

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL REVISION APPLICATION NO. 68 of 2019**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Approved for Reporting	Yes	No
	Yes	

VASAVA LILABEN D/O KESURBHAI AND W/O SHANTIBHAI & ANR.

Versus

BHARATKUMAR BALDEVBHAI DESAI

Appearance:

MR SP MAJMUDAR(3456) for the Applicant(s) No. 1,2

RUSHABH H MUNSHAW(8958) for the Applicant(s) No. 1,2

MR AM PAREKH(562) for the Opponent(s) No. 1

MR MD CHAUHAN(1345) for the Opponent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 03/07/2025

ORAL JUDGMENT

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1. This Revision Application raises a neat question of law. Whether a Plaintiff, being an Unregistered Agreement to Sell holder, can maintain suit simplicitor for permanent injunction without seeking the relief of specific performance.
2. The present Revision Application has been filed challenging Order dated 06.12.2018, passed by Principal Civil Judge, Waghodia, District Vadodara below Exhibit 13 in Regular Civil Suit No. 7 of 2018, whereby the application under the provisions of Order VII Rule 11(a) and (d) of the Code of Civil Procedure (“CPC”) has been rejected.
3. For the sake of brevity, the parties are referred to by their original status in the suit.

DISPUTE - IN BRIEF

4. Brief facts in the present Revision Application are that, the Plaintiff filed Regular Civil Suit No. 7 of 2018, seeking a relief of permanent injunction on the ground that the Defendants intended to sell the suit property. The cause of action to file the suit is that an Agreement to sale was executed on 23.09.2017 whereby it was agreed by the Defendant to sell the suit property to the Plaintiff for an amount of Rs. 21 lakhs.
5. It is the case of the Plaintiff in the Plaint that, possession of the suit property was also handed over to the Plaintiff and thereafter time and again the Plaintiff has requested the Defendant to execute a Sale

Deed on basis of Agreement dated 23.09.2017, but the Defendant on one or the other pretext has not executed the same. It is also the case of the Plaintiff that a public notice was issued by the Defendant on 26.01.2018 for a Title Clearance Certificate and it has been alleged that as the prices of the land have increased the Defendants are trying to sell the suit property to a third party.

6. By way of the present suit, the Plaintiff has sought a relief of permanent injunction restraining the Defendants from transferring the suit property to a third party and further a relief seeking injunction on the Defendant from disturbing the Plaintiff's possession of the suit property.
7. The Defendants entered appearance in the said suit and filed an Application vide Exhibit 13, on the ground that, the Plaint is required to be rejected, in view of the provisions of section 73(aa) of the Gujarat Land Revenue Code as the Defendants are "Scheduled Tribe", and therefore, in view of section 73(aa) of the Gujarat Land Revenue Code without the previous sanction of the Collector, the suit property could not be transferred.
8. Defendant has also in the Application stated that the suit was filed seeking permanent injunction and the Plaintiff has not sought any relief for specific performance of the contract, and therefore, the suit is required to be rejected.
9. After hearing the parties and after taking into consideration the

Plaint and documents annexed with the Plaint, the trial Court rejected the said application. Hence, the present Revision Application.

CONTENTIONS OF THE PETITIONER

10. Ld. Advocate for the Petitioner–Defendant has mainly argued that the trial Court ought to have rejected the plaint in view of the fact that the suit is barred by law on two counts:
 - i. The suit is a suit *simplicitor* for injunction; and
 - ii. The transaction between the Plaintiff and Defendant is hit by section 73 (aa) of the Gujarat Land Revenue Code, 1879.
11. To substantiate this argument, the Ld. Advocate for the Petitioner has argued that, in the Plaint, the Plaintiff has stated clearly that a public notice was issued by the Defendants for selling their land to a third party. Therefore, the Plaintiff is aware that Defendant does not intend to sell the suit property to the Plaintiff. Hence, despite being aware that Defendant does not intend to sell the suit property to the Plaintiff, it has not filed a suit seeking specific performance of the Agreement to Sell.
12. Fact remains as per the clear admission of the Plaintiff, the Defendant has refused specific performance of Agreement dated 23.09.2017. Further, there are no averments in the Plaint to suggest that at the time when the suit was filed, Defendants were ready and

willing to execute the sale deed. It has also been argued by Ld. Advocate for the Defendants that by virtue of unregistered Agreement to Sale, the Plaintiff cannot seek relief of injunction solely and in that view of the matter it has been argued that the Plaintiff is required to be rejected.

13. With respect to the argument of the Plaintiff being hit by section 73 (aa) of the Gujarat Land Revenue Code (“**LRC**”), the Ld. Advocate for the Respondent has argued that the Defendants are Scheduled Tribes and hence, the present suit property could not be transferred to any person without previous sanction of the Collector. This fact has been suppressed by the Plaintiff while filing the present suit and the said fact goes to the root of the entire suit, and therefore, it has been stated that the said fact will have to be taken into consideration while deciding the Application.
14. The Ld. Advocate for the Defendant has relied on the Certificate issued by the Government dated 22.01.2009, which clearly states that the Defendants are from Scheduled Tribes, and therefore, the suit transaction is hit by section 73 (aa) of the Gujarat Land Revenue Code. It has also been argued that the trial Court erred in coming to the conclusion that whether or not the transaction is hit by section 73 (aa) and section 73(aa)(c) of LRC, is an issue which can only be decided after framing issues. It is argued that when the said Certificate is clear there is no requirement of leading evidence to that effect, and therefore, the trial Court could not have rejected the said Application. Hence, it has been argued that the Revision

Application is required to be allowed and the Plea is required to be rejected.

15. Ld. Advocate for the Defendants has relied on the following judgments in the case of:

1. ***Correspondence, Rbanms Educational Institution v. B. Gunashekar & Another, 2025-AIJEL-SC-75084.*** The relevant paragraphs 15.2.1, 15.2.2 & 17, read as under:

*“15.2.1. First, there is no privity between the Respondents and the appellant. The agreement to sell, is not between the parties to the suit. According to Section 7 of the Transfer of Property Act, 1882, only the owner, or any person authorised by him, can transfer the property. We have already held that an agreement to sell does not confer any right on the proposed purchaser under the agreement. Therefore, as a natural corollary, any right, until the sale deed is executed, will vest only with the owner, or in other words, the vendor to take necessary action to protect his interest in the property. According to the Respondents, the property belongs to the vendors and according to the appellant, the property vests in them. Since the Respondents are not divested any right by virtue of the agreement, they cannot sustain the suit as they would not have any locus. Consequently, they also cannot seek any declaration in respect of the title of the vendors. But when the title is under a cloud, it is necessary that a declaration be sought as laid down by this Court in the judgment in **Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and others, AIR 2008 SC 2033 : MANU/SC/7376/2008.** Therefore, the suit at the instance*

of the Respondents/Plaintiffs is not maintainable and only the vendors could have approached the court for a relief of declaration. In the present case, strangely, the vendors are not arrayed as parties to even support any semblance of right sought by the Respondents/Plaintiffs, which we found not to be in existence. Further, the Respondents/Plaintiffs claim to have paid the entire consideration of Rs.75,00,000/- in cash, despite the introduction of Section 269ST to the Income Tax Act in 2017 and the corresponding amendment to Section 271 DA. As held by us, the agreement can only create rights against the proposed vendors and not against third parties like the appellant herein. As the agreement to sell does not create any transferable interest or title in the property in favour of the Respondents/ Plaintiffs, as per Section 54 of the Transfer of Property Act, 1882, we hold that the attempt of the Plaintiffs to disclose the cause of action through clever drafting, based solely on an agreement to sell, must fail, as such disclosure cannot be restricted to mere statement of facts but must disclose a legal right to sue.”

15.2.2. Secondly, and perhaps more fundamentally, as we have seen and held above, the Respondents have no legal right that can be enforced against the appellant as their claim is impliedly barred by virtue of Section 54 of the Transfer of Property Act, 1882. Their remedy, if any, lies against their proposed vendors. The Plaint averments remain silent regarding the execution of a registered sale deed in favour of the Respondents, which alone can confer a valid right on them to file a suit against the appellant as held by us earlier. Another, remedy available to them is to institute a suit against the vendors for specific performance. This principle was clearly established in K. Basavarajappa (supra), wherein this Court held that an agreement holder lacks locus standi to maintain actions

against third parties. The relevant paragraph of the said judgment is extracted below:

“8. ... By mere agreement to sell the appellant got no interest in the property put to auction to enable him to apply for setting aside such auction under Rule 60 and especially when his transaction was hit by Rule 16(1) read with Rules 51 and 48. Consequently he could not be said to be having any legal interest to entitle him to move such an application. Consequently no fault could be found with the decision of the Division Bench of the High Court rejecting the entitlement of the appellant to move such an application.”

17. At the same time, we are conscious of principle that only averments in the Plaint are to be considered under Order VII Rule 11 CPC. While it is true that the Defendant's defense is not to be considered at this stage, this does not mean that the court must accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which are barred and the cause of action is fictitious. In T. Arivandandam (supra), this Court emphasized that where the Plaint is manifestly vexatious and meritless, courts should exercise their power under Order VII Rule 11 CPC and not waste judicial time on matters that are legally barred and frivolous. The present case falls squarely within this principle.”

- 2. *Devesh Metcast Pvt. Ltd. Through Directors & Others Vs. Girish Nagjibhai Savaliya* in *R/CRA/288/2022 & R/CRA/289/2022*. The relevant paragraph Nos.6.7, 6.9, 6.14, 6.15, 6.16 & 6.20.**

3. ***Dhaniben D/o Morabhai Bapubhai Rohit And W/o Parshottambhai Chhotabhai Rohit Vs. Rohit Kanubhai Morabhai*** reported in ***2024-AIJEL-HC-249324***. The relevant paragraph Nos.6.3 & 6.4, reads as under:-

“6.3 Reliance placed on an order of the Hon'ble Supreme Court in the case of [Keshav Sood](#) (supra) wherein in Para 5 the Supreme Court has observed that while rejecting a Plaint the Court cannot go into the documents produced by the Defendants. The observations were made by the Hon'ble Supreme Court in context of a plea by the Defendant-applicant of Order VII Rule XI on the issue of res-judicata by referring to certain documents. Here, in the facts of the present case when the Trial Court found that the foundational facts themselves were not correctly stated, the Court when found that it was a case of suppression of facts the Court had to consider the documents of the Defendant on the issue of suppression made by the Plaintiff of the very documents which should have been in his custody. The contention of the Counsel for the appellants cannot be accepted. When the case of the Plaintiff was based on a false claim on suppression of facts which were material to the issue, the Trial Court committed no error in relying on the documents produced by the Defendants. The documents produced by the undefined Defendants indicated that notices under Section 135D were issued and acknowledgements were produced. This belied a statement in the Plaint that no notices under Section 135-D were received. The case was further exposed to suppression when signed release deeds were placed on record which struck at the Plaintiffs' root to further their case for partition of properties. Only when these documents were produced did the Plaintiffs come forward then to change track to suggest that the signatures on the release deed was forged.

6.4 Even Mr Majmudar,Ld. counsel, now contending that the release deed not being a registered document is trying

to latch on to a last straw to swim against the tide to come out of the fact that there was a clear case of suppression before the Trial Court and the Plaint was nothing but a case of clever drafting and suppression. Even reliance placed on the provisions of the [Hindu Succession Act](#) is a submission that stands on loose ground in light of the facts that indicate that the sisters themselves had foregone their rights in the suit undefined properties by signing a release deed in the year 1974 and statements were recorded before the Talati-cum-Mantri. The alternative submission of Ld. Counsel Mr Majmudar was that even otherwise revenue entries are for fiscal purposes and cannot be looked into for the purposes of title may now be considered.”

- 4. Rameshchandra Chimanlal Shah Vs. Mahesbhai Manubhai Patel** in **R/First Appeal No.1329 of 2019 with Civil Application for Stay No.1 of 2019 in R/First Appeal No.1329 of 2019**. The relevant paragraph Nos.7,8 & 9, reads as under:-

7. In view of the above factual position, this Court is required to consider as to whether the averments in the Plaint justify the exercise of powers under Order 7 Rule 11(d) of CPC. The proposition of law that the Plaint which would include the document annexed therewith would be the only material to be considered for exercise of powers under the said provisions is well settled. However, in a case where clandestinely the real purport of Plaint is maneuvered by clever drafting; by misleading statements, and by suppressing the basic facts, can the Plaintiff contend that the averments in the Plaint do not justify the exercise of powers under Order 7 Rule 11. The rule that the averments in the Plaint and the related documents would be the material for consideration under Order 7 Rule 11 would not justify the Plaintiff to choose the

averments suiting his case. The aforesaid rule would only mean that the averments made and which ought to be made and the documents produced and which ought to be produced in justification of the prayer in the suit would be the material for the above purpose. In other words, a deliberate avoidance of the necessary averments in the Complaint and related documents in order to clandestinely alter the true purport of the Complaint, would not justify the Plaintiff to contend that the powers under Order 7 Rule 11(d) were not exercisable, if after consideration of avoided necessary material, the case under said provision would be made out. Therefore, even in cases where the necessary averments are deliberately avoided or misleading statements are made or false suggestions are made, the aforementioned rule for the decision in the applications under Order 7 Rule 11 of the CPC would be attracted and it would be permissible to trace out the missing statements; false suggestions and avoided statement for the purpose and said provision.

8. Testing on the above principles, there can be no escape from the conclusion that a deliberate attempt was made by the appellantPlaintiff to avoid the relevant averments in relation to the background of the dispute pertaining to block no.730. Plaintiffappellant chose to make halfhearted averments with an only intention to make out a case that he was a tenant in relation to block no.730. A deliberate misleading statement that he has been declared as tenant for the said land also came to be made in the prayer clause. A feeble statement that dispute in relation to block no.730 was the subject matter in the Special Civil Application No. 12533 of 2017 came to be made; no positive, cogent or clear statement pointing out the circumstances giving rise to the above referred Special Civil Application were made and appears to have been deliberately avoided. Had the aforesaid required

averments been made in the Plaint, the facts would have been as clear as the day light; giving rise to a clear inference that the Plaintiffappellant had lost in his claim to the title as tenant in respect of block no.730. It also would have led to a clear inference that the Plaintiff had no locus to assail the sale deed pertaining to block no.730 in absence of his title as a tenant or otherwise, to the said property.

9. Thus, the omitted statements and the misleading statements and the false suggestions, if read in the light of the true facts, would justify that the Plaintiffappellant had no cause of action to plead in the Plaint and the Court may be justified in exercise of powers under Order 7 Rule 11(d) for the consideration of the relief as to cancellation of the sale deed, obviously, the Court would be obliged to determine whether the Plaintiff is a tenant under the Gujarat Tenancy Act; in absence of such predetermination subsisting on the date of the suit. Thus, had the Plaintiff stated that he does not hold the title as a tenant on the date of the suit, the suit would be barred by the provisions under the Gujarat Tenancy Act.”

- 5. *Decd. Shaikh Ismailbhai Hushainbhai Through Lh. Vs. Vankar Ambalal Dhanabhai* reported in 2024 (0) AIJEL HC 247772.**

- 16. Though the present matter was called out twice, none appeared for the Respondents.**

ANALYSIS

- 17. As pointed out above, the main issue falling for consideration of this Court is whether or not a Plaintiff (being an unregistered agreement**

to sell holder) can maintain or bring a suit only for permanent injunction without having sought specific performance of the said Agreement? Remaining issues (discussed later) as raised by the Ld. Advocate for the Petitioner need not detain this Court much longer in view of the settled proposition of law thereon.

Suit by unregistered agreement to sell holder for permanent injunction without seeking specific performance

Barred by law - Order II Rule 2

18. It is the argument of the Petitioner that a suit only for permanent injunction without seeking specific performance of the unregistered agreement to sell is barred under Order II Rule 2. For appreciating this argument, it is important to see the cause of action as pleaded in the suit. Cause of Action as pleaded in the Plaint is reproduced hereinunder:

“7. on 26.01.2018, the defendants tried to transfer the suit property to other person and with a malafide intention issued a Public Notice in Gujarat Samachar newspaper and from that day the cause of action to file the suit has arose.”

19. What is striking from this cause of action is twofold. **First**, the cause of action as pleaded regarding the public notice, is a cause of action for filing a suit for specific performance. According to the averments of the Plaint itself, the Defendant is seeking to sell the suit property to third party. Therefore, a cause of action for seeking specific performance has naturally arisen. **Second**, by no stretch of

imagination, can it be said that the cause of action so pleaded threatens the possession of the Plaintiff alone and does not give rise to cause of specific performance.

20. Order II Rule 2 of the Code of Civil Procedure, reads as under:

“2. Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action; but a Plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

***Relinquishment of part of claim.-** Where a Plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

***Omission to sue for one of several reliefs.-** A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

***Explanation.-** For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”*

21. Therefore, what is important is that a Plaintiff must seek all claims which arise from a given cause of action. Having omitted or relinquished to sue for all claims and reliefs, the Plaintiff cannot be subsequently permitted to sue for the same. Hence, cause of action giving rise to the reliefs is the most important part for Order II Rule 2.
22. This Court is mindful and bound by the law as laid down by the Hon'ble Apex Court in the case of ***Rathnavati and Anr. v. Kavita Ganashamdas, (2015) 2 SCC (Civ) 736*** as followed in the case of ***Sucha Singh Sodhi (Dead) v. Baldev Raj Walia and Anr., (2018) 6 SCC 733***. Hon'ble Court in the said cases have held that the cause of action for seeking relief of permanent injunction is separate from the cause of action for seeking the relief of specific performance. Consequently, it was held that there was no bar of Order II Rule 2 in filing the subsequent suit of specific performance.
23. Relevant paragraph of ***Rathnavati (supra)*** is reproduced as under:
- 23.1. *So far as the suit for permanent injunction is concerned, it was based on a threat given to the plaintiff by the defendants to dispossess her from the suit house on 2-1-2000 and 9-1-2000. This would be clear from reading Para 17 of the plaint. So far as the cause of action to file suit for specific performance of the agreement is concerned, the same was based on non-performance of agreement*

dated 15-2-1989 by Defendant 2 in the plaintiff's favour despite giving legal notice dated 6-3-2000 to Defendant 2 to perform her part.

24. Therefore, in the said cases, the cause of action for permanent injunction and specific performance was separate and distinct. However, in the present case, a bare perusal of the cause of action pleaded it would show that in fact, a cause of action entitling the Plaintiff to seek specific performance has been pleaded. This is in clear view of the fact that the Plaintiff has itself stated that the Agreement to sell has not been implemented by the Defendant.
25. Hence, **a subsequent suit for specific performance** (if at all filed) **could be said to be barred by law in the present facts**. However, Order II Rule 2 will bar the subsequent suit for specific performance. The present suit for permanent injunction simpliciter cannot be said to be barred by provisions of Order II Rule 2.
26. This is in view of the language of the provision “*he shall not afterwards sue for any relief so omitted*”. Hence, the Petitioner’s argument regarding rejection of Plaint under Order II Rule 2 must fail on this count.

No cause of Action

27. Having noted the position of law as regards Order II Rule 2, it is important to see whether there is any cause of action disclosed in the present Petition for filing a suit of permanent injunction alone.

28. It is trite law that an Agreement to sell holder does not have any right in the property. [See: ***Munishamappa v. M. Rama Reddy and ors.*, 2023 SCC Online SC 1701**, Para 10, ***Raheja Universal Limited vs. NRC Limited*, 2012(4) SCC 148**]. The only right available to such agreement to sell holder is to seek specific performance of the said agreement.
29. In this regard, this Court is bound by the Judgment of the Hon'ble Apex Court in the case of ***Balram Singh v. Kelo Devi***, **MANU/SC/1241/2022** which held as follows:

“17. Having conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simplicitor for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counter-claim for getting back the possession which was allowed by the learned trial Court. The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever

drafting.

30. Therefore, in the present case, when there was a cause of action (according to the averments of the Plaintiff) a cause for seeking specific performance, the Plaintiff omits not to do the same and seeks a suit simpliciter for permanent injunction, is impermissible. This is because, no cause of action for seeking permanent injunction in absence of specific performance can be said to have arisen.

31. This Court in ***Devesh Metacast (supra)*** has held as follows:

6.1 In view of the above admitted positions, the first point that has to be seen is that the Plaintiff is relying on Banachitthi which is not a registered Banachitthi and the fact also remains that the suit that has been filed by the Plaintiff is not for specific performance of a contract. Therefore, the fact remains that whether the suit that has been filed by the Plaintiff will be protected under the proviso of Section 49 of the Registration Act which reads as under:

“49. Effect of non-registration of documents required to be registered.

- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882),] [Added by Act 21 of 1929, Section 10.] to be registered shall

*(a) affect any immovable property comprised therein,
or*

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

[Provided that an unregistered document affecting

immovable property and required by this Act, or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the [Specific Relief Act, 1877] [Added by Act 21 of 1929, Section 10.], [* *] [The words "or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Act, 1882 (4 of 1882)" omitted by Act 48 of 2001, Section 6 (w.e.f. 24.9.2001).] or as evidence of any collateral transaction not required to be effected by registered instrument.]*

6.2 *In view of Section 49 of the Registration Act the Court can receive the evidence of a contract in **a suit for specific performance or as evidence of any collateral transaction.** The fact also remains that the suit that has been filed is with respect to a right which the Plaintiff claims having arisen by way of Bana-chitthi that is executed on 31.07.2006 and till filing of the present suit, the Plaintiff has not claimed any right for specific performance and the suit that has been filed is on a document which is required to be registered as per Section 17 of the Registration Act, therefore as the document on which the Plaintiff relies is unregistered document, no right will arise to the Plaintiff to rely on the said document i.e. Bana-chitthi as the suit is not for specific performance of a contract but only seeking permanent injunction and not for specific performance.*

6.3 *Therefore, the question is whether or not the Plaintiff can seek permanent injunction on basis of an unregistered Agreement to Sell? **In view of the well settled law, the answer to the said question is in the negative.***

6.4 *Hon'ble Apex Court in **Balram Singh v. Kelo Devi (supra)**, was dealing with a similar situation. It has been held that if the Plaintiff files suit simplicitor for permanent injunction and does not seek substantive relief of specific*

performance for agreement to sale which is an unregistered document, on such unregistered document i.e. agreement to sale, no decree for permanent injunction could have been passed.

...

6.5 It is therefore clear that no decree for permanent injunction can be granted on basis of an unregistered agreement to sell, especially where a prayer for specific performance has not been sought.

6.6 The Plaintiff cannot be permitted to achieve indirectly, what it cannot achieve directly....

6.8 The Plaintiff having not filed a suit for specific performance, and in absence of any averment made in the Plaint as regards the readiness of the Defendant to execute the sale deed, cannot seek permanent injunction since the Plaintiffs are very well aware that the Defendant has already cancelled the Bana-chitthi and have refused specific performance of the Bana-chitthi.

6.9 Therefore, the Plaintiff does not have any cause of action to sue the Defendant for permanent injunction and declaration, on basis of an unregistered agreement to sell without having sought specific performance thereof. Hence, the Plaint does not disclose a cause of action and is liable to be rejected under Order VII Rule 11 (a) on this count.

Section 41(h) of the Specific Relief Act

32. This issue can be examined from one more angle.
33. One important aspect while considering the present suit is that whether a relief of injunction alone can be maintainable in view of Section 41(h) of the specific relief Act. The said provision, for the sake of convenience is reproduced hereinunder:

41. Injunction when refused.— An injunction cannot be granted—

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

34. It is pertinent to be noted that the language of the Section is that an injunction cannot be granted when any equally efficacious relief can certainly be obtained by other usual mode of proceeding. In the present case, and equally efficacious, relief could be obtained by the Plaintiff by seeking specific performance of the unregistered agreement to sell, which was being relied upon by the Plaintiff in the present proceedings. However, the same having not been sought, a prayer for simple injunction cannot be maintained in the eye of law, and in view of the ratio of Hon'ble Apex Court laid down in the case of ***Balaram versus Kelo Devi*** (supra).

35. The Punjab and Haryana High Court in ***Jasmer Singh and Ors. v. Kanwaljit Singh and Ors.***, 1990 SCC Online P&H 650 held as follows:

4. ...

An injunction cannot be granted, if equally efficacious relief can certainly be obtained, by any other usual mode of proceeding. An injunction will not be granted where an adequate relief by way of damages is available. The vendees having a contract for sale in their favour have the equally efficacious remedy by suit of specific

performance, their suit for injunction to restrain the vendors from selling the property to others is not maintainable.

36. Moreover, Bombay High Court in *Hussain Khan v. Ahmed*, 1988 4 Bom CR 60 held as follows:

In the light of these decisions, I am of the opinion that the suit filed simpliciter for injunction where the claim is funded purely to claim to protection under section 53-A is not maintainable, and such a suitor is not entitled to claim relief in view of the provision of section 41(h) of the Specific Relief Act. Such a suitor should not be usually granted injunction

Protection of possession by way of unregistered agreement to sell

37. The only question falling for consideration of this Court in the said respect is that in the present case, the Plaintiff has pleaded that it was in possession of the suit property. Hence, is there a cause of action therefore, disclosed for seeking injunction simpliciter? The answer to the said question, in opinion of this Court is in the negative.
38. This is for a simple reason. If the Plaintiff is seeking a relief of protection of possession on the strength of an Agreement to Sell, it is claiming the benefit by operation of **Section 53A of the Transfer of Property Act, 1882** (“TP Act”). However, the benefit of Section 53A of the TP Act is not available to an Unregistered Agreement to sell holder.
39. **Section 17(1A)** of the Registration Act is reproduced hereinunder:

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

40. Therefore, for the purposes of Section 53A and claiming any benefit thereunder, an unregistered agreement to sell can give birth to no right. This has also been recognized and elaborated by the Hon'ble Apex Court in *Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar*, (2018) 7 SCC 639 as follows:

*10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53-A of the 1882 Act to protect its possession over the stated property. **If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53-A of the 1882 Act.** The issue, in our opinion, is no more res integra. In *S. Kaladevi v. V.R. Somasundaram* [*S. Kaladevi v. V.R. Somasundaram*, (2010) 5 SCC 401 : (2010) 2 SCC (Civ) 424] this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an*

endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.

41. Therefore, an unregistered agreement to sell cannot be used to protect the possession of the property, which the Plaintiff claims to have received in part performance of the Agreement. Hence, on this count also, it cannot be said that the suit is maintainable.
42. Naturally, an unregistered Agreement to sell can be used for evidence to prove contract in a suit for specific performance. However, the present suit is not filed for specific performance and hence, the unregistered Agreement will be of no help to the Plaintiff.
43. In view of the foregoing and in view of the ratio as laid down by the Hon'ble Apex Court in ***Balram v. Kelo Devi (supra)***, it is held that a suit by an Unregistered Agreement to Sell holder for permanent injunction only without seeking specific performance is not maintainable as it does not disclose a cause of action thereof. Further, if the suit is for protection of possession, an unregistered Agreement to sell will not give rise to any right for protection thereof and hence, the same also cannot be maintained.
44. Recently the Hon'ble Apex Court in the case of ***Mahnoor Fatima Imran and Ors. v. M/s. Visweswara Infrastructure Pvt. Ltd.***, held (in regards to an Unregistered Agreement to sell holder, while reversing the Division Bench's Order by which protection from dispossession had been granted) as under:

As far as the writ petition praying for a direction not to dispossess, we find that the writ petitioners to have not established a valid title. We prima facie find the title to be suspect, which would disentitle them from claiming a rightful possession, which also has not been proved.

45. Therefore, it is clear that an unregistered agreement to sell holder cannot file a suit for mere permanent injunction without having sought specific performance of the agreement. Therefore, on this count, the present Plaint is required to be rejected as disclosing no cause of action under Order VII Rule 11(a).

Section 73 AA of the LRC

46. As far as the issue regarding Section 73 of the LRC is concerned, the same is a triable issue. In any case, question regarding permission of the Collector would arise at the time of 'transfer' of the suit property. The key ingredients of the said Section is that an occupancy belonging to a Schedule Tribe *shall **not be transferred** to any person without the previous sanction of the Collector.*
47. Hence, the said issue would probably arise had the Plaintiff sought a relief of specific performance. Since the Plaintiff has elected not to seek relief of specific performance, in the present case, there is no question of bar of Section 73. Hence, the Plaint cannot be rejected on the said count.

CONCLUSION

48. In view of the aforesaid, the Plaintiff, being an unregistered agreement to sell holder, cannot maintain a suit for permanent injunction only without having sort specific performance of the said agreement. This is in view of the fact that the Plaintiff would have no cause of action to seek the same. Therefore, the Plaint is liable to be rejected under Order VII Rule 11 (A). Consequently, the present Civil Revision Application is hereby allowed. Rule made absolute.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai