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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 25TH OF JANUARY 2024
CIVIL REVISION No. 381 of 2022**

BETWEEN:-

1. SMT. PUSHPA PATEL W/O LATE LAKHAN LAL PATEL, AGED ABOUT 59 YEARS, OCCUPATION: HOUSEWIFE, HOUSE NO. 19, MR-4 BADI, UKHRI, BADORHA, VIVEKANAND WARD, AGASOD, AGASAUD, JABALPUR, (MADHYA PRADESH)
2. SUSHIL PATEL S/O LATE LAKHAN LAL PATEL, AGED ABOUT 39 YEARS, OCCUPATION: FARMER, R/O HOUSE NO. 19, MR-4 BADI UKHRI, BADORHA, VIVIKANAND WARD, AGASOD, AGASAUD, JABALPUR (MADHYA PRADESH)
3. AMIT KUMAR PATEL S/O LATE LAKHAN LAL PATEL, AGED ABOUT 42 YEARS, OCCUPATION: FARMER, HOUSE NO. 19, MR-4, BADI UKHRI, BADORHA, VIVIKANAND WARD AGASOD, AGASAUD, JABALPUR (MADHYA PRADESH)
4. AJAY PATEL S/O LATE LAKHAN LAL PATEL, AGED ABOUT 46 YEARS, OCCUPATION: FARMER, HOUSE NO. 19, MR-4, BADI UKHRI, BADORHA, VIVIKANAND WARD, AGASOD, AGASAUD, JABALPUR (MADHYA PRADESH)
5. ATUL PATEL S/O LATE LAKHAN LAL PATEL, AGED ABOUT 44 YEARS, OCCUPATION: FARMER, R/O HOUSE NO. 19, MR-4 BADI UKHRI BADORHA, VIVIKANAND WARD AGASOD, AGASAUD, JABALPUR (MADHYA PRADESH)
6. NIKKI PATEL S/O LATE LAKHAN LAL PATEL, AGED ABOUT 37 YEARS, OCCUPATION: FARMER, R/O HOUSE NO. 19, MR-4 BADI UKHRI, BADORHA, VIVIKANAND WARD, AGASOD, AGASAUD, JABALPUR (MADHYA PRADESH)

....APPLICANTS

(BY SHRI AMIT VERMA - ADVOCATE)

AND

1. **SMT. NEELIMA TIWARI, W/O SHRI BRIJESH TIWARI, AGED ABOUT 38 YEARS, OCCUPATION: BUSINESS, PERMANENT R/O VILLAGE RITHORI, P O S T SONPUR, KHAMARIA, DISTRICT- JABALPUR, M.P. AT PRESENT R/O 67/1, KESHAV SMRITI, BEHIND MUSKAN PLAZA, VIJAY NAGAR, JABALPUR, (MADHYA PRADESH)**
2. **THE STATE OF MADHYA PRADESH THROUGH COLLECTOR JABALPUR JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS**(BY SHRI PRAMOD KUMAR GAUTAM - PANEL LAWYER)**

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

ORDER

This civil revision u/s 115 of CPC has been filed by the applicants being aggrieved by order dated 09.5.2022 passed by 14th Civil Judge Class-II, Jabalpur in Regular Civil Suit No.175-A/2022, in which, the trial Court has rejected the application of the applicants filed under Order 7 Rule 11 CPC.

2. Brief facts of the case are that respondent No.1/plaintiff has instituted a suit against applicants/defendant No.1 to 6 before the trial Court seeking decree of permanent injunction by pleading that on 21.2.2021 the respondent/plaintiff entered into an agreement with Late Lakhanlal Patel s/o Late Khitai r/o House No.19, Vivekananda Ward, Badhoraha Tola, Badi Ukhari, Jabalpur for purchase of 35,000 sq.ft. (out of total 0.860 hectares) of agricultural land at the rate of Rs.490/- per sq.ft. for a total sale consideration of Rs.1,71,50,000/- bearing 'Rin Pustika' No.835-000550 and Khasra No.56/6 situated at Laxmipur, Settlement No.643, Patwari Halka No.25/31, R.I.Circle, Jabalpur-I, Old Tahsil Jabalpur, New Tahsil Adhartal, District Jabalpur. The plaintiff further pleaded that Late Lakhanlal Patel handed over possession of the

suit land. At present the suit land bears Khasra No.56/6/9. After death of Lakhanlal Patel it has been recorded in the names of applicants/defendants being his legal heirs. Defendant No.1 (Smt.Pushpa Patel) is wife of Late Lakhanlal Patel and defendants No.2 to 6 are his sons. He further stated that as per agreement the sale consideration was agreed between the parties at the rate of Rs.490/- per sq.ft. and the total sale consideration of the suit land was Rs.1,71,50,000/-. It is also averred that out of total sale consideration on 21.2.2011 the respondent/plaintiff paid an amount of Rs.25 lacs through Cheque No.976750 drawn at State Bank of India, Branch Khamaria, Jabalpur and amount of Rs.1,25,00,000/- was paid on various dates in cash and balance amount was agreed to be paid at the time of registry. It is also stated that from the date of agreement i.e. 21.2.2011 the respondent/plaintiff in continuous and peaceful possession of the suit land. It is further case of plaintiff that on 25.1.2022 when she had gone to see her land, she found that applicants/defendants were raising illegal construction. When plaintiff raised objection, then defendants picked up quarrel and assaulted her. The defendants were forcibly interfering with the peaceful possession of the respondent/plaintiff and disputed her possess. Therefore, on 25.1.2022 she lodged a written report at Police Station, Vijay Nagar, Jabalpur. Then she filed aforesaid civil suit seeking relief of permanent injunction against the applicants/defendants.

3. The applicants/defendants No.1 to 6 filed an application under Order 7 Rule 11 of CPC claimed rejection of plaint. It is averred in the said application that agreement does not bear signature of Lakhanlal Patel and he had not executed the same in favour of plaintiff. The plaintiff and her husband conspired together to forge signature of Late Lakhanlal on unregistered sale

deed. Though the plaintiff has mentioned in alleged agreement that an amount of Rs.1,50,00,000/- (Rs.1,25,00,000/- & Rs.25,00,000/-) was paid by cheque but she has not filed any documentary evidence such as bank account statement, income tax return to prove the same. During lifetime Late Lakhanlal Patel had not filed any suit. Lakhanlal Patel expired on 02.4.2015 and thereafter names of defendants were recorded in revenue records being legal heirs. But, present suit has been filed after 10 years, whereas date 31.3.2011 is mentioned in agreement regarding payment of balance amount. The plaintiff's suit was barred by time. Had there been such agreement of receiving Rs.25 lacs by cheque and Rs.125 lacs in cash the same would have been in their knowledge. In agreement Khasra No.56/6 total area 0.86 hectares has been mentioned, whereas plaintiff filed document of year 2021-22 M.P. Computerised Land Record wherein Khasra No.56/6/9 area 0.298 hectares is mentioned. The plaintiff has not mentioned actual land. Plaintiff admitted that defendants were carrying out construction over suit property, whereas she is in possession. Hence, her averments are contradictory. There is no sale consideration and hence, it is not valid agreement. Therefore, suit of plaintiff is not maintainable and plaint is liable to be rejected.

4. The respondent/plaintiff filed reply to application under Order 7 Rule 11 CPC and denied the averments pleaded in the application and claimed its dismissed.

5. After hearing learned counsel for the parties the trial Court passed the impugned order dismissing the application under Order 7 Rule 11 CPC. Being aggrieved by the impugned order the applicants have filed instant civil revision on the grounds that court below has committed material error of law and facts and the impugned order is very much against weight of material

placed on record. A bare perusal of plaint averments would reveal that there is no pleading as to why suit for specific performance has not been filed. There is no averment in plaint fulfilling the conditions which are necessary in order to defend or protect possession under section 53-A of Transfer of Property Act. The trial Court ought to have held that suit for permanent injunction was not maintainable in view of availability of efficacious remedy of filing suit for specific performance of suit and for want of necessary ingredients of section 53-A of Transfer of Property Act. The trial Court ought to have held that suit filed by plaintiff was barred under section 11(d) of CPC and not maintainable. The application under Order 7 Rule 11 CPC should have been allowed and suit of the plaintiff ought to have been dismissed by holding as not maintainable. The trial Court further ought to have held that respondent/plaintiff was not in actual physical possession of the suit property.

6. No one appeared on behalf of respondent/plaintiff even after service of notice.

7. The real object of Order 7 Rule 11 is to keep out of the Court irresponsible law suits. Order 7 Rule 11 of the CPC lays down an independent remedy available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised. The trial Court can exercise the power at any stage of the suit, that is, before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial- and also does not say in express terms about the filing of a written statement: for the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the CPC, the averments in the plaint are

germane [please see: Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others, (2004) 3 SCC 137]

8. Section 34 of the Specific Relief Act prohibits a suit for mere declaration without consequential relief. Section 53-A of the Act of 1882 is ordinarily to be used as a defence and not as a weapon of attack. The Privy Council, in the case of Probodh Kumar Das (supra), has held that the right conferred by Section 53-A of the Act of 1882 is a right available only to the defendant to protect his possession.

9. The Supreme Court, in the case of ***Srimat Shamrao Suryavanshi and another Vs. Pralhad Bhairoba Suryavanshi (dead) by L.Rs. and others***, (2002) 3 SCC 676, has held the following necessary conditions are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act:-

“(1) there must be a contract to transfer for consideration of any immovable property;

(2) the contract must be in writing, signed by the transferor, or by someone on his behalf;

(3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;

(4) the transferee must in part-performance of the contract take possession of the property, or any part thereof;

(5) the transferee must have done some act in furtherance of the contract; and

(6) the transferee must have performed or be willing to perform his part of the contract.”

9. If the conditions enumerated above are complied with, the law of limitation does not come in the way of a defendant taking plea under Section of

the Act to protect his possession of the suit property even though a suit for specific performance of a contract is barred by limitation. The above judgment of the Supreme Court again suggests, the protection under Section 53-A of the Act of 1882 is available to the defendant.

10. A Single Judge of Punjab and Haryana High Court in the case of *Jasmer Singh and others Vs. Kanwaljit Singh and another*, AIR 1991 Punjab & Haryana 194, has held the suit for permanent injunction filed by the vendee-plaintiff as not maintainable, in view of availability of equally efficacious relief by way of suit for specific performance.

11. Now, I shall examine the plaint averments. A bare perusal of the plaint averments would reveal that there is no pleading why suit for specific performance has not been filed. Further, there is no averment in the plaint fulfilling the conditions, which are necessary in order to defend or protect the possession under Section 53-A of the Act, as has been held by the Supreme Court in the case of *Sirmat Shamrao Suryavanshi (supra)*. Therefore, even assuming the suit for permanent injunction maintainable in order to protect possession under section 53-A of the Act of 1882 even without claiming relief of specific performance, the suit was not maintainable as the necessary ingredients to claim relief under section 53-A of the Act of 1882 are absent in the plaint.

12. The matter can be looked from another angle also. The suit has been filed before the trial Court on 02.2.2022 i.e. after 11 years of entering into an agreement of sale. If filing of such suit, without claiming relief of specific performance is allowed, then any person may enter into an agreement of sale by giving a meager amount as earnest money and thereafter without showing his willingness to get the sale executed may retain possession, which is not

permissible under the law prevailing in the country.

13. So, in the above discussion, this Court finds that the Trial after perusing the plaint averments has wrongly rejected the application under Order 7 Rule 11 of CPC filed by applicants/defendants. Accordingly, it is found that suit filed by the respondent/plaintiff seeking relief of permanent injunction without claiming relief of specific performance of agreement is not maintainable. Hence, the impugned order passed by the trial Court is set aside. The suit filed by the respondent/plaintiff is rejected.

14. In the result, the civil revision is allowed.

RM



**(HIRDESH)
JUDGE**