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

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Judgment reserved on :24.01.2013

Judgment delivered on :04.02.2013

FAO(OS) NO.233/2010

INDIAN CITY PROPERTIES LTD. AND ORS. Appellants

Through: Mr. Ravinder Sethi, Sr. Adv with
Mr.Sanjay Gupta, Mr. Ateev
Mathur and Ms. Mamta Mehra,
Advs.

Versus

VIMLA SINGH & ORS. Respondents

Through: Mr. Amitabh Chaturvedi and
Mr.Azeem Samuel, Advs for R-1
to R-3.
Mr. B.V. Niren, CGSC with Mr.
Prasouk Jain, Adv for R-4/UOI.
None for R-5.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The application filed by defendant No.2/Indian City Properties
Limited (hereinafter referred to as the 'appellant') under Order 7 Rule
11 of the Code of Civil Procedure (hereinafter referred to as the 'Code')

has been dismissed by the impugned order.

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2 The present suit was a suit for declaration, possession, permanent and mandatory injunction. It was filed on behalf of three plaintiffs i.e. the two children and the widow of late C.P. Singh.

3. The case as set up by the plaintiffs is that late Sh. C.P.Singh was the owner of property No. 124, Queens Way now known as 124, Janpath, New Delhi (hereinafter referred to as the 'suit property'). He remained the owner and in possession of the suit property till his death on 31.12.1984. The plaintiffs are the surviving legal heirs of deceased and have inherited all rights, title and interest of late C.P. Singh (who had died intestate) including the suit property. It was only around 22-23.07.1994 that the plaintiffs were informed by one of their lawyers handling their legal matters that there was some case relating to their father and the NDMC pending in the High Court which led to inquiries to be made by the plaintiffs who pursuant to these inquiries learnt that the suit property had been acquired by their late father in his lifetime; further inquiry effected on 27.02.1995 from the L & DO revealed that Sh.M.L.Ahuja (original defendant No.1) had been dealing as an attorney of late C.P. Singh and on 17.08.1957, the suit property had been registered by the appellant in favour of the appellant. The fact of the

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death of late C.P. Singh had been intentionally suppressed from the L & DO who had effected this registered lease deed in favour of the appellant in the absence of this knowledge. Para 4 of the plaint specifically avers that it was only at that time that these facts came to their knowledge which included the fact that C.P. Singh had acquired rights of ownership in the suit property and he had remained in possession of the suit property till the time of his death on 31.12.1984. Legal notice dated 14.02.1996 was sent to defendant No. 1 to which he had replied vide a reply dated 23.02.1996. Further averments in the plaint being that the defence set up by the defendants in the reply was that C.P. Singh in his lifetime had sold his interest in the suit property to the appellant and the lease deed dated 05.08.1957 had been signed on behalf of C.P. Singh and Company (a partnership) by I.S. Anand who was acting on behalf of C.P. Singh and Company. Paras 8.4 & 8.8 of the plaint are relevant. They are bordered on the submission that no request was ever made by C.P. Singh in his lifetime to get the lease deed effected in favour of the appellant; there was no partnership firm by the name of C.P. Singh and Company; the question of C.P. Singh having sold his interest in the suit property to the appellant did not arise; a fraud

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has been played by defendants No.1 to 4 upon C.P. Singh and in pursuance of this fraudulent claim this partnership appears to have been formulated under the name of C.P. Singh and Company; it was a sham and nothing but a collusion between the defendants; there was no question of assignment of any right by the partnership firm in favour of the appellant; defendant No. 1 was not authorized to act as an agent qua the suit property. All these acts of the defendants were on account of mis-representations made by them; being wrongful and malafide; the whole objective of the defendants was to perpetuate a fraud.

4. The cause of action has been depicted in para 13. It reads herein as under:-

“13. That the cause of action accrued to the Plaintiff in or about Jan/Feb.1995, when the Plaintiffs for the first time came to know about the fraud perpetrated as stated by Defendants No.1 to 4 and on or about February 1995, when the Plaintiffs pursuant to their Advocate’s visit to the L & D.O. Office came to know for the first time that Defendant No.6 had on account of fraud, mistake, misrepresentation and on account of suppression of material facts by the Defendants executed the perpetual lease dated 5.8.1957.

5 The following are the prayers made in the plaint:-

- a) “Declare the Plaintiffs as the legal heirs of late Shri C.P.Singh and the legal owner and beneficiary of the leasehold rights relating to the suit property*

and in terms of annexures 1 and II hereto and no other person and in particular, the Defendant Nos.1 to 5 cannot claim any right adverse and contrary to the rights of the Plaintiffs and the Plaintiffs alone are entitled to the suit property and consequential relief of possession of suit property bearing No.124, Janpath, New Delhi in favour of Plaintiffs and against the Defendants;

- b) Declare that the perpetual lease dated 5.8.1957 executed by Defendant No.5 in favour of Defendant No.4 is illegal and void and that it does not confer any rights, title or interest in Defendant No.4 and/or in favour of its partners; calling up the original documents, adjudging them as null and void and to cancel the same;*
- c) Declare that the alleged partnership entered into between the late Shri C.P.Singh and Defendant No.1 to 4 or any of them was illegal, void, fraudulent, fictitious, having been entered into with the illegal and unlawful objectives and for purposes of perpetuating a fraud on defendant No.5, various statutes and the exchequer and is thus not binding on the plaintiff or Defendant No.5.*
- d) Declare that any sale/assignment of rights in the suit property or the alleged partnership by Late Shri C.P.Singh whereby legal rights and interest in the suit property were sought to be created directly or indirectly in favour of Defendants No.1 to 4, or any of them is illegal and bad in law.*
- e) Declare that Defendant No.2 has no rights, title or interest in the suit property;*
- f) Declare that the Defendant No.3 has no right to act agent of late Sh. C.P.Singh or otherwise in the name of M/s C.P.Singh & Co.*
- g) Declare that the legal possession of the property vests in the plaintiffs;*
- h) Direct the defendant Nos.1 to 4 to render accounts and to make over to the plaintiffs the mesne profits and all benefits earned or derived by them in connection with the suit property;*

i) *Issue a permanent and mandatory injunction restraining the defendants No.1 – 4 their nominees, agents and assigns:-*

i) *From the use and enjoyment of the said property in any manner whatsoever;*

ii) *From creating any third party interests in the said suit property;*

iii) *From representing themselves to be the legal owners, occupiers or users of the suit property;*

iv) *From acting as attorneys of Late Sh.C.P.Singh.*

v) *From interfering in the plaintiff's rights of free ingress/egress, use and enjoyment of the suit property as the lawful owners thereof. ”*

6 It is in this background that the averments and pleas made in the plaint have to be tested for deciding the application under Order 7 Rule 11 of the Code filed by the appellant who had sought a rejection of the plaint on two grounds i.e.

(a) there is no cause of action and

(b) it is barred by limitation.

7 The submission of the learned senior counsel for the appellant being that the present suit has been filed in the year 1997 by virtue of which the legal heirs of C.P. Singh seek to establish a title in the suit property qua a registered lease deed which had been executed on

05.08.1957; C.P. Singh was admittedly alive till 31.12.1984 and he himself not having challenged this lease deed during his lifetime and the plaintiffs only stepping into the shoes of deceased C.P. Singh and having no better right or title than the deceased, cannot claim the reliefs now sought for in the plaint. No cause of action has been disclosed in the plaint; further submission being that under Article 58 of First Schedule of the Indian Limitation Act, 1963, a period of three years is prescribed for obtaining a declaration and which period has to be computed from the date when the right to sue accrues and the present suit having been filed more than four decades later after the registration of the lease deed on 17.08.1957 is clearly time barred. Additional submission being that the statement of the legal heirs of C.P. Singh i.e. his widow and daughter recorded under Order 10 of the Code also establishes that they were well aware of the alleged interest of C.P. Singh in the suit property after his death but they chose not to file the suit till 1997 which clearly precludes them from doing so not having crossed the hurdle of limitation. Last submission being that in terms of Section 3 of the Transfer of Property Act, 1882 C.P. Singh is presumed to have notice of the fact of the registration of the lease deed of the suit

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property on 17.08.1957 which is evident from a plain reading of Explanation 1 of Section 3; the plaintiffs being the legal heirs of C.P. Singh are clearly precluded from setting up a claim four decades later.

8 To support their arguments, reliance has been placed upon 1998 (2) SCC 70 ITC Vs. DRAT, 1987 Suppl. SCC 663 Samar Singh Vs. Kedar Nath, 2004 (3) SCC 137 Sopan Sukhdeo Sable & Ors Vs. Assistant Charity Commissioner, 1977 (4) SCC 467 T.R. Aravindam Vs. T.V. Satyapal, 2002 (10) SCC 501 Raj Narain Sarin Vs. Laxmi Devi & Others, JT 2011 (10) SC 541 Khatri Hotels Private Ltd. and Anr. Vs. Union of India, (1974) 1 SCC 242 Nagindas Ramdas Vs. Dalpatram Ichharam, (2007) 5 SCC 614 Hardesh Ores (P) Ltd. Vs Hede and Co., (2005) 5 SCC 548 N.V. Srinivasa Murthy & Ors. Vs. Mariyamma & Orsu and (2006) 6 SCC 207 Om Prakash Shrivastava Vs. Union of India; submission being that the impugned order has failed to appreciate both the legal and the factual position in the correct perspective; the plaint being devoid of cause of action and barred by limitation was liable to be rejected.

9 Counter arguments have been addressed by the learned counsel for the respondents. Submission being that it is only the averments made in the plaint and documents annexed thereto which have to be seen at the time of dealing with an application under Order 7 Rule 11 of the Code and the defence sought to be set up by the defendants cannot be looked into.

10 Record has been perused; arguments have been appreciated.

11 There is no dispute about the settled legal proposition that it is only the averments made in the plaint and the accompanying documents which can be gone into for the purpose of dealing with an application under Order 7 Rule 11 of the Code. The statements of plaintiff No. 1 and plaintiff No. 2 recorded under Order 10 of the Code can also be seen for this limited purpose. In T.R. Aravindam (supra), the Apex Court while dealing with powers of the Court under Order 7 Rule 11 of the Code had noted that where the meaningful reading of the plaint disclosed that the suit which had been filed was in fact vexatious and meritless; it being a case of clever drafting creating an illusory cause, it must be nipped in the bud by the Court at the first hearing by examining the party under

Order 10 of the Code in order that such a bogus litigation can be shot down at its earliest stage. This position has been reiterated by a Bench of this Court in Sanjay Kaushish Vs. D.C. Kaushish and others AIR (1992) Delhi 118.

12 Record shows that the present suit has been filed by the plaintiffs on 06.01.1997; in the year 1999 i.e. almost two years later, the present application under Order 7 Rule 11 of the Code came to be filed. Matter did not progress very much; on 11.08.2008, the statement of the plaintiffs was directed to be recorded under Order 10 of the Code. These statements have been perused. The submission of the learned senior counsel for the appellant that the statement of Vimla Singh (widow of C.P. Singh) evidences the fact that the legal heirs of C.P. Singh learnt about his interest in the suit property immediately after his death is not borne out. That portion of the statement relied upon by the learned senior counsel reads as under:-

“My son did not find any paper or records relating to this property after the death of Mr. C.P.Singh, but he came across some papers after couple of years (2-3 years)”

This statement of Vimla Singh does not help the case of the appellant. It only records that her son came across certain papers after 2-3 years of the death of her husband but these papers did not relate to the suit property.

13 For deciding the controversy in the present case Sub Clause (a) and Sub Clause (d) of Order 7 Rule 11 of the Code have been pressed. They read as under:

“11. Rejection of plaint

The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) xxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxx

(d) where the suit appears from the statement in the plaint to be barred by any law;”

14 The averments made in the plaint disclose that it was only around 22-23.07.1984 that the plaintiffs were informed by one of their lawyers handling their cases about some pending litigation about their father which led them to make further inquiries and on 27.02.1995 it was learnt that C.P. Singh had an interest in the suit property which had been

subsequently transferred in favour of the appellant; legal notice had been sent to the defendants to which a reply has been received on 23.02.1996 which revealed certain other facts which were to the effect that the lease deed had not been signed by C.P. Singh but had been signed by I.S. Anand on behalf of C.P. Singh and Company. Submission of the learned senior counsel for the appellant that since C.P. Singh in his lifetime (up to 31.12.1984) did not take any action seeking invalidation of the lease deed dated 05.08.1957 and the legal heirs having no better right than C.P. Singh himself, the plaint is liable to be rejected on the ground of limitation is negated by the aforementioned averments as noted in the plaint. There is no doubt to the legal proposition that the legal heirs of C.P. Singh would have no better title than C.P. Singh himself but the whole plaint is bordered on the submission that C.P. Singh was himself unaware of what had happened behind his back; the defendants had played a fraud upon him; there was no partnership between C.P. Singh and the defendants; defendant No.1 was not his authorized agent; the fact about the death of C.P. Singh was never brought to the notice of the L & DO at the time when the L & DO was registering the lease deed on

17.08.1957 and it did not bear the signatures of C.P. Singh but bore the signatures of a person by the name of I.S. Anand.

15 The cause of action and the question of limitation vis-a-vis the applicability of Article 58 have to be read in the light of the aforementioned pleadings.

16 So long as the claim discloses some cause of action or raises some questions fit to be decided by a Court, the fact that the case is not likely to succeed would not be a ground for striking it out. [see: JT (2003) SC 218 Liverpool and London S.P. and I Asson. Ltd.Vs. M.V. Sea Success I and Anr.] The question of limitation also being a mixed question of fact and law (in view of the averments made in the plaint), there can be no ground for the rejection of the plaint at this stage.

17 Section 3 of the Transfer of Property Act is wholly inapplicable as that proposition would bind a party against whom the transaction relating to the immoveable property has been effected; the plea set up by the plaintiffs in the instant case is that the lease deed was never signed by their father and the Authority registering it even did not have knowledge about the factum of the death of C.P. Singh.

18 The judgments relied upon by the learned counsel for the appellants are also all distinguishable; having been pronounced in their peculiar facts and circumstances. There is no doubt about the legal proposition that where the plaint discloses no cause of action and it is a case of a mere clever drafting, it is the bounden duty of the Court to examine it fully and provisions of Order 7 Rule 11 of the Code not being a mere empty formality, the plaint in the absence of a cause of action is liable to be rejected. So also the legal proposition that where the plaint is barred by a legal provision and amounts to an abuse of the process of the Court, the prayer made under Order 7 Rule 11 should be granted.

19 However none of these cases would be applicable to the instant factual scenario. In (1999) 1 SCR 983 Dr. Ramachandran Vs. R.V. Janakiraman and Others, the Apex Court had held that the Court cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action or not. The Court at this stage is not required to make an elaborate inquiry into complicated question of law and facts.

20 On a conspectus of the aforementioned facts, the impugned order in no manner suffers from any infirmity.

21 We are further informed that the trial is in progress and the evidence of the plaintiffs is underway. In fact on an application filed by the appellant, the lease deed (dated 05.08.1957) had been sent for an opinion of handwriting expert.

22 The appeal is without any merit; it is accordingly dismissed.

INDERMEET KAUR, J.

SANJAY KISHAN KAUL, J.

FEBRUARY 04, 2013

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