

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

% Date of judgment: 03.05.2011

+ **R.S.A.No. 281/2007 & CM No. 15637/2007**

**MURLI SINGH & OTHERS** .....**Appellant**

Through: Mr. J. Sarma, Advocate.

Versus

**ROOMAL & OTHERS** .....**Respondents**

Through: Mr. O.P. Khadaria and  
Mr. Deepak Khadaria, Advocates.

**CORAM:**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

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

**INDERMEET KAUR, J.** (Oral)

1. This appeal has impugned the judgment and decree dated 31.07.2007 which had endorsed the finding of the trial judge dated 16.04.2005 whereby the suit filed by the plaintiff Sh. Murli Singh seeking declaration and injunction (to the effect that the suit land be declared as an ancestral property and defendant nos. 3 to 5 be restrained from getting any sale deed executed in

regard to the suit land; plaintiff be not dispossessed; further the agreement to sell dated 13.01.1961 and the decree dated 02.02.1973 in suit no. 395/1961 as modified in RFA no. 52/1973 and RFA No. 80/1973 be also declared null and void) had been decreed. Impugned judgment had reversed this finding; suit stood dismissed.

2. The plaintiffs (13 in number) and defendant nos. 1 and 2 are members of joint Hindu family; their common Ancestor was Tulsi (a) Popi. He had two sons namely Roomal and Jodha (defendant nos. 1 and 2 respectively). Plaintiff nos. 1 to 7 & 12 are the sons of defendant no. 1 and plaintiff no. 8 to 11 and plaintiff no. 13 are the sons of defendant no. 2. The case of the plaintiff is that the suit land was an ancestral property; their father Tulsi had inherited it from their grandfather; plaintiffs being governed by the Mitakshra School of Hindu Law have interest in said joint family property. On 13.01.1961, defendant nos. 1 and 2 had entered into an agreement to sell qua the suit property with defendant nos 3 to 5; plaintiffs came to know about this agreement on 30.01.1985. On enquiry, it was revealed that defendant nos. 3 to 5 had filed a suit for specific performance (suit no.395/61) qua this agreement to sell dated 13.01.1961; this suit was decreed in favour of defendant no. 3 by the court of Sh. RSA No.281/2007

O.P. Diwedi on 02.02.73 whereby the defendant nos. 1 & 2 had been directed to executed the sale deed in favour of defendant no. 3. The RFA no. 80/1973 was allowed by the High Court; vide judgment dated 14.01.1985, defendant nos. 1 and 2 were ordered to execute the sale deed qua defendant nos. 3 to 5 within one month. The case of the plaintiff is that they were minors at the time when defendant nos. 1 and 2 executed the agreement to sell and this agreement being against their interest was not binding upon them. Suit was accordingly filed with the aforementioned prayers.

4. Defendant nos. 1 and 2 filed their written statement; they admitted the averments in the plaint; they supported the case of the plaintiffs being the fathers of the plaintiffs.

5. Defendant no. 3 and 4 had also contested the suit. It was stated that defendant nos. 1 and 2 have sold the property to defendant no. 3 vide agreement to sell dated 13.01.1961; the plaintiff had complete knowledge of the proceedings. In the High Court, a local commissioner had been appointed who had visited the suit property wherein he had noted the presence of Mr. Murli Singh and Mr. K.V. Sharma; this was on 20.02.1981. The suit was even otherwise barred by limitation. It was denied that the suit property was a joint family property.

6. On the pleadings of the parties, the following issues were framed:-

*"1. Whether the land in question bearing khasra no. 208/132/1 situated in village Zamrudpur, Delhi is an ancestral land, as alleged in Plaint? OPP*

*2. Whether the alleged agreement to sell dt. 13.01.1961 and decree dt. 02.02.73 in suit no. 395/71 (1951) as given in the plaint are null and void and not binding on plaintiffs as alleged in plaint? OPP*

*3. Whether plaintiff is entitled to injunction as prayed for? OPP*

*4. Whether the plaintiff is not liable to be dispossessed from the suit land as alleged in plaint? OPP*

*5. Whether the plaintiff is estopped from filing the present suit in view of preliminary objection in para no. 3 & 4 of w/s? (OPD-3&4)*

*6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction as alleged in para 5 of the w/s.*

*7. Relief."*

7. Oral and documentary evidence was led.

8. Court was of the view that the plaintiffs have failed to prove the case. The agreement to sell dated 13.01.1961 executed by defendant nos. 1 and 2 in favour of defendant no. 3 is binding. The suit for specific performance had also been decreed in favour

of defendant no. 3 which had been upheld by the High Court. The suit for the plaintiff was dismissed.

9. This was endorsed in first appeal.

10. This is a second appeal. It had been admitted and on 25.04.2011, the following substantial question of law had been formulated.

*“Whether the findings in the impugned judgment dated 31.07.2007 returning a finding on the limitation against the appellant is perverse finding and if so, its effect?”*

11. On behalf of the appellant, it has been urged that the impugned judgment dismissing the suit of the plaintiffs on the ground of limitation is a perversity; at best knowledge could have been imputed to Murli who as per report of the Local Commissioner was found present at the site on 20.02.1981; no knowledge could have been imputed to the other 12 plaintiffs. It is pointed out that the impugned judgment has otherwise returned all other findings in favour of the plaintiffs; the impugned judgment had noted that the suit property is in fact the property of a Hindu undivided family (HUF); it was an ancestral property; there was no legal necessity to alienate this property. The finding returned on the question of limitation which is the

only finding against the appellant is misconceived and is liable to be set aside.

12. Arguments have been rebutted. It is pointed out that the impugned judgment does not in any manner for any interference. Attention has been drawn to the provisions of Section 7 of the Limitation Act, 1963. Reliance has been placed upon the judgments reported in AIR 2003 Madras 129 G. Murugan & Others Vs. Manickam, AIR 1972 Madras 3 Subramanyam Vs. Venkataraman & Others, AIR 1974 Madras 203 Venkatesan Vs. Neelayathakshiammal & Others as also a judgment of the Apex Court reported in 1996 VIII AD SC 37 Divya Dip Singh & Ors. Vs. Ram Bachan Mishra & Ors. Reliance has also been placed upon another judgment of the Apex Court in (1999) 9 SCC 446 Madhukar Vishwanath Vs. Madhao & others. It is pointed out that the relevant Article applicable in this case would be Article 60 of the First Schedule of the Limitation Act, 1963 and not Article 59; limitation is three years for filing a suit by a minor for repudiating the acts of his guardian and this period of three years has to be counted from the date when he attained majority. It is pointed out that Murli was the manager and karta of HUF; he admittedly being the eldest son and on the date of filing of the suit i.e. on 12.02.1985 Murli was more than 34 years of age; he had

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represented the interest of other plaintiffs also; suit was admittedly time barred. The impugned judgment calls for no interference.

13. Record has been perused. Plaintiffs No. 1 to 8 were the sons of Roomal and plaintiffs No. 9 to 13 were the sons of Jodha. The ancestor of Roomal and Jodha was Popi @ Tulsi; lineage of the plaintiffs was being traced from Popi @ Tulsi down to Roomal & Jodha and then to the present plaintiffs. As per the averments in the plaint except plaintiff nos. 12 and 13 who were minors on the date of filing of the suit; all other plaintiffs had attained majority much before three years from the date of filing of the suit; they were all in the age bracket of 30-35 years on the date when the suit was filed. Murli as per tabulation was born on 05.06.1951. He was the eldest son of Roomal. Para 5 of the plaint clearly states that no partition had taken place and the suit land is entered in the names of defendants No. 1 & 2 being the heads of their respective families; further Tulsi was their common ancestor. The impugned judgment had returned a finding that the Hindu undivided family of Tulsi remained intact; it was an HUF. Vehement contention of learned counsel for the appellant is that the impugned judgment had noted that there are two separate

Hindu undivided families of Jodha and Roomal and even if  
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knowledge is attributed to the family of Roomal (through Murli), no knowledge can be imputed to the family of Jodha is without any force. This is clear in view of specific averment in the plaint that the suit property is not partitioned and both Roomal and Jodha are claiming through their common ancestor Tulsi. The HUF of Tulsi was thus one complete whole.

14. Section 7 of the Limitation Act is relevant, it reads as follows:-

“7. Disability of one of several persons.- Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.”

15. In AIR 1961 SC 1074 Sarda Prasad & Others Vs. Lal Jumna Prasad the Apex Court while dealing with the provisions of Section 7 of the Limitation Act had held where a valid discharge can be given by one without the concurrence of the others, time would begin to run under Section 7 against all irrespective of the fact that some of those persons were minors at that time. In this case, the execution proceedings filed by the applicant were held to be barred by time. A suit for partition had been filed by two

brother Jamuna Prasad and Devi Prasad and two minor sons of Jamuna Prasad; a decree for partition was passed on 02.09.1938; execution was thereafter filed. Contention was that the application was in time as all the applicants till then had been minors; the application had put forward a plea that Jawala Prasa was entitled jointly with these applicants to make an application for the execution of the decree and he could not have given a discharge of the liability under the decree without the concurrence of his minor sons was rejected; as such time had begun to run under Section 7 of the Limitation Act against them also from the date of the decree.

16. Article 60 of the first Schedule of the Limitation Act is relevant. It reads as under:-

“To set aside a transfer of  
Property made by the guardian  
of a ward—

|                                               |             |                                |
|-----------------------------------------------|-------------|--------------------------------|
| (a)By the word who has<br>attained majority;” | three years | when the ward attains majority |
|-----------------------------------------------|-------------|--------------------------------|

Article 59 of the Limitation Act is also relevant. It reads as under:-

“To cancel or set aside an  
instrument or decree or for the  
rescission of a contract.

|             |                                                                                                                                                                  |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Three years | When the facts entitling the<br>plaintiff to have the instrument<br>or decree cancelled or set aside<br>or the contract rescinded first<br>become known to him.” |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|

17. The prayer in the plaint is to set aside an agreement to sell dated 13.01.1961 which had been executed by Roomal and Jodha (defendants No. 1 & 2) in favour of defendants No. 3 to 5. In terms of Article 60 such a suit could have been filed by the ward for setting aside the transfer made by his guardian within a period of three years from the date when the ward attained majority. In the instant case, Murli (eldest son in the family) was borne on 05.06.1951. He attained majority in the year 1972. Suit had been filed on 12.02.1985; he was then aged about 34 years. It was time barred.

18. Even if three years is to be counted from the date of knowledge as is contained in Article 59, even then the suit is time barred. Murli was admittedly present at the time of visit of the Local Commissioner at the site i.e. on 22.04.1981; date of knowledge is 22.04.1981; suit filed on 12.2.1985 was time barred.

19. On both counts suit was time barred.

20. The next question which has to be answered is as to whether the suit filed by Murli was in his individual capacity or whether he represented the other plaintiffs i.e. plaintiffs No. 2 to 13 as well. The answer to this question is in the positive; Murli was representing the interest of his other brothers as well. Murli

is admittedly the eldest son in the family; he being the eldest male

member of the Hindu undivided family he had the capacity to give a valid discharge on behalf of the other plaintiffs.

21. This has also been answered by the series of judgment on which reliance has been placed upon by learned counsel for the respondent.

22. In G. Murugan there were four brothers who had filed a suit against their father; their prayer being that the alienation of property by their father be declared null and void and not binding upon them. Out of four brothers on the date of filing of suit, two brothers were majors aged 26 & 24 years; plaintiff No. 1 was 20 years of age and plaintiff No. 2 was of 16 years of age. The Court had adverted to the provisions of Section 7 of the Limitation Act. It had held that the third plaintiff being the eldest member of Hindu undivided family shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family; he not having filed a suit within three years from the date of his attaining majority, in view of Article 60 such a suit was barred. This ratio has been reaffirmed in two other judgments relied upon by the respondent namely Subramanyam (Supra) and Venkatesan (Supra). The Supreme Court in Divya Dip Singh (Supra) was dealing with the rights of a minor to have a sale set aside qua the alienation of property by his natural guardian. In  
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this case, the natural guardian of the minor had disposed of the immoveable property of the ward in contravention of Section 8 (2) of the Hindu Minority and Guardianship Act, 1956; the minor not having challenged the sale within three years from his attaining majority; he having challenged the sale within 12 years was held to be a suit which was barred by time. The Supreme Court in Madhukar Vishwanath (Supra) was dealing with the rights of a minor whose immoveable property had been transferred by his guardian i.e. by his maternal uncle. The plaintiff in this case was born on 22.08.1948; he had attained majority on 22.08.1966; suit challenging the alienation made by his guardian was filed after seven years. Applying the provisions of Article 60 of the Limitation Act, the Court had held that such a suit is barred by limitation.

23. Substantial question of law is answered in favour of the respondent and against the appellant. There is no merit in this appeal. Appeal as also pending application are dismissed.

**INDERMEET KAUR, J.**

**MAY 03, 2011**  
a/ss