

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 3rd OF FEBRUARY, 2023

CIVIL REVISION No. 281 of 2022

BETWEEN:-

**1. BHERU CHANDANI S/O LATE
MOOLCHAND CHANDANI, AGED
ABOUT 60 YEARS, SHAKTI VIHAR
COLONY SATNA, TEHSIL
RAGHURAJNAGAR DISTRICT SATNA
(MADHYA PRADESH)**

**2. SAJAYB KUMAR KOTWANI S/O
MOHANLAL KOTWANI, AGED ABOUT 45
YEARS, OCCUPATION: BUSINESS R/O
HOUSE NO. 417, WARD NO. 20
KANWARNAGAR, SINDHI COLONY
SATNA M.P. (MADHYA PRADESH)**

...PETITIONERS

(BY SHRI ATUL CHOUDHARY - ADVOCATE)

AND

**1. SHIVKUMAR GUPTA S/O
BARAMDEEN GUPTA, AGED
ABOUT 60 YEARS, OCCUPATION:
BUSINESS INFRONT OF
KAWARRAM CINEMA HALL,
SATNA, TEHSIL
RAGHURAJNAGAR DISTRICT
SATNA (MADHYA PRADESH)**

**2. MANISH KAPADI S/O LATE
NARAYANDAS KAPADI, AGED
ABOUT 46 YEARS, OCCUPATION:
BUSINESS R/O SANT
KANWARRAM MARKET, BIHARI**

**CHOWK, SATNA M.P. PRESENT
RESIDENCE SUKHSAGAR
VALLEY, GWARIGHAT,
JABALPUR, DISTRICT JABALPUR
M.P. (MADHYA PRADESH)**

**3. SHANKAR KAPADI S/O
THARUMAL KAPADI, AGED
ABOUT 46 YEARS, OCCUPATION:
BUSINESS R/O WARD NO. 42,
SAHIL TRADERS, INFRONT OF
KAMESHWAR AWASTHI
COMPOUND, KAWADI TOLA,
KRISHNA NAGAR ROAD, SATNA,
TEHSIL RAGHURAJNAGAR,
DISTRICT SATNA M.P. (MADHYA
PRADESH)**

**4. THARUMAL KAPADI S/O
LATE KEWALRAM KAPADI, AGED
ABOUT 70 YEARS, OCCUPATION:
BUSINESS R/O WARD NO. 42,
SAHIL TRADERS, INFRONT OF
KAMESHWAR AWASTHI
COMPOUND, KAWADI TOLA,
KRISHNA NAGAR ROAD, SATNA,
TEHSIL RAGHURAJNAGAR,
DISTRICT SATNA M.P. (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI SARANG SONI – ADVOCATE)

*This revision coming on for admission this day, the court passed
the following:*

ORDER

This civil revision has been preferred by the applicants/defendants 4-5 challenging the order dated 13.04.2022 passed by 3rd Civil Judge Senior Division, Satna in Civil Suit No.17-A/2022 whereby learned trial Court has dismissed the defendants 4-5's application under Order 7 Rule 11 CPC.

2. Learned counsel for the applicants/defendants 4-5 placing reliance on the decision of Supreme Court in the case of **Fatehji and Company and another vs. L.M Nagpal and others (2015) 8 SCC 390** submits that if from the allegations made in the plaint itself, suit for specific performance is barred by limitation, then the learned Court can reject the plaint under Order 7 Rule 11(d) CPC and in the present case agreement in question is said to have been executed on 24.01.2001 but the instant suit appears to have been filed on 03.01.2022, therefore, the same is clearly barred by limitation and it ought to have been rejected under Order 7 Rule 11(d) CPC. He submits that without considering this aspect of the matter learned Court below has erred in dismissing the application under Order 7 Rule 11 CPC.

3. Learned counsel for the respondent 1/plaintiff by placing reliance on the decision of Supreme Court in the case of **Urvashiben and another vs. Krishnakant Manuprasad Trivedi (2019)13 SCC 372** submits that in the agreement of sale in question, no time has been fixed for execution of sale deed, therefore, as per decision of Supreme Court in the case of **Urvashiben** (supra), the plaint in the instant case cannot be rejected under Order 7 Rule 11(d) CPC and in such cases the question of limitation is a mixed question of fact and law, which is beyond the purview of order 7 Rule 11(d) CPC. As such no illegality has been committed by learned trial Court in dismissing the application of the applicants/defendants 4-5.

4. Heard learned counsel for the parties and perused the impugned order, agreement of sale as well as copy of plaint.

5. Apparently in the agreement of sale in question, no time has been fixed for execution of sale deed, therefore, the decision of Supreme Court

in the case of *Fatehji and Company and another (supra)* is not applicable to the present case, wherein it has been held :-

“5. We considered the rival submissions. The specific performance is claimed of a written agreement of sale dated 2.7.1973 and as per the terms the performance of the contract was fixed till 2.12.1973. The defendants by subsequent letters dated 7.4.1975, 1.10.1975 and 1.8.1976 sought for extension of time to enable them to obtain permission of lessor and the last extension of six months expired on 1.2.1977. In view of Order VII Rule 11(a) and 11(d) the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. 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, when the plaintiff has noticed that performance is refused.

8. The plaintiffs averred in the plaint that the last and final cause of action accrued and arose to them after August 1991 when the defendants succeeded in hiding themselves and started avoiding the plaintiffs and the cause of action being recurring and continuous one, they filed the suit on 29.4.1994. As already seen the original cause of action became available to the plaintiffs on 2.12.1973, the date fixed for the performance of the contract and thereafter the same stood extended till 1.2.1977 as requested by the defendants. Though the plaintiffs claimed that oral extension of time was given, no particulars as to when and how long, were not mentioned in the plaint. On the other hand even after knowing the dishonest intention of the sons of the second defendant with regard to the suit property in the year 1985, the plaintiffs did not file the suit immediately. The suit having been filed in the year 1994 is barred by limitation under Article 54 of the Limitation Act.”

6. Whereas the decision of the Supreme Court in the of **Urvashiben and another vs. Krishnakant Manuprasad Trivedi (supra)** is fully applicable to the case in hand, in which it has been held :-

“12. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under O.VII R.11(d) of the CPC. Equally, it is well settled that for the purpose of deciding application filed under O.VII R.11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under :

Suits for Specific Performance	3 Years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused
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13. From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under O.VII R.11, same is to be considered from the facts of each case, looking at the averments made

in the plaint, for the purpose of adjudicating such application. As averred in the plaint, it is the case of the plaintiff that even after payment of the entire consideration amount registration of the document was not made and prolonged on some grounds and ultimately when he had visited the site on 25.05.2017 he had come to know that the same land was sold to third parties and appellants have refused performance of contract. In such event, it is a matter for trial to record correctness or otherwise of such allegation made in the plaint. In the suits for specific performance falling in the second limb of the Article, period of three years is to be counted from the date when it had come to the notice of the plaintiff that performance is refused by the defendants. For the purpose of cause of action and limitation when it is pleaded that when he had visited the site on 25.05.2017 he had come to know that the sale was made in favour of third parties and the appellants have refused to execute the Sale Deed in which event same is a case for adjudication after trial but not a case for rejection of plaint under O.VII R.11(d) of CPC.”

7. In the present case, no date or period has been fixed for performance of the agreement or for execution of sale deed and the plaintiff has come with the case that he was put in possession on the date of agreement of sale and during life time, the vendor Narayandas and after his death the defendant 1 assured the plaintiff to execute the sale deed but first time on 08.11.2021 by way of reply to the notice, he has denied from the agreement. Further, the plaintiff claiming himself to be in possession of the disputed land, has also prayed relief of permanent injunction restraining the defendants from making interference in possession of the plaintiff.

8. As such, in view of the aforesaid facts and legal position, at the present stage of suit, the plaint cannot be rejected under Order 7 Rule 11(d) CPC and the impugned order does not suffer from any legal infirmity.

9. Resultantly, civil revision fails and is hereby **dismissed**. However, no order as to costs.

10. Interim application(s), if any, shall stand dismissed.

(DWARKA DHISH BANSAL)

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JUDGE