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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 2209/2009

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Judgment dated 12.03.2012**SHRI SHANTI KUMAR RAMSISARIA**

..... Plaintiff

Through : Mr.S.K. Bhaduri, Adv.

versus

SHRI RAMAN SURI & OTHERS

..... Defendants

Through : Mr.M.L. Bhargava, Adv. for defendants
no.1 and 2.Mr.Kunal Kohli, Adv. for Ms.Anusuya
Salwan, Adv. for DSIDC/D-8.**CORAM:****HON'BLE MR. JUSTICE G.S.SISTANI****G.S.SISTANI, J (ORAL)****L.A.NO.736/2010**

1. This is an application filed by defendants no.1 and 2 under Order VII Rule 11 CPC for rejection of the plaint as being barred by limitation.

2. Present suit has been filed by plaintiff for declaration, mandatory and permanent injunction with the following prayers:

(i) Pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring that the plaintiff is the owner in possession of plot bearing No.739, measuring 350 sq. meters situated in Narela Industrial Complex, Narela, Delhi;

(ii) Pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring that the documents dated 15.06.1993 i.e. Agreement to Sell, General Power of Attorney, Special Power of Attorney, Receipt, etc. allegedly executed by Shri Gyandender Kumar in favour of Shri

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Ashish Jain and Sh.Arun Jain and the documents dated 31.03.1994 i.e. Agreement to Sell, General Power of Attorney, Special Power of Attorney, Receipt etc. allegedly executed by Shri Ashish Jain in favour of defendants no.1 and 2 herein, in respect of plot bearing No.739, measuring 350 sq. meters situated in Narela Industrial Complex, Narela, Delhi, are illegal, null and void and do not confer any right, title or interest either upon Shri Ashish Jain or upon the defendants no.1 and 2 in any manner whatsoever.

- (iii) Pass a decree of mandatory injunction in favour of the plaintiff and against the defendants thereby directing the defendant no.8 its official, employees, etc., to transfer the plot bearing No.739, measuring 350 sq. meters situated in Narela Industrial Complex, Narela, Delhi, in the name/favour of the plaintiff on the basis of the documents executed by Shri Gyanender Kumar, original allottee of the said plot in favour of the plaintiff and already submitted with the defendant no.8:
- (iv) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendant no.8, its officials, employees, etc. from transferring the plot bearing No.739, measuring 350 sq. meters situated in Narela Industrial Complex, Narela, Delhi, in the name/favour of defendants no.1 and 2 or any other person, except in the name of the plaintiff, in the records of D.S.I.D.C.:
- (v) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants no.1 and 2, their agents, servants, assigns, nominees, associates or any other person on their behalf from interfering in any manner in the peaceful use and enjoyment of the plot bearing No.739, measuring 350 sq. meters situated in Narela Industrial Complex, Narela, Delhi, by the plaintiff;
- (vi) Award costs of the present suit in favour of the plaintiff and against the defendants.

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3. As per the plaint, in the year 1996, one Sh.Gyanender Kumar, predecessor in interest of defendants no.5 to 7 had represented to the plaintiff that DSIDC, defendant no.8, had allotted a plot bearing no.739, measuring 350 sq. mts., situated in Narela Industrial Complex, Narela, Delhi, (hereinafter referred to as the said plot) to him. It was also represented by Sh.Gyanender Kumar that the said plot is free from all sorts of encumbrances such as prior sale, mortgage, gift, lien, court injunctions, etc. Sh.Gyanender Kumar sold the said plot to the plaintiff by executing various documents including an Agreement to Sell dated 22.7.1996 in favour of the plaintiff after receiving sale consideration of Rs.2.90 lakhs from the plaintiff. The plaintiff is stated to have paid Rs.2.00 lakhs by way of a cheque and Rs.90,000/- in cash to Sh.Gyanender Kumar. Sh.Gyanender Kumar also executed number of documents in favour of the plaintiff and handed over the vacant peaceful possession of the said plot to the plaintiff. The plaintiff thereafter applied to DSIDC for transfer of the said plot in his favour and also tendered a cheque towards the necessary charges. Plaintiff is also stated to have raised construction of a shed and the said shed is being used for the purpose of the business of the plaintiff. Admittedly, defendants no.1 and 2 had filed a suit being CS(OS) 5191/1998 titled as "*Shri Raman Suri and Another v. D.S.I.D.C and Others*" (hereinafter referred to as 'the earlier suit') wherein the present plaintiff was arrayed as defendant no.4 and on the basis of averments made in the earlier suit the plaintiff learnt that defendants no.1 and 2 are claiming title over the plot, in question. Relevant documents in support of their title were also filed by defendants no.1 and 2 on 17.3.2009 in the said earlier suit and on gaining knowledge of the said documents present suit has been filed by plaintiff seeking declaration, mandatory and permanent injunction.

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Mr.M.L.Bhargava, learned counsel for defendants no.1 and 2/applicant, has filed the present application under Order VII Rule 11 CPC for rejection of the plaint as being barred by limitation. Placing reliance on the certified copy of the earlier plaint filed by defendants no.1 and 2 in the year 1998 he has drawn the attention of the Court to the Memo of Parties wherein the plaintiff herein was arrayed as defendant no.4 in the said suit. It is the submission of Mr.Bhargava that the present suit is patently barred by limitation. Mr.Bhargava submits that the period of limitation would commence from the date the summons were served on the plaintiff in the earlier suit (filed by the present applicant) and accordingly, the present suit is hopelessly barred by limitation. Counsel further submits that plaintiff has admitted the pendency of the earlier suit; *and* his being a party to the earlier suit, which would show that he had knowledge about the pendency of the earlier suit and, thus, while relying upon Articles 56 and 58 of the Limitation Act it is submitted that prayers (i) and (ii) of the present suit are patently barred by limitation and prayers (iii), (iv) and (v) of the suit are simply consequential prayers and can also not be granted in view of the suit being barred by limitation.

- A. Counsel next submits that statement made by Sh.Gyanender Kumar is not reliable in view of the fact that in the written statement filed by him in the earlier suit he has stated that he never sold the property either to the present plaintiff or to defendants no.1 and 2 (being plaintiff in the earlier suit) or to Sh.Ashish Jain. Counsel also submits that the cause of action in the present suit would arise when defendants no.1 and 2 denied the title of the plaintiff. Mr.Bhargava has relied upon Section 34 of Specific Relief Act in support of his plea which read as under.

“Section 34 in The Specific Relief Act, 1963

34. Discretion of court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation.- A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee."

6. Mr.S.K.Bhaduri, learned counsel for the plaintiff/non-applicant, submits that the present application is devoid of merit and is liable to be dismissed. It is submitted that cause of action in favour of the plaintiff arose only on 17.3.2009 when for the first time defendants no.1 and 2, being plaintiff in the earlier suit, tendered the alleged documents signed and executed by Sh.Gyanender Kumar in favour of Sh.Ashish Jain, who in turn sold the said plot to defendants no.1 and 2. Mr.Bhaduri has relied upon the order dated 17.3.2009 passed by learned Additional District Judge in support of his plea that the relevant documents saw the light of the day for the first time on 17.3.2009. Counsel next submits that any suit filed prior to 17.3.2009 would in fact have been premature as in the absence of documents the plaintiff could not have either sought a declaration or cancellation.
7. Learned counsel for the plaintiff while placing reliance on the order dated 17.3.2009 passed by learned Additional District Judge contends that the set of documents of the year 1993 were not filed along with the earlier suit and they did not form part of the list of documents or even find place in the list of reliances which is evident from reading of the plaint and

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also the order passed by Additional District Judge on 17.3.2009. Counsel further contends that the question of limitation is a mixed question of fact and law, which cannot be decided on an application filed by defendants no.1 and 2 under Order VII Rule 11 CPC and the same would require pleadings, issues and evidence. In support of this plea, Mr. Bhaduri has relied upon the decisions rendered by the Apex Court in the case of **Ramesh B. Desai & Ors. v. Vipin Vadilal Mehta and Ors.**, reported at 2006 (3) Civil Court Cases 575 (S.C.) and **Balsaria Construction (P) Ltd. v. Hanuman SEva Trust and Others**, reported at (2006) 5 SCC 658. Relevant portion of paragraph 16 of **Ramesh B. Desai & Ors.** (supra) reads as under:

“6..

After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time.”

8. Para 8 of **Balsaria Construction (P) Ltd.** (supra) reads as under:

“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.”

9. Learned counsel for the plaintiff also submits that the documents, sought

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to be relied upon by defendants no.1 and 2 (plaintiffs in the earlier suit), are forged and fabricated documents and the reason why the said documents were not filed was that they were never in existence and it is only after Sh.Gyanender Kumar expired on 29.4.2007 did the defendants no.1 and 2 in a clandestine manner produce these documents to gain unfair advantage. Counsel for the plaintiff has also relied upon the statement made by Sh.Gyanender Kumar wherein he has denied having any relationship with Sh.Ashish Jain to support his plea that the documents are forged and fabricated.

19. I have heard counsel for the parties and also considered their rival contentions. The basic facts of the present case are not disputed that one Sh.Gyanender Kumar was allotted a plot by DSIDC. While it is the case of the plaintiff that this plot was sold to her by Sh.Gyanender Kumar for valuable consideration and possession thereof was also handed over to him, it is the case of defendants no.1 and 2 that Sh.Gyanender Kumar sold this plot to Sh.Ashish Jain and Sh.Ashish Jain further sold this plot to defendants no.1 and 2. As defendants no.1 and 2 learnt that plaintiff herein was also claiming ownership entitlement they instituted a suit in the year 1998 for declaration, specific performance and mandatory injunction in which DSIDC, Sh.Gyanender Kumar, Sh.Ashish Jain and the plaintiff in the present suit, Smt.Shanti Kumar, were made parties. In para 4 of the earlier suit defendants no.1 and 2 gave details of the chain of documents, available with them and by which the said plot was sold to them. Paras 4 & 5 of the earlier suit filed by the defendants no.1 and 2 reads as under:

"4. That defendant No.2 thereafter sold the said plot to defendant no.3 on the basis of Power of Attorney for a total sale consideration of Rs.2.90 laes. An agreement to Sell dated 15.6.1993, was executed by the defendant No.2 in favour of Defendant No.3

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confirming the sale in favour of Defendant No.3. A Receipt dated 15.6.1993, in the sum of Rs.2.90 Laes was also executed by Defendant No.2 in favour of Defendant No.3 in token of having received the said amount in full and final sale consideration of the said Plot. Defendant No.2 also executed a General Power of Attorney dated 15.6.1993, in favour of Shri Arun Jain father of Defendant No.3, authorizing him to do all the acts and to manage the said property. A Will dated 15.6.1993, was also executed by Defendant No.2 in favour of Defendant No.3. After execution of the aforesaid documents and after receiving the full sale consideration, the possession of the Plot was delivered by Defendant No.2 to Defendant No.3 on that date itself.

5. That Shri Ashish Jain, Defendant No.3, could not do any business on the Plot in question and decided to sell the same. In March 1994, the said Shri Ashish Jain expressed his willingness for selling the said Industrial Plot. The Plaintiffs were interested to set up some Small Scale Industry and therefore, they negotiated with defendant No.3 for purchasing the aforesaid Industrial Plot. The plaintiff also visited the site and found that the Plot was suitable for doing some business. After negotiations, the Plaintiffs agreed to pay to defendant No.3 a sum of Rs.2.60 Laes for the purchase of the said Plot. The said defendant NO.3 agreed to sell the plot in favour of the Plaintiffs provided the transfer charges with respect to the plot were also paid by the Plaintiffs to defendant No.1. The Plaintiffs accepted this offer and paid the Sale consideration to defendant No.3 and thereafter Defendant No.3 executed the following documents in favour of the plaintiff in token of having sold the said Plot to the Plaintiffs.

- (a) Receipt in token of having received a sum of Rs.2.60 Laes from the Plaintiff vide two Bank Drafts for Rs.1.30 Laes, each dated 31.3.1994;
- (b) Agreement to Sell and Purchase dated 31.3.1994;
- (c) Special Power of Attorney for Different purposes dated 31.3.1994;
- (d) Consent Letter addressed to the Officer, D.S.I.D.C.,

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Narela Industrial Complex, informing them that he had no objection for the transfer of the Plot in favour of the plaintiff.

Since Shri Arun Jain, father of the Plaintiffs had (sic.) appointed as General Attorney by the previous owner i.e. Shri Gyanender Kumar (Defendant No.2). The Said Shri Arun Jain also executed General Power of Attorney and a Special Power of Attorney in favour of the Plaintiffs. Some other documents were also executed by Shri. Ashish Jain in favour of the Plaintiffs in order to show that he had sold the Plot in question and had received the entire sale consideration.

After receiving the sale consideration Shri. Ashish Jain delivered the possession of the Plot to the Plaintiffs and this fact was acknowledged by him in the documents executed in favour of the plaintiffs.”

11. Reading of paras 4 and 5 of the earlier plaint, reproduced above, would show that the applicant herein (plaintiff in the earlier suit) had disclosed that defendant no.2 (Sh. Gyanender Kumar) sold the plot to Sh.Ashish Jain on the basis of a Power of Attorney for a total sale consideration of Rs.2.90 laes. An agreement to Sell dated 15.6.1993, was executed by the defendant No.2 in favour of Sh.Ashish Jain confirming the sale in favour of Defendant No.3. A Receipt dated 15.6.1993, in the sum of Rs.2.90 Laes was also executed by Defendant No.2 in favour of Sh.Ashish Jain in token of having received the said amount in full and final sale consideration of the said Plot. Defendant No.2 also executed a General Power of Attorney dated 15.6.1993, in favour of Shri Arun Jain father of Sh. Ashish Jain, authorizing him to do all the acts and to manage the said property. A Will dated 15.6.1993, was also executed by Defendant No.2 in favour of Sh.Ashish Jain.
12. The plaintiff in the present suit has acknowledged the fact that defendants no 1 and 2 had filed an earlier suit. It would be useful to reproduce paras 5

and 6 of the present plaint:

“5. That the plaintiff was, however, shocked and surprised to receive summons from this Hon’ble Court in Suit No.519 of 1998 titled as “Shri Raman Suri and Another Vs. D.S.I.D.C. & Others” and from the said suit, the plaintiff herein had come to know that defendants no.1 and 2 had filed a suit for declaration, specific performance and mandatory injunction against D.S.I.D.C., Shri Gyandender Kumar, Shri Ashish Jain and the plaintiff herein and in the said suit, the defendants no.1 and 2 have claimed the following relief:

- (i) Declaring that the plaintiffs are bonafide purchase of Plot No.739, measuring 350 sq. Meters at Narela Industrial Complex, Delhi, from defendant no.3 (Ashish Jain) and are entitled to get the plot transferred in their names from defendant no.1;
- (ii) Decree for specific performance of the agreement to sell may be passed in favour of the plaintiff and against the defendant no.3 requiring the defendant no.3 to execute all necessary documents affecting the sale deed/conveyance deed with respect to the said plot and got the same registered by law in favour of the plaintiffs;
- (iii) Directing the defendant no.1 by mandatory injunction to transfer the plot in question as mentioned in clause (a) of prayer clause in favour of the plaintiff.

6. That the plaintiff herein has also filed the written statement in the said suit and has also stated that Shri Gyanender Kumar has already sold the said plot in favour of the plaintiff herein and has also filed necessary documents in original before this Hon’ble Court. It is submitted that even during the pendency of the said suit, as the defendants no.1 and 2 herein were malafidely trying to claim the right over the said plot, which has actually been sold by Shri Gyanender Kumar in favour of the plaintiff, therefore, the plaintiff herein has moved an application in the said suit before this Hon’ble Court for recording of the statement of defendant no.2 in that suit i.e. Shri Gyanender Kumar. It is, however, submitted that during the pendency of the said application, the said suit was, however, transferred to the Court of Learned Additional District Judge,

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Delhi, because of pecuniary jurisdiction of that suit. It is, however, submitted that thereafter, the Learned Additional District Judge was pleased to record the statement of Shri Gyandender Kumar under Order 10 of the Code of Civil Procedure on 09.02.2005 to the following effect:-

"I am an allottee of Plot No.1302 measuring 350 sq. Meters at Narela Industrial Complex, Delhi, which was later changed to Plot No 739. I have given the possession of Plot No.739 by defendant no.1. I had entered into an agreement to sell with defendant no.4 Shri Shanti Kumar and had never dealt with Shri Ashish Jain, defendant no.3 herein in respect of the suit property. I have never taken any money from him nor entered into an agreement to sale (sic sell) with defendant no.3"

3. In para 18 of the plaint the plaintiff has averred that the cause of action has accrued in her favour and against defendants no.1 and 2 specifically on 17.3.2009 when defendants no.1 and 2 in collusion with the officers of DSIDC for the first time brought certain alleged documents being Agreement to Sell, Power of Attorney, Will, Affidavit and Receipt all dated 15.6.1993 before the Court. In the light of the submissions made and on the basis of averments made in the plaint, the question which arises for consideration is the date when the cause of action has arisen in favour of the plaintiff to file the present suit.

4. A careful reading of Section 34 of the Specific Relief Act, 1963, would show that a person is entitled to take recourse to legal remedies including to institute a suit against any person, who denies or is interested to deny his title to such character or right and the Court may in its discretion grant a declaration to such plaintiff. In my view the plaintiff gained knowledge that defendants no.1 and 2 applicants herein were denying his title for the first time in the year 1998 when plaintiff's received summons in the suit. It is also not in dispute that even prior to this date DSIDC had addressed a

communication dated 7.5.1997 to the plaintiff as also to the defendant. Receipt of this communication is mentioned in para 11 of the earlier suit. Para 11 of the earlier suit read as under:

"11. That in the month of May 1997, the plaintiffs received a letter dated 7th May, 1997, from defendant No.1 in response to their application dated 29th August, 1996, informing the plaintiffs that since there were more than one person claiming transfer of the aforesaid plot, the plaintiffs should obtain necessary declaration from the competent Court of law to be the persons entitled to the property and they will process the case further on receiving such a declaration. This letter is addressed to the plaintiff as well as to defendants no.3 and 4. It is in these circumstances, that the plaintiffs have been compelled to file the present suit."

15 In para 11 of the written statement filed by defendant no.4 in the earlier suit (plaintiff herein) the factum of receipt of this communication has not been denied. Para 11 reads as under:

"11. That para No.11 of the plaint so far as it states about the letter of the defendant no.1 dated 7th May, 1997, is concerned the same is matter of record. Even otherwise it is submitted that as the answering defendant has purchased the property from the defendant no.3, the original allottee, therefore the defendant no.1 is liable to transfer the plot in the name of the answering defendant immediately."

16. Mr.Bhaduri has strongly urged before this Court that till such time the documents were filed by defendants no.1 and 2 he could not have instituted the present suit. I find no force in this submission in view of the fact that plaintiff had complete knowledge about the aforesaid documents, which is evident from a bare reading of the earlier plaint filed by defendants no.1 and 2 wherein all the relevant details of the documents, sought to be cancelled, at this stage were given. The plaintiff was actively participating in the earlier suit and had complete knowledge about the fact that defendants no.1 and 2 had instituted a suit for declaration, specific

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performance and mandatory injunction as far back as in the year 1998.

17. There is no quarrel to the proposition that while dealing with an application under Order VII Rule 11 CPC the Court must look into the plaint. The judgments sought to be relied upon by learned counsel for the plaintiff are not applicable to the present case as in this case upon reading of the plaint itself makes it crystal clear that the plaintiff had knowledge about the pendency of the earlier suit which was filed in the year 1998. In fact the plaintiff has extracted the prayers of the earlier plaint filed by defendants no.1 and 2 in the present plaint, which have been extracted above. Having regard to the fact that the plaintiff had knowledge about the alleged documents since 1998, which were executed by Sh.Gyanender Kumar in favour of Sh.Ashish Jain and the said alleged documents were executed by Sh.Ashish Jain in favour of defendants no.1 and 2, applicants herein, present application (I.A.No.736/2010) filed by defendants no.1 and 2 under Order VII Rule 11 CPC is allowed. The suit is dismissed being hopelessly barred by limitation.


G.S.SISTANI, J

MARCH 12, 2012

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