

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 09.02.2010

+ CS(OS) 735/2006

SH. SATYA PARKASH GUPTA & ANR. Plaintiffs
Through : Mr. Ajay Kumar Gupta, Advocate.

versus

SH. VIKAS GUPTA & ORS. DA+ Defendants
Through : Mr. Dinesh Garg, Ms. Rachna Agrawal and Mr. Prakhar
Garg, Advocates, for Defendant Nos. 1,2,4,6,7&8.

CORAM:**MR. JUSTICE S. RAVINDRA BHAT**

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)**I.A. No. 2102/2008 in CS (OS) 735/2006**

1. The plaintiff seeks impleadment and substitution of legal representatives of deceased Defendant No.5. The previous order sheets would disclose that the said legal representatives/proposed defendants were served; inspite of service of notice, the said defendants have not chosen to appear, to contest the proceedings. I.A. No. 2102/2008 is allowed. The legal representatives of deceased Defendant No. 5 are hereby substituted in his place, as party defendant. The amended memo of parties shall be filed within a week.

I.A. No. 10988/2006 in CS (OS) 735/2006

2. The defendant seeks rejection of the Suit on the ground that the averments in the plaint discloses that the claim is time barred.

3. The plaintiffs and defendants are members of the same family. They are also involved in another litigation - CS (OS) 1038/1997. The plaintiffs contend that the defendants reliance on two release deeds dated 31.7.1956 and Will dated 12.9.1999 (of one late Kanshi Ram) in respect of the suit properties are unenforceable as they are forged. They accordingly seek cancellation of those documents, produced as Annexure P-1 to P-3 and for a decree of permanent injunction restraining the defendants from alienating or creating third party rights in respect of the properties mentioned in paragraph-4 which are subject matter of the documents.

4. The suit averments briefly are that the parties are heirs of late Kanshi Ram; the plaintiffs claim suit properties *inter alia* in the other pending proceedings on such basis. The defendants' application is premised on reading of paragraph 14 and 17 of the suit. It is contended that the two release deeds are of the year 1956 and their existence was known to the plaintiffs all the while. It is also submitted that similarly the Will of late Kanshi Ram dated 12.9.1999 cannot now be attacked since the plaintiffs were aware of it. The defendants/applicants rely on paragraph-14 of the Suit in support of the submission regarding maintainability on the ground of limitation. The said submission is as follows:

"14. That after death of Late Lala Kanshi Ram the plaintiff No.1 filed one CM No.301/01 under Order 22 Rule 3 for impleading LRs of the deceased appellant as party to the said proceedings. At the same time the defendants No.1 to 3 also filed one CM No.439/01 for impleading themselves as party to the said appeal wherein they claimed themselves to be the LRs of deceased Late Lala Kanshi Ram on the basis of a forged Will dated 12.9.1999 and further claimed that the plaintiffs No.1 and 2 have already released their share in favour of late Lala Kanshi Ram and rest of the members of HUF by way of Release Deed dated 31.07.1956."

5. The defendants further submit that in another proceedings, where execution of a decree was sought before the Court of Additional District Judge in Execution Case No.24/2000, the plaintiffs had in fact sought for being added as parties, claiming to be the heirs of Late Kanshi Ram as far back as in the year 2001. The order made by the ADJ in the said execution case, rejecting the present plaintiffs' request for impleadment, has been relied upon. The relevant extracts of the said order are as follows: -

"4. Notice of the application was given to the legal representatives who was substituted in place of deceased DH. The application was contested by them who in their reply submitted that the application is hopelessly barred by time. Further vide release Deed dated 31.7.1956, the applicants themselves separated from the DH. They have no locus standi to be impleaded in the application as necessary or proper party. They also filed a suit against the DH and claimed relief which was dismissed by the Civil Judge vide Order dated 6.3.1997. As such, it was submitted that the application is liable to be dismissed.

5. Applicants filed rejoinder wherein they denied the factum of execution of Will dated 12.11.99 and release deed dated 31.7.1956. Along with rejoinder an application u/s 5 of Limitation Act was also filed stating that applicants were not aware about present proceedings prior to 3rd week of Feb.2002. Immediately on coming to know about the present proceedings, this application has been filed.

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8. Even coming to merits, applicant by virtue of the present application, the applicant wants substitution of 7 persons in place of deceased DH but application is signed by only one applicant namely Raghubar Dayal. Only he has filed affidavit in support of the application. Even the vakalatnama in favour of Shri Ajay Kr., Adv. is signed by him only. Furthermore, DH has placed on record photocopy of release deed dated 31.7.1956 by Raghubar Dayal and Satya Prakash Gupta in favour of deceased DH. Alongwith the rejoinder, the applicants alleged that it is a forged document and reserved their right to initiate criminal proceedings against the person who forged the same. There is nothing to show that any such action was taken by them. Vikas Gupta & others have placed on record photocopy of order passed by Hon'ble H.C. in another case between Kanshi Ram Vs. DDA where also after the death of Kanshi Ram, Gauri Shankar, Vikas Gupta & Manish Gupta have been substituted in place of deceased plaintiff.

9. In view of the foregoing discussions, there is no merit in the applications

besides the fact that same is barred by limitation. As such application U/O 22 R.3 CPC and 5 Limitation Act, are dismissed.”

6. The defendants/applicants argue that the relief of cancellation is governed by Article 56 of the Schedule to the Limitation Act, which reads as follows: -

Description of suit	period of limitation	Time from which period begins to run
To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.

7. It is stated that the plaintiffs’ conduct itself discloses that they were aware about the existence of the documents relied upon, the cancellation of which is the relief in the present case, as far back as in 2001 and that their attempt to be impleaded as part in that case was unsuccessful. Not only, have they suppressed this, but that the averments in the suit clearly disclose that it was time barred.

8. The non-applicants/plaintiffs submit that the suit cannot be dismissed on the ground of limitation without the Court examining the detailed facts and circumstances, since the issue as to forgery etc is a mixed question of fact and law. They rely upon a decision of the Supreme Court in *Balasaria Construction (P) Ltd. v. Hanuman Seva Trust* (2006) 5 SCC 658.

9. The plaintiffs contend that the suit nowhere discloses any knowledge on their part, as alleged by the defendants in 2001 or 2002 and that rather paragraph-17 clearly states that the plaintiffs became aware about the document in 2003. It is stated that if the Suit is to be rejected, the plaintiffs

10. The plaintiffs further argued that reliance placed upon an order in the execution case is of no significance and that the Court should permit to proceed and that the plaintiffs should be

given the opportunity of leading evidence in support of their claim. Para 17 of the suit, upon which the plaintiffs rely in resisting the present application reads as follows:

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17. That the cause of action for filing the suit arose on various dates in the year 2003 onwards when the defendants 1 to 3 used these forged and fabricated documents enclosed herewith as Annexures P-1, P-2 and P-3 in the judicial proceedings to mislead and divert the mind of presiding officers in various judicial proceedings. The cause of action is still continuing as the defendants are still relying on these forged and fabricated documents to deprive the plaintiff from their genuine claim in RSA No.12/2001 before Hon’ble High Court of Delhi and CS(OS) No. 1038/97 in a suit of partition pending before this Hon’ble Court.

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11. As is evident from the above discussion that the suit claims cancellation of two documents, i.e. the Will of 1999 and to lease deeds executed on 31.07.1956. The executant on this document was one Kanshi Ram. It is a matter of record that in some other civil proceedings, i.e. two execution proceedings pending on the file of Additional District Judge, the present plaintiffs have moved for impleadment, sometime in 2001. That application was, however, rejected. Paras 4 and 8 of that order, rejecting that application, clearly demonstrate that the plaintiffs were aware about the existence of the documents, which they now impeach and seek cancellation in the present case.

12. That the plaintiffs’ argument that limitation involves determination of an imposed question of fact and law ordinarily cannot be disputed. At the same time, the Court needs to carefully scrutinize the pleadings and determine if a claim otherwise not sustainable in law, would require trial. If not, the Court can either reject the suit or on the basis of material existing on record at the stage of filing of the suit or other materials brought on record subsequently, reject the plaint or make such orders or decrees as are appropriate in exercise of Order 12 Rule 6

CPC. Having regard to these parameters, the Court is disinclined to accept plaintiffs' submission that the order of the ADJ in the execution proceedings cannot be gone into. It is not as if the plaintiffs are denying existence of such order; all that is being said is that the parties must face each other in trial.

13. So far as the other submissions with regard to the averments concerning limitation in the suit (para 17) goes, the Court cannot be unmindful of the pleadings which have to be read as a composite whole. Para 14 clearly mentions that in some appellate proceedings, RSA No. 20/2000. The present defendants had moved C.M. No. 439/2001, relying upon some documents, of which cancellation and consequent relief is sought in the present case. This, in the opinion of the Court, seals the fate of the suit in the sense that the plaintiffs have disclosed in para 14 itself that the documents which they now challenge were not known to them or at least they have become aware of it since their existence were disclosed as far back as in 2001.

14. The relevant provision of the Limitation Act, Article 56 mandates that a suit for cancellation (and consequential reliefs) has to be filed three years from the date of the issue or registration of the instrument becomes known. In this case, the suit averments clearly demonstrate that the plaintiffs became aware of the existence of the documents that were treated as hostile to their title sometime in 2001. The suit was, therefore, filed in 2006, on 20.04.2006. It is clearly time-barred. It is also liable to be dismissed for the reason that the plaintiffs, at best were aware of these documents on 08.02.2002, when the order was made in the execution proceedings by the ADJ. I.A. No. 10988/2008 is accordingly allowed.

CS (OS) 735/2006

15. For the reasons mentioned in the order made today in I.A. No. 10988/2006, the suit is liable to be rejected. Also since the plaintiffs have not disputed the order dated 08.10.2002 by the

ADJ in Exec. Case 24/2000, which is a part of the record, the suit is unsustainable as it is time-barred. CS (OS) 735/2006 is accordingly dismissed.

FEBRUARY 09, 2010
ajk/vd

S. RAVINDRA BHAT,J