

UNREPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 209/2002**

S.N.REKHI & ANR.

..... Appellants

Through: Mr.T.K.Ganju, Sr. Adv. with Mr.C.S.Gupta,
Mr.Bharat Gupta and Mr.R.K.Mishra,
Advocates.

versus

PAMILA MANMOHAN SINGH & OTHERS

..... Respondents

Through: Mr.Sandeep Sethi, Sr.Adv. With
Mr.Mahendra Rana and Mr.Lakshay
Sawhney, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

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07.02.2008

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DR. MUKUNDKAM SHARMA, C.J. (ORAL)

1. We have heard the learned counsel for the parties on this appeal, which is filed against the judgment and order dated 17.05.2002 passed by the learned Single Judge in the suit, whereby the learned Single Judge has answered two issues on the basis of an application filed under Order VII Rule 11 of the Code of Civil Procedure.
2. The respondent herein, namely, Smt.Pamila Manmohan Singh instituted a suit for declaration of right, title and interest in respect of the suit property and for a decree for possession and mesne profit. In paragraph-22 of the plaint, it was stated by her that as per Section 14 of the Limitation Act, the period between 1981, that is the year when the suit was instituted and 24.08.1993, that the date when the suit was dismissed in default

and for non-prosecution, that is, 12 years has to be excluded in computing the period of limitation for filing the suit regarding the suit filed in respect of authenticity of a gift deed. A bare reading of the paragraph indicates that it was assumed by the respondent herein that while filing the appeal that the suit was otherwise barred by limitation, but the period of limitation is protected in view of the statement made in paragraph-22 of the plaint. The said statement made in paragraph-22 was refuted by the appellant in his written statement, contending as follows:

“22. Para 22 of the plaint is legally misconceived and is denied. As per the allegations made, the suit is hopelessly barred by time and the same is to be dismissed as per Section 3 of the Limitation Act. Section 14 of the Limitation Act has got no application in excluding the period during which the suit by defendants 1 & 2 has been prosecuted while the deceased Dr.R.Kohli had full knowledge about the assertion of absolute ownership of the subject property by Late Smt. Channo Devi and defendant No.1. It is ridiculous on the part of the deceased Dr. R.Kohli and now by the plaintiff to allege that gift deed which was executed and registered on 23.5.33 and duly acted upon during all this time was not in their knowledge. The plaintiff has devised a novel way, exclusive of the Limitation Act, for computing the period of limitation for filing the suit. The plea is legally misconceived and merits summary rejection”.

3. In the light of the aforesaid pleadings of the parties, it appears to us that the said issue with regard to as to whether the suit was barred by limitation could have been decided only after the parties are allowed to lead their respective evidence on this aspect. The said issue involves not only the question of fact, but also of law. In our considered view, it was not proper for the learned Single Judge to consider the said issue only as an issue of law and deciding the same on the basis of an application under Order VII Rule 11 of the Code of Civil Procedure and not giving the parties to lead any evidence.

4. We hold that the said issue should now be decided by the learned Single Judge by

allowing the parties to lead their respective evidence on this aspect. We are also informed that so far the other issues are concerned, except for issue No.2, the trial between the parties is proceeding before the learned Single Judge and the same is stated to be at the stage of cross-examination of the defendants' witnesses.

5. Insofar as the issue with regard to the cause of action is concerned, in our view, the same could also be gone into at the stage of trial. In terms of this order, as to whether the suit is barred by limitation, it would be open for the parties to lead their evidence even now, for which the parties shall be given an opportunity to lead further evidence, if any, in respect of the aforesaid issue only. So far the remaining issues which are stated to be pending for consideration before the learned Single Judge are concerned, the same may be proceeded with in accordance with law and all the issues shall now be decided by the learned Single Judge in accordance with law as expeditiously as possible.

6. The parties shall appear before the learned Single Judge on the date already fixed there. It is also made clear that while deciding the aforesaid two issues, the learned Single Judge shall not, in any manner, be persuaded or influenced by the impugned judgment and order which stand more or less modified by us in terms of our above order.

7. FAO(OS) 209/2002 stands disposed of in terms of the above order.

CHIEF JUSTICE

REVA KHETRAPAL, J

FEBRUARY 07, 2008

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