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

+ CS(OS) 1890/2011

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Judgment dated 31.01.2012

LT COL B.M.K. KHOSLA Plaintiff

Through : Mr. Surinder Anand, Adv.

versus

DELHI DEVELOPMENT AUTHORITY Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

I.A.NO.12322/2011.

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

I.A.NOS.18805/2011 (O VI R 17)

3. This is an application for amendment of the plaint. Summons are yet to be issued in the suit. Since the matter is at the initial stage, the amendment is allowed. Let the amended plaint be taken on record.
4. Application stands disposed of.

CS(OS) 1890/2011,

5. Counsel for the plaintiff was called upon to satisfy this Court that the present suit has been filed within the period of limitation.
6. Before summons could be issued in the suit, the plaintiff moved an application under Order 6 Rule 17 CPC for amendment of the plaint, which has been allowed. Plaintiff has amended the paragraph pertaining to the cause of action. In the plaint initially filed, it was averred that the cause of action had arisen when the defendant accepted the legal affidavit

and converted the property on 07.10.2005 from lease-hold to free-hold. In the amended plaint, the plaintiff has given various details when the cause of action has arisen. The amended plaint reveals that in the year 2005 itself the plaintiff filed IA.No.9315/2005 in CS(OS)No.2520/1996 on 17.11.2005 wherein a prayer was made that the Local Commissioner has committed illegality in signing and filing affidavit (subject matter of the present suit), however, the application was dismissed on 14.03.2007. The plaintiff has also filed a writ petition in the year 2009. The aforesaid facts would reveal that in the year 2005 itself the plaintiff gained knowledge that the Local Commissioner had no authority to file the affidavit. Paragraph 10 of the amended plaint reads as under:

“10. The cause of action for filing the present suit first arose on 24th May, 2005 when Sh.V. K. Shali, Advocate executed the disputed Affidavit in the name of the plaintiff and subsequently submitted the affidavit to the DDA (Delhi Development Authority) Defendant for converting lease hold rights of property No.33 Poorvi Marg, Vasant Vihar, New Delhi into freehold rights. The cause of action for filing the present suit arose a number of times subsequently when the IA's (interim Applications) I.A. No.9315 of 2005 in CS(OS)No.2520 of 1996, WP(C)No.7806 of 2009, LPA No.328 of 2009 and one C.M.No.13442/2009 in LPA No.328 of 2009 was filed before this Hon'ble Court. One Special Leave Petition CC No.2059 of 2010 and review petition filed by vide filing No.8553 dt. 16.03.2010 were filed before Hon'ble Supreme Court of India. All petitions mentioned above were dismissed without adjudicating the legality of the disputed affidavit. Details of the aforementioned petition are herein given below:

(a) I.A. No.9315/2005 in CS(OS)No.2520 of 1996 was filed on 17th November, 2005 and was dismissed on 14.03.2007. The main prayer in the aforementioned I.A. was that the Ld. Local Commissioner Sh.V.K. Shali, Advocate has committed illegality in signing and filing affidavit, indemnity bond and agreement to sell for property No.33, Poorvi Marg, Vasant Vihar, New Delhi. These illegalities be considered and appropriate order for withdrawing and

cancelling all the aforementioned documents be passed.

(b) That on 26.11.2008 one legal notice was served on the defendants which was duly received by the offices of Defendant. Notice was to correct the records and convert Free Hold Rights into Lease Hold Rights regarding property No.33, Poorvi Marg, Vasant Vihar, New Delhi as conversion from leasehold to freehold was not in accordance with law. Disputed affidavit was one of the illegalities.

(c) That WP(C)No.7806 of 2009 was filed on 3.3.2009 when the defendant did not take action on the legal notice dated 26.11.2009 and was dismissed on 27.03.2009. One of prayer in the WP(C)No.7806 of 2009 was to convert freehold rights of the four co-sub lessee into lease hold rights and cancellation of all the papers submitted before the defendant regarding ordering of converting the property from leasehold to free hold i.e. property No.33, Poorvi Marg, Vasant Vihar, New Delhi, as null and void as the same were based on forged and fabricated documents for conversion of leasehold rights of co-sub lessee in property No.33, Poorvi Marg, Vasant Vihar, New Delhi in freehold rights.

The affidavit in dispute is one of the documents mentioned above.

(d) Further cause of action arose on 9.07.2009 when the plaintiff filed one LPA No.328 of 2009 before this Hon'ble Court which was dismissed on 20.07.2009 one of the prayer in LPA No.328 of 2009 was conversion of freehold rights of the four co-sub lessee in lease hold residential property No.33, Poorvi Marg, Vasant Vihar, New Delhi which has been converted illegality into freehold property arbitrarily, illegally, falsely and by accepting forged and fabricated documents submitted before the defendant as null and void.

The disputed affidavit in the present suit is part and parcel of documents mentioned above.

(e) Further cause of action arose on 28.09.2009 when the plaintiff filed one CM No.13442/2009 in LPA No.328/2009 which was also rejected on 22.09.2009 the above mentioned C.M.No.13442/2009 was filed for modification of the order dated 20.07.2009 passed in LPA No.328 of 2009. The prayer in the present CM was that this Hon'ble Court may kindly and graciously be pleased to clarify or modify the order dated 20.07.2009 passed in LPA No.328 of 2009 and an speaking order be passed by this Hon'ble Court that the disputed illegal documents executed by Ld. Court Commissioner are invalid having no force of law against the

interests of the present plaintiff as null and void and are only scrap of paper having no force of law.

The present disputed affidavit in the present suit is a part of the documents mentioned above.

(f) Further cause of action arose on 24.12.2009 when the plaintiff filed one Special Leave Petition No.2059 of 2010 which was dismissed on 15.02.2010. The above noted SLP NO.CC 2059 of 2010 was an appeal against the judgment and order dated 20.7.2009 in LPA No.328/2009 and order dated 22.09.2009 in CM.No.13442 of 2009 in LPA No.328 of 2009 by this Hon'ble Court whereby the Hon'ble Court dismissed the LPA NO.328 of 2009 and plaintiff filed CM No.13442 of 2009 in LPA No.328 of 2009 for modification and the same was also rejected.

The orders passed in SLP CC No.2059 of 2010

“delayed condoned.

The Special Leave Petition is dismissed.”

The cause of action further arose on 16.3.2010 when the plaintiff filed review petition vide filing No.8553 dated 16.3.2010 which was also dismissed.

And the cause of action for filing the present suit is within the law of limitation and cause of action is still subsisting.”

7. Learned counsel for the plaintiff in support of his submission that the suit has been filed within the period of limitation, relies on Article 59 of the Limitation Act, which is reproduced below:

“PART IV- SUITS RELATING TO DECREES AND INSTRUMENTS

(59) To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have
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the instrument or
decree cancelled
or aside or the
contract
rescinded first
become known
to him.”

8. Article 59 of the Limitation Act provides a period of three years’ limitation which runs from the date when the plaintiff first came to know that he was entitled to get the affidavit declared illegal null and void.
9. In the present case, as per the plaint, the cause of action for filing the present suit arose on 24.5.2005, when the disputed affidavit in the name of the plaintiff was executed and subsequently submitted with the DDA. The plaintiff gained knowledge of this fact in the year 2005 itself as the plaintiff was present when the order was passed, which is evident from the fact that the plaintiff filed an application, being I.A.No.9315/2005, on 17.11.2005 itself wherein he brought to the notice of the Court that an illegality had been committed by the Local Commissioner. This application of the plaintiff was dismissed on 14.3.2007. All these facts have been brought out by the plaintiff in the plaint. The period of limitation in this case would run from May, 2005, itself, when the affidavit was executed or at best in November, 2005, when I.A.No.9315/2005 was filed by the plaintiff. Accordingly, the present suit is patently beyond the period of limitation and the same is accordingly dismissed.

G.S.SISTANI, J

JANUARY 31, 2012

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