

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 22nd November, 2011
Judgment delivered on : 24th November, 2011

+ RFA (OS) No.23/2010

SATYA PRAKASH GUPTA & ANR. Appellants.
Through: Mr.Ajay Kumar, Advocate.

versus

VIKAS GUPTA & ORS. ...Respondents
Through: Mr.Dinesh Garg, Advocate for
respondent Nos.1,2,4, & 6

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

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

S.P.GARG, J.

1. Appellants have challenged Order dated 09.02.2010 passed by the learned Single Judge whereby the suit filed by them for declaration, cancellation and permanent injunction was dismissed under Order VII Rule 11 CPC.

2. Appellants filed a suit for declaration, cancellation and permanent injunction alleging that Release Deeds dated 31.07.1956 annexed as Annexure P-1 and P-2 and Will annexed as Ex.P-3 dated 22.11.1999 were forged and fabricated documents. They never executed Release Deeds Ex. P-1 and P-2 on 31.07.1956. Deceased Kanshi Ram, father of the appellants, never executed any Will Annexure P-3 on 12.11.1999. All these documents have been forged by the respondents to lay a claim over property bearing No.25/41, West Punjabi Bagh, New Delhi.

3. The respondents took a specific plea before the learned Single Judge that the suit filed by the appellants was barred by limitation. They were aware about the Release Deeds and Will in question but opted not to file a suit for declaration and cancellation of those documents within time.

4. Learned Single Judge came to the conclusion that appellants were having knowledge of all these documents and did not file any suit within limitation for their cancellation.

5. We have heard learned counsel for the parties and have scanned the file.

6. Appellants are the sons of late Kanshi Ram. Respondent Nos. 4, 5 and 6 are the other sons of late Kanshi Ram. Respondent Nos. 7 and 8 are his daughters.

7. It is not in dispute that appellant-Raghubar Dayal filed a suit No.367/1995 against Kanshi Ram and others for grant of injunction against his dispossession from property bearing No.25/41 West Punjabi Bagh, New Delhi claiming the property to be HUF (Hindu Undivided Family). He also filed an

application under Order XXXIX Rule 1 and 2 CPC in the said suit. The said application was disposed of by the Court of Shri Narinder Kumar, learned Civil Judge, Delhi on 06.03.1997. The order reveals that the learned counsel for Kanshi Ram had placed on record photocopy of Release Deed dated 31.07.1956 with a view to show that plaintiff-Raghubar Dayal had accepted a sum of ₹14,000/- as his 1/6th share in Joint Hindu Family and at the same time relinquished his right, title and interest in the business, property and other assets of Hindu Joint Family. The Court was of the view that property No.25/41 West Punjabi Bagh, New Delhi was self acquired property of defendants and in view of the recital in the Release Deed, plaintiff Raghubar Dayal had no right, title or interest in the property in dispute. Contents of this Order dated 06.03.1997 demonstrate that the appellant-Raghubar Dayal had come to know about the existence of Release Deeds dated 31.07.1956 purportedly executed by him in the proceedings in suit No.367/1995. Learned counsel for the appellants have failed to convince us as to what prevented them from challenging the said Release Deed dated 31.07.1956 within limitation when reliance was placed on that document much prior to the institution of present suit.

8. It is also not in controversy that deceased Kanshi Ram had filed Execution Petition No.24/2000 for execution of a decree obtained by him against third party. During the pendency of the said execution petition, Kanshi Ram expired on 06.02.2001. He left behind seven legal heirs. An application was made by respondent No.1-Vikas Gupta, respondent No.2-

Manish Gupta, respondent No.3- Gauri Shankar under Order XXII Rule 3 for substituting them in place of decree holder on the basis of Will dated 12.11.1999. That application was allowed vide order dated 12.10.2001 as reflected in the order dated 08.10.2002 passed by Smt.Sunita Gupta, the then learned Addl.Distt.Judge, Delhi. It is also not disputed that Raghubar Dayal and Satya Prakash Gupta (appellants before us) also moved an application under Order XXII Rule 3 for impleading them as party in the execution proceedings. The said application was contested by the substituted legal heirs and they pleaded that the application was hopelessly barred by time. Again it was pleaded that vide Release Deeds dated 31.07.1956 the appellants themselves separated from the decree holder and have no locus standi to be impleaded in the application as necessary or proper party. Will dated 12.11.1999 and Release Deeds dated 31.05.1956 purportedly were also relied upon by the applicants in their rejoinder. Their plea was that they were not aware about the proceedings prior to third week of February, 2002. Learned court of Smt. Sunita Gupta discussed the Release Deeds dated 31.07.1956 purportedly executed by the appellants in favour of the deceased decree holder and dismissed the application under Order XXII Rule 3 CPC filed by the appellants in the said proceedings.

9. Again it reveals that at the time of disposal of the said application the appellants were having adequate knowledge about the documents being got cancelled in the

present suit but for the reasons known to them, they did not prefer to file the suit within limitation.

10. The averments made in the plaint also non-suit the appellants to file the suit in question. In para 14 of the plaint it was specifically pleaded by the appellants that appellant No.1 filed one CM No.301/2001 under Order XXII Rule 3 for impleading LRs of deceased Kanshi Ram. At the same time, defendant No. 1, 2 and 3 also filed one CM No.439/2001 for impleading them as party. In the said application they claimed themselves to be the LRs of the deceased Kanshi Ram on the basis of forged Will dated 12.09.1999. They further claimed that the appellants had already released their share in favour of late Kanshi Ram and the rest of the members of HUF by way of Release Deeds dated 31.07.1956. Again in para No.15 of the plaint the appellants themselves claimed that the Release Deeds produced by defendant Nos.1 to 3 and relied upon by them in RSA No.12/2001 were forged and fabricated documents as they never signed the alleged Release Deeds dated 31.07.1956. Secondly appellant No.2 was a minor on that date and any document signed by such incapable person would not be a legally valid document.

11. These contents in the plaint apparently show that the appellants were aware about the existence of these documents in RSA No.12/2001 as per their own admission. Appellants filed the present suit on 17.04.2006 much after the expiry of three years from the date when they came to know about the existence of Release Deeds and Will under challenge. As per article 56 of the Schedule to the Limitation Act, the

period of limitation is three years and the time from which period begins to run is when the issue or registration became known to the plaintiffs. Since the appellants had come to know about the execution of these Lease Deeds and Will in question in the judicial proceedings referred above, the present suit filed by them before the learned Single Judge was hopelessly barred by limitation.

12. The Release Deed Annexure P-1 specifically shows the appellant No.2 to be aged about 19 years. No document has been shown by the appellants to infer that appellant No.2 was minor at the time of execution of Release Deed dated 31.07.1956. In the plaint the appellant No.2 did not prefer to disclose his date of birth. Learned counsel for the respondents at Bar has stated that the school certificate was placed on record where the appellant No.2 was major on the date of execution of the Release Deeds.

13. Rules of Limitation are meant to see that parties do not resort to dilatory tactics but to seek their remedy promptly. It is a policy of Limitation Acts that those who sleep upon their claims should not be assisted by the courts and equal policy behind those acts, in that there shall be an end of litigation and protection shall be offered against stale demands. It is well settled that question of limitation can be raised at any time in the course of proceedings. Court can dismiss the suit on the ground of limitation even if the defence has not raised that plea, where on the face of the pleadings, the court comes to the conclusion that the suit is barred by limitation.

14. We find no merit in the present appeal and the same is accordingly dismissed.

15. No order as to cost.

(S.P.GARG)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

November 24, 2011
sa