 1 & 2 :-

2. Read application supported by affidavit. Perused Say filed by the plaintiffs. Perused record. Heard.

3. The advocate for the defendants has submitted that, the plaintiffs have filed this suit for Specific Performance of Contract or in the alternative for refund of consideration amount and for permanent injunction. He further submitted that, the value i.e. consideration amount of the suit filed has been shown as Rs.42,00,000/- the advolerem court fee is required to be paid on the said amount which comes to Rs.63,630/- and court fee for relief for permanent injunction is Rs.200/-, thus the total court fee Rs.63,830/- ought to have been to paid by the plaintiffs on the plaint. However, from the copy of the plaint supplied to defendants, it appears that, the plaintiffs have paid only court fee of Rs.50,200/- on the plaint. Which shows that, the plaintiffs have paid deficit court fee of Rs.13,630/-. Unless the advolrm court fee paid by

the plaintiffs the suit is not tenable and the plaint is liable to be rejected.

4. The advocate for the defendants has further submitted that, the plaintiffs have filed alleged Issarchitti on record alleging that it has been executed on 01/06/2011 and agreed date is mentioned in it was on or before 15/04/2012, the alleged sale deed ought to have been executed on or before 15/04/2012 if not then the suit must have been filed for specific performance within three years from the breach of contract i.e. within the three years from 15/04/2012 which comes on 15/04/2015. However, the plaintiffs have filed this suit on 15/04/2022 i.e. after 7 years of the expiring of limitation. In such circumstances, the suit is not tenable and is liable to be dismissed on the count of limitation.

5. The advocate for the defendants has further submitted that, even the plaintiffs have filed one receipt on record i.e. “भरणा पोहोच पावती व मुदत वाढीचा लेख” alleging that it has been executed by some of the defendants on 20/06/2014. If this document plainly perused, it is contended that “उर्वरीत राहिलेली रक्कम रु.३,००,०००/- तुम्ही आम्हाला खरेदीखताचे दिवशी म्हणजे आज पासून ६ महिन्यापर्यंत किंवा त्यापुर्वी देण्याचे ठरले आहे.” it means from 20/06/2014 the time alleged to have been extended upto 20/12/2014. In such circumstances, the suit for specific performance or refund of consideration ought to have been filed by the plaintiffs on or before 20/12/2017. However, the suit has been filed by the plaintiffs on 15/04/2022 i.e. after 5 years of the expiry of last date. Hence, the suit is not tenable and liable to be dismissed as barred by limitation and the plaint is liable to be rejected on this count. He lastly prayed that the plaint be rejected as per provisions of Order 7 Rule 11 (b)(c) (d) of the Civil Procedure Code.

6. On the other hand, the advocate for the plaintiffs has raised objection to this application submitting that, the plaintiffs have filed this suit against

the defendants for Specific Performance of Contract or in the alternative for refund of consideration amount with interest and thereby sought decree for Specific Performance of Contract dated 01/06/2011 directing the defendants to execute the sale deed in respect of the suit field and further order to deliver the actual and vacant possession of the suit field to the plaintiffs alongwith other relief.

7. The advocate for the plaintiffs has further submitted that the contents of para-I of the application regarding the calculation of the court fees are not admitted by the plaintiffs. The defendants claiming that, the suit is not within limitation and it is barred by limitation. However, the defendants are going to mislead the facts of the case and falsely alleging that the suit is barred by limitation.

8. The advocate for the plaintiffs has further submitted that, the suit filed by the plaintiffs is well within limitation as looking to the facts of the case even till today cause of action is continuous one. He further submitted that, the defendants have not complied with the terms and conditions of agreement of sale. Thereafter, also not acted as per the subsequent document executed in favour of the plaintiffs. The said document has been executed in continuation of original agreement of the sale. He also submitted that, if going through the document filed by the plaintiff on record it is very clear that the suit of the plaintiffs is well within limitation. The defendants have not appreciated the facts according the settle principle of law. Therefore, there is no substance in the application filed by the defendants. So, the application filed by the liable to be rejected with costs.

9. The advocate for the plaintiffs has further submitted that, the plaintiffs have paid proper court fee on the relief claimed. The issue raised by the defendants regarding the court fee is not the ground to reject the plaint as per

the provisions of Order 7 Rule 11 of the Civil Procedure Code. But it can be complied as per Court order. He lastly submitted that considering the above said submissions the application filed by the plaintiffs is nothing but to mislead the court therefore, it is liable to be rejected with costs. Hence, prayed for to reject the application.

10. After considering the submissions made on behalf of both the side I have gone through the relevant provisions of Order 7 Rule 11 of the Civil Procedure Code which I have reproduced here as under for the sake of convenience.

Order 7 Rule 11 (b) – *whether the relief claimed is under-valued, and the 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) – *whether the relief claimed is properly valued, but the plaint 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 plaint to be barred by any law.*

11. After considering the submissions made on behalf of both the side going through the relevant provision and record, it seems from the record that, the plaintiffs have filed suit for Specific Performance of Contract or in the alternative for refund of consideration and for permanent injunction alleging that, the plaintiffs have agreed to purchase the suit property from defendant Nos.1 to 8 and their predecessor. They have executed one registered Issarchitthi in favour of plaintiffs on 01/06/2011 which has been duly registered vide No.1558/2011, alleging that, it was agreed that, the cost of the suit property will be Rs. 42,00,000/- out of which Rs.15,00,000/- were

paid to the defendant Nos.1 to 8 and their predecessor by the plaintiffs on the date of execution of Issarchitti and balance amount of Rs.27,00,000/- was to be paid by measuring the disputed land on the date of registration of sale deed. Possession of the property was delivered on the date of execution of registration of Issarchitthi.

12. It is further alleged that, it is mutually agreed between the plaintiffs and defendants and with their predecessor that they mean defendants and their predecessor have to get corrected the 7/12 extract of the suit property on their costs and thereafter to execute the sale deed in favour of plaintiffs after accepting the remaining amount as per agreement. The sale deed was to be executed after measurement of the suit property and correction of 7/12 extract by the defendants and their predecessor. It is also alleged that, as per the request of defendants and their predecessor after execution of registered Issarchitthi the plaintiffs for time to time paid an amount of Rs.39,00,000/- to the defendants and their predecessor. It is also alleged that, the cause of action for the suit arose on 01/06/2011 when the defendants executed Issarchitthi in favour of the plaintiffs, thereafter on 01/12/2020 and 20/12/2020 when the plaintiffs published publication notice in daily newspaper, thereafter on 21/06/2021 when the plaintiffs issued notices to the defendants. However, it is the contention of the defendants that the plaintiffs have filed alleged Issarchitthi alleging that it has been executed on 01/06/2011 and agreed date mentioned on or before 15/04/2012 the alleged sale deed ought to have been executed 15/04/2012 if not then the suit must have been filed for specific performance within three years from the breach of contract i.e. within the three years from 15/04/2012 which means on 15/04/2015. It is further contention of the defendants that according to the plaintiffs the defendants have executed one document titled as “भरणा पोहोच पावती व मुदत वाढीचा लेख” on 20/06/2014 contending that, “उर्वरीत राहिलेली

रक्कम रु.३,००,०००/- तुम्ही आम्हाला खरेदीखताचे दिवशी म्हणजे आज पासून ६ महिन्यापर्यंत किंवा त्यापुर्वी देण्याचे ठरले आहे.’’ means from 20/06/2015 the time alleged to have been extended upto 20/12/2014 so the plaintiffs required to file this suit on or before 20/12/2017. In support of their contention defendants have produced documents alongwith list Exh.20 upon 1 to 7. However, it is settled principle of law that while deciding objection raised by the defendants as per the provisions of Order 7 Rule 11 b to d the contention of the plaint is required to be considered.

13. Thus from the rival contention of the parties it seems that, it is the contention of the defendants that, the suit is required to be filed on or before 20/12/2017 however it is filed on 15/04/2022 after 5 years expiring of last date so the suit is barred by limitation. On the contrary, it is the contention of the plaintiffs that, the suit is well within limitation looking to the facts of the case till today the cause of action is in continuous one as defendants have not complied the terms and conditions of the agreement of sale, thereafter also not acted as per the subsequent document executed in favour of the plaintiffs. The objection raised by the defendants as regards limitation is mixed question of law and fact, when there is mixed question of law and fact evidence is required to be recorded. So, at this stage, I do not find substance in the submissions made on behalf of the defendants so far as the suit is liable to be dismissed as barred by limitation is considered. Further it is the objection of the defendants that the value i.e. consideration amount of the suit filed by the plaintiffs is Rs.42,00,000/-. The advolerem court fee is required to be paid on this amount, which comes @ Rs.63,630/- and court fee for relief for permanent injunction is Rs.200/-, the total court fee is required to be paid Rs.63,680/-. However, the plaintiffs have paid court fee only Rs.50,200/-. Which prima facie seems that the plaintiffs have paid deficit court fee Rs.13,630/-. In such circumstances, considering the

provisions of law I am of the view that time is required to be given to the plaintiffs to pay the proper Court fee on subject matter of the suit. So at this stage I am of the view that on that count also plaint is not liable to be rejected. If some sort of time has been given to the plaintiffs to pay deficit court fee and even though the plaintiffs fails to comply with the said direction as to pay requisite Court fee within prescribed time then the plaint can be rejected. So considering the above said submission at this stage I do not find substance in the submission made on behalf of the defendants. So, the application filed by the defendants deserve to be rejected. Hence, I answer point No.1 in the negative and in the result in answer to point No.2 I pass the following order.

ORDER

1. The application filed by the plaintiff is hereby rejected.
2. The plaintiffs are directed to pay the deficit court fee Rs.13,630/- on or before 20/09/2023.
3. If the plaintiffs fail to comply with the above direction for payment of requisite court fee within the prescribe time the plaint shall stands rejected under the provisions of Order 7 Rule 11 of the Civil Procedure code.
4. Cost in cause.

(Dictated and pronounced in open Court.)

Date : 01/09/2023

(S. J. Gaikwad)
C. J. S. D. Mangrulpir.

Order dictated on : 01/09/2023
Order transcribed on : 01/09/2023
Order checked on : 06/09/2023
Order retyped and signed on : 07/09/2023

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per original order.

- 1) Name of Stenographer :- R. A. Charthal,
Stenographer (Grade II)
- 2) Name of Court :- Civil Judge (S.D.), Mangrulpir.
- 3) Date :- 01/09/2023
- 4) Order signed by the :- 07/09/2023
presiding officer on
- 5) Order uploaded on :- 07/09/2023