

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL  
ON THE 27<sup>th</sup> OF JULY, 2023  
CIVIL REVISION No. 602 of 2022**

**BETWEEN:-**

**1. SMT. SHARDA BAI W/O LEELA  
KISHAN, AGED ABOUT 80 YEARS,  
OCCUPATION: HOUSE WIFE H.NO. 7  
MURGI BAZAR JAHANGIRABAD  
(MADHYA PRADESH)**

**2. SAHABUDDIN S/O KABIRUDDIN,  
AGED ABOUT 45 YEARS, OCCUPATION:  
BUSINESS R/O 10/2 MURGI BAZAR LINE  
JAHANGIRABAD DISTRICT BHOPAL  
(MADHYA PRADESH)**

**...PETITIONERS**

**(BY SHRI SHAFIQULLAH - ADVOCATE)**

**AND**

**1. SHARAFAT ALI S/O SAUKAT ALI,  
AGED ABOUT 34 YEARS, H.NO. 23  
JUMMA KHAN KA AHATA ISLAMI GATE  
SAHJANABAD BHOPAL (MADHYA  
PRADESH)**

**2. MOHAMMAD RIZWAN S/O LATE  
ABDUL GAFOOR, AGED ABOUT 61  
YEARS, R/O A106 SHED WALI GALI  
BEHIND MASZID ASHOKA GARDEN  
BHOPAL (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI PARVEZ AHMAD QUAZI - ADVOCATE)**

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

**ORDER**

This civil revision has been preferred by the applicants/defendants 1-2 challenging the order dated 14.10.2022 passed by 9<sup>th</sup> Civil Judge Junior Division, Bhopal in RCSA/825/2022, whereby learned Court below has dismissed defendants 1-2/applicants' application under Order 7 Rule 11 CPC, on the ground that the objection raised on behalf of the defendants can be decided only after recording evidence.

2. Learned counsel for the applicants/defendants submits that the plaintiff/respondent 1 has instituted a suit for permanent injunction putting valuation of Rs.1,000/- seeking prayer for restraining the defendants from raising construction over the suit land on the basis of agreement of sale dated 08.01.2019 and undisputedly till now no suit for specific performance has been filed on the basis of agreement in question. As such, he submits that the suit, as filed, is not maintainable and the plaint is liable to be rejected under Order 7 Rule 11 CPC.

3. In support of his submissions learned counsel for the applicants placed reliance on the decision of a coordinate Bench of Madras High Court in the case of R. Chendilvel vs. G. Damodaran and others **AIR 2015 MADRAS 96** and submits that the suit being not maintainable, the plaint deserves to be rejected. Relevant paragraph 18 of this judgment is quoted as under:-

“18. In a suit for specific performance of agreement for sale, there could be ancillary relief of interim injunction, not to alienate or encumber the property, detrimental to the rights of the agreement holder till the disposal of the suit. However, without seeking the main relief of specific performance or seeking return of the advance amount and paying necessary Court fee, according to law, the first respondent / plaintiff would not be entitled to file a suit, seeking permanent injunction against the proposed vendor, not to alienate or encumber the property and seek leave to file a comprehensive suit at later stage, namely, suit for specific performance. The Court below, has mechanically allowed the petition, by one word order "Permitted", which shows only the non-application of mind. As the first respondent / plaintiff has claimed right, based on an agreement of sale, the main relief could be seeking specific performance of agreement for sale and for which, he could have been ready and willing to perform his part of the contract, by paying the balance of sale consideration. However, it is seen that the suit has been filed by the first respondent, seeking only permanent injunction restraining the owner of the land, not to alienate or encumber the property. Hence, permitting the first respondent / plaintiff to file a suit in the name of comprehensive suit at a later stage should be construed only permitting the first respondent to circumvent the law, by not filing proper suit, based on the alleged agreement of sale.”

4. Learned counsel appearing for the respondent 1/plaintiff does not dispute the aforesaid facts in relation to filing of the suit for permanent injunction on valuation of Rs.1,000/- on the basis of agreement of sale in question. However, he supports the impugned order with the submission that learned trial Court has rightly rejected the application under Order 7 Rule 11 CPC.

5. Heard learned counsel for the parties and perused the record.

6. A copy of agreement of sale dated 08.01.2019 placed on record shows that the property in question is agreed to have been sold by the defendant 1-Sharda Bai to the plaintiff for consideration of Rs.50,00,000/- (Fifty lakhs), out of which an amount of Rs.48,50,000/- is said to have been paid previously, and the sale deed is agreed to be

executed within one year from the date of agreement after making payment of remaining amount of Rs.1,50,000/-. On the basis of aforesaid agreement, the present suit has been filed on 29.08.2022, only for permanent injunction putting valuation of Rs.1,000/- upon payment of fixed court fee.

7. The question in respect of valuation and payment of court fee in the suit for permanent injunction based on an agreement of sale, arose and was decided by a coordinate Bench of this Court in the case of *Kapoori Bai v. Bhagwan Singh* **2000(1) MPWN 65**, as under :

“Learned counsel for the applicant invited my attention to section 7(iv)(d)-suits for injunction. According to section 7(iv)(d), in a suit for injunction the court fee in such cases has to be paid on the amount on which the relief is sought. Since the plaintiffs alleged that they have entered into an agreement to purchase the land in question for a sum of Rs.2,10,000/- and they have already paid Rs.1,30,000/-, therefore, they were seeking an injunction against the defendant not to interfere with the possession.

Accordingly, on the own disclosure of the plaintiffs, the valuation of the suit has to be assessed to the tune of Rs.2,10,000/-. Therefore, as per clause 7(iv)(d), they have to pay the court fee *ad valorem* i.e. at the value of the land purchased by them i.e. a sum of Rs.2,10,000/-. If the plaintiffs want to continue the suit, then they have to pay the court fee on the valuation disclosed by them to the tune of Rs.2,10,000/-.”

In view of decision in the case of *Kapoori Bai* (supra), it is clear that if the plaintiff wants to file suit mere for permanent injunction on the basis of an agreement of sale, then he has to value the suit on the basis of full sale consideration mentioned in the agreement of sale and to pay *ad-valorem* court fee thereon.

8. Identical question in respect of maintainability of suit mere for permanent injunction on basis of agreement of sale, arose before coordinate Bench of this Court in the case of M/s Jawahar Theatres Private Ltd. v. Smt. Kasturi Bai and Anr. **AIR 1961 MP 102**, in which it has been held as under:-

“8. There is another aspect which persuades me to adopt this course. Section 56(f) of the Specific Relief Act, 1877 lays down that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. However, Section 57 of the Specific Relief Act, which is as follows is an exception to Section 56 of the Specific Relief Act :

"Notwithstanding Section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement :

Provided that the applicant has not failed to perform the contract so far as it is binding on him." Therefore, unless a plaintiff brings his claim within the ambit of Section 57 of the Specific Relief Act, the Court would ordinarily refuse to grant a mere negative injunction in cases where a plaintiff is in a position to claim a mandatory injunction or the specific performance of the contract. If the Court were to permit that, it might result in multiplicity of suits and also might amount to abuse of the process of the Court, if the other side were prevented from raising legal pleas, which would ordinarily be available to it.

It is true that where a party may not be able to claim a specific performance of the contract of lease, or where a party is not in a position to claim a mandatory injunction, such as cases, where it is a matter of personal skill or personal service, the Court might grant mere negative injunction. But in other cases the Court should be cautious about granting mere negative injunction in cases where a plaintiff, being able to claim positive injunction, or being able to claim specific performance, avoids to do the same and wants to reserve it for some later occasion. I do not mean to say that in no case should the Court grant such liberty to reserve for a later occasion. But the discretion has to be exercised judicially and if it results in depriving the other side of some of its legal pleas, the Court would not be inclined to exercise its discretion in favour of the plaintiff.”

9. The aforesaid judgment in the case of M/s Jawahar Theatres Private Ltd. (**supra**) was considered by another coordinate Bench of this Court in the case of Ajay Narang v. M/s. Ram Enterprizes **ILR 2011 MP 2162**, relevant paragraph 10 of which, is quoted as under:-

“10. In the present case also, plaintiff is not claiming specific performance of the agreement, but is only claiming injunction. If the principle laid down in the case of M/s Jawahar Theatres Private Limited (*supra*) is applied to the facts and circumstances of the present case, the suit itself being not maintainable, the question of existence of prima facie case does not arise. This vital aspect of the matter also was totally ignored by the appellate court while granting injunction”

10. In the case of Ganpat vs. Ashwani Kumar Singh and Anr. **2018 (I) MPWN 32**, another coordinate Bench of this Court after taking into consideration the decision in the case of M/s Jawahar Theatres Private Ltd. (**supra**), has held as under:-

“12. The judgment of this court in Jawahar Theatres Private Ltd.(*supra*) was considered by the Punjab & Haryana High Court in AIR 1980 P&H 351 (Satish Bahadur vs. Hans Raj). The P&H High Court opined that in the present case, what is to be seen is whether the suit for permanent injunction can continue when the relief for specific performance of contract under the agreement, on the basis of which present suit for permanent injunction has been filed, has become available to the plaintiffs. The court allowed the revision petition which was filed against the order of trial court whereby application for dismissing the suit for permanent injunction has infructuous, was declined.

13. The said judgment of Jawahar Theatres Private Ltd. (*supra*) was again considered by this Court in 2011 SCC Online MP 559 (Ajay Narang vs. M/s Ram Enterprizes). Menon, J. (as His Lordship then was) opined that the question as to whether such a decree could be granted without seeking specific performance of the agreement in the light of the provisions of Section 41 and 42 of the Specific Relief Act, is considered by a Bench of this Court in the case of Jawahar Theatres Private Limited (*supra*) and after evaluating the principle and taking note of the provisions of Specific Relief Act, 1877 as was then applicable, the law laid down is that a suit for mere negative injunction without claiming specific performance is not maintainable. It was further recorded that plaintiff has not claimed specific performance of the agreement

but only claimed injunction. Thus, as per the principles laid down in *Jawahar Theatres Private Ltd.(supra)*, the suit itself is not maintainable. In that case, the question of existence of prima facie case does not arise.

14. In view of aforesaid legal position, it is clear that a suit of this nature claiming only injunction is not maintainable in absence of claiming specific performance of agreement. Thus, the order of court below is bad in law for twin reason. Firstly, the court below has not assigned any justifiable reason for rejecting the contention of the petitioner regarding tenability of the suit for the reasons stated above. Secondly, the court below has failed to consider the settled legal position in view of the judgment of *Jawahar Theatres Private Ltd. (supra)*.”

11. In the case of *Chellingi Narayanamurthy vs. Chillingi Satyanarayana & Ors AIR 2008 A.P. 25*, reliance was placed on the decision of another coordinate Bench of Andhra Pradesh High Court, in which it has been held as under:-

“13. \*\*\*\*\*

In *Mohd. Jahangir v. Mallikharjuna Coop. Housing Society Limited, Represented by its Secretary* , it has been held by this Court that a suit filed for permanent injunction only without seeking the relief of specific performance of the agreement of sale is barred under Order 2, Rule 2 of the Civil Procedure Code. I am inclined to follow the decision of this Court especially in view of the fact that the relief of injunction is an equitable relief and the same cannot be granted when the plaintiff has not established his readiness and willingness to perform his part of the contract and failed to seek the relief of specific performance of the agreement of sale. Hence, the plaintiff's suit is not maintainable for the reason that the plaintiff has not sought for the relief of specific performance of the agreement of sale.”

12. In recent judgment in the case of *Suresh Kumar through GPA vs. Anil Kakaria and Ors. (2018)1 SCC 86 = 2018(1) MPWN 1*, Hon’ble Supreme Court has held as under:-

“16. Even apart from what is held above, we are of the considered opinion that the appellant's suit is wholly misconceived and was, therefore, rightly dismissed by the three Courts below. We concur with the reasoning of the

Courts below and also add the following three reasons in addition to what is held by the Courts below.

16.1. In the first place, the appellant had no title to the suit land. All that he had claimed to possess in relation to the suit land was an agreement dated 24.04.1980 to purchase the suit land from its owner (Shri Ved Prakash Kakaria). The appellant, as mentioned above, failed to prove the agreement. In this view of the matter, the appellant had no prima facie case in his favour to file a suit nor he had even any locus to file the suit in relation to the suit land once the agreement was held not proved.

16.2. Second, the proper remedy of the appellant in this case was to file a civil suit against respondent Nos.1 to 3 to claim specific performance of the agreement in question in relation to the suit land and such suit should have been filed immediately after execution of agreement in the year 1980 or/and within three years from the date of execution. It was, however, not done. The suit was, however, filed by the appellant almost after 12 years from the date of agreement and that too it was for declaration and mandatory injunction but not for specific performance of agreement. It was, in our opinion, a misconceived suit and was, therefore, rightly dismissed.”

**13.** In view of the aforesaid settled legal position and further in view of the undisputed factual position, the impugned order is not sustainable and the present suit/plaint filed simplicitor for permanent injunction being not maintainable, is hereby rejected by allowing the defendants’ application under Order 7 Rule 11 CPC, with the further direction to learned trial Court to pass appropriate order in the pending civil suit.

**14.** Accordingly, this civil revision is **allowed and disposed off.**

**15.** Interim application(s), if any, shall stand disposed off.

**(DWARKA DHISH BANSAL)**  
**JUDGE**