

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

+ **CS(OS) 2777/2012**

% **18th October, 2012**

SANJEEV KALRA Plaintiff
Through: Mr. Ashish Partap Singh, Advocate.

VERSUS

JYOTI KALRA & ORS. Defendants
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a suit filed by one Mr. Sanjeev Kalra for declaration, possession and permanent injunction seeking the following reliefs:-

“1. That a decree of declaration declaring the plaintiff as the owner of the properties i.e. J-4/35-B, Khirki Extension, Malviya Nagar, New Delhi-, J-1/22, Flat No.B-2, Khirki Extension, Malviya Nagar and Three flats at B-4, Tooth Sarai, 3F, Malviya Nagar, New Delhi purchased by the defendant No.1 fraudulently in her name from the illegal proceeds of undivided share of the plaintiff in property bearing no.B-2/161, Safdarjung Enclave, New Delhi.

2. That a decree of possession of the aforesaid property may please passed in favour of the plaintiff and against the defendants with a direction to the defendant No.1 to execute the necessary transfer

documents of all the above said properties so purchased by her in favour of the plaintiff.

3. That a decree of permanent injunction restraining the defendants their agent, associates from alienating, selling or creating third party interest in the properties i.e. J-4/35-B, Khirki Extension, Malviya Nagar, New Delhi, J-1/22, Flat No.B-2, Khirki Extension, Malviya Nagar and Three flats at B-4, Tooth Sarai, 3F, Malviya Nagar, New Delhi may also be passed in favour of the plaintiff and against the defendants.

4. Costs of the suit; and

5. Such other and further relief as deem fit and proper in the facts and circumstances of the case may also be awarded to the plaintiff and against the defendant in the interest of justice.”

2. There are two defendants in the suit. Defendant No.1 is the ex-wife of plaintiff and the defendant No.2 is the present husband of the defendant No.1.

3. By means of the suit, effectively the plaintiff seeks to do the following:-

(i) Cancel the registered agreements to sell dated 19.4.2006 and 5.5.2006 entered into between the plaintiff and one Sh. Hemant Gogia with respect to first floor, second floor with terrace respectively of the property bearing No. B-2/161, Safdarjung Enclave, New Delhi.

(ii) Cancel the sale deed executed by the plaintiff in favour of the defendant no.1 with respect to the Shop no. 192, Export Market, Sarojini Nagar Market, New Delhi.

(iii) Declaration of the fact that decree of divorce by mutual consent entered into between the plaintiff and the defendant No.1 before the Court of concerned ADJ on 4.11.2006 is void.

(iv) Plaintiff also claims that out of the total sale consideration with respect to the sale of first floor, second floor with terrace of the property bearing No.B-2/161, Safdarjung Enclave, New Delhi no amount was received by him but was received by the defendant No.1 and who has purchased the five properties as stated in prayer clause (1) of the plaint, and of which properties the plaintiff claims for being declared as the owner.

4. The above reliefs are predicated on the cause of action that plaintiff used to remain drunk, and that the documents which were executed by him, were at the time when he was in an inebriated condition. There are also allegations of the defendant no.1 mixing 'tablets' (not specified of what) in the drinks of plaintiff.

5. In my opinion, ex facie, the suit besides being hopelessly barred by limitation, it is also not maintainable for non-joinder of necessary party who purchased the rights under the two agreements to sell, namely Mr. Hemant Gogia. I am also informed by the counsel for the plaintiff today that Sh. Hemant Gogia has further transferred the properties to other persons, and who are also not made as parties to this suit. I am also of the opinion that the plaint lacks material

particulars including dates and facts as to when the plaintiff got out from his 'inebriated condition' for seeking to challenge the documents as stated above.

6. A suit for cancellation of the documents which is filed under Section 31 of the Specific Relief Act, 1963 is governed by Article 59 of the Limitation Act, 1963 i.e it has to be filed within three years from the date of knowledge of the documents, execution of which is challenged. In the present case, two agreements to sell under which the plaintiff has transferred rights in the first floor, second floor with terrace of the property are dated 19.4.2006 and 5.5.2006 respectively i.e almost six years prior to filing of the suit. In the plaint, though it is stated that defendant No.1 by fraud took away the moneys from sale of the aforesaid two flats of the property bearing No.B-2/161, Safdarjung Enclave, New Delhi, there is no date mentioned as to when these moneys were taken by the defendant No.1 for the purchase of the five properties which are stated in prayer clause (1) of the plaint, and when the plaintiff came into his senses to know that the defendant No.1 perpetrated a fraud upon him. It will therefore have to be taken that best after a few hours or at the very best in a few days, or within a few weeks at the worst, the plaintiff would have come back to his senses for such time for being able to challenge the documents. I also put it to the counsel for the plaintiff as to whether the decree of divorce by mutual consent dated 4.11.2006 and which is of a date after the date of execution of the documents dated 19.4.2006 and 5.5.2006, was

ever challenged and to which counsel for the plaintiff states that decree for divorce by mutual consent has not been challenged by the plaintiff till date. In fact, for the completion of narration, I must state that even the sale deed which has been executed by the plaintiff dated 9.2.2006 in favour of his wife with respect to ground floor portion of Shop No.192, Export Market, Sarojini Nagar Market, New Delhi had not been challenged till the filing of the present suit. I may also state that one of the properties which is mentioned in prayer clause (1) of the plaint, namely J-4/35-B, Khirki Extension, Malviya Nagar, New Delhi, has been mentioned in the mutual divorce petition as to be owned by the defendant No.1 and which has been given for maintenance of the defendant No.1 and the minor children of the parties, namely Baby Sanchya and Master Sajan, and which minors are admittedly living with the defendant no.1.

7. It has been observed by the Supreme Court in the case of *T. Arivandandam Vs. T.V. Satyapal & Anr. AIR 1977 SC 2421* that there must be not a cursory but a meaningful reading of the plaint to determine that whether at all a cause of action is made out. Courts have frowned upon gross dishonesty in litigations, as also when the same are of frivolous nature.

8. The upshot of the discussion is that the documents which the plaintiff seeks to challenge are of the year 2006. Plaintiff is not only very much in the knowledge of documents of the year 2006 but also the documents are registered

documents and plaint is deliberately silent as to how the plaintiff got out of his drunken position to know that he had wrongly executed the documents of the year 2006. The documents of the year 2006 are with respect to all the three properties, namely two flats of the property bearing No.B-2/161, Safdarjung Enclave, New Delhi and also of a portion of Shop No.192, Export Market, Sarojini Nagar Market, New Delhi. The decree of divorce by mutual consent dated 4.11.2006 is final. A meaningful reading of the plaint shows that really not only the suit is clearly barred by time in view of Article 59 of the Limitation Act, 1963, but, the suit is in fact an abuse of process of law and an endeavour to unsettle the rights created in the year 2006 today in the year 2012, and that too without making the affected parties i.e Mr. Hemant Gogia and his successors-in-interest as parties to the present suit.

9. In view of the above, the suit is dismissed as not only being barred by limitation but also lacking in requisite cause of action. A copy of this judgment be sent by the Registry of this Court by post to the defendants as also through the Delhi High Court Process Serving Agency.

OCTOBER 18, 2012
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VALMIKI J. MEHTA, J.