

\$~5

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

+ RFA 239/2013

Decided on 22nd May, 2013

SH IQBAL SINGH ARORA AND ANR Appellants
Through: Mrs. C.M. Chopra, Senior
Advocate with Mr. Sunil
Mittal and Mr. D.S. Vohra,
Advs.

Versus

AMIT SINGH ARORA & ORS Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. By the order impugned in this appeal trial court has rejected the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure (hereinafter referred to as the “Code”), being barred by limitation.
2. Appellants-plaintiffs filed a suit against the respondents-defendants in the trial court with the following prayers:-

“It is, therefore, prayed that this Hon’ble Court may be pleased to pass a Decree of Declaration in favour of plaintiffs and against the defendants, thereby declaring:-

- a. alleged Will executed by father of plaintiffs Sh. Surender Singh Arora in favour of defendant No.1 Sh. Amit Singh Arora, dt. 25.3.2006, registered on 10.4.2006, document regn. No. 1917, in Addl. Book No. 3, Volume No. 602, on pages 92 to 95, registered in the Office of Sub Registrar, S.D. No.1, Delhi as null and

void abinitio, nullity, non est, without any legal credence, consequence, in view of aforesaid facts and circumstances;

b. a decree for recovery of damages/Mesne profits amounting to Rs.9,00,000/- [Rs. Nine lacs] [@Rs.25,000/- for three yrs. immediately preceding to filing present suit] for unauthorised use and occupation of shares of plaintiffs in property No. 7/7, East Punjabi Bagh, New Delhi – 110026 with future damages/mesne profits @ Rs.25,000/- (Rupees twenty thousand) p.m. from date of filing suit, till vacating and handing over due shares of plaintiffs in said property by defendants, with interest @ 18% per annum from date of filing suit till realisations, on suit amount and on future damages/mesne profits from the date till realization.

c. for rendition of true and correct account of business conducted by defendant No.2, of firm M/s. Amritsar Printing Press at 14, Najafgarh Road, near Zakhira, New Delhi – 110035, its assets and liabilities etc. and also the moveable properties left by deceased, father of plaintiffs Sh. Surinder Singh Arora i.e. FDRs, Sharer Certificates, Debentures, Securities, credit balance, gold, diamond jewellery etc. Etc.

d. for permanent injunction in favour of plaintiffs and against the defendants, thereby restraining the defendants, their respective family members, relations, representatives, assignees, attorneys, agents etc. etc. or any person(s) acting for, in the names and on behalf of defendants from selling, mortgaging, transferring, parting with possession, creating third party's interest, alienating, conveying assigning or otherwise effecting rights and interest of plaintiffs in properties mentioned in paras 4, 5 and 6 [A to G] of the plaint or any part thereof, in any manner, under any circumstances, by any mode, in any capacity, in the absence and at the back of the plaintiffs, without sharing due shares of plaintiffs in sale proceeds thereof.

This is without prejudice to the rights of plaintiffs to file a suit for Partition, Recovery of Possession of their due shares in said properties and recovery of damages as detailed hereto above, in due course, before the learned courts of competent jurisdiction, subsequently.

Any other order or relief(s) which the Hon'ble Court deems fit and proper in the facts and circumstances of the case be also passed in favour of the plaintiffs and against the defendant in the interest of justice.”

3. Appellants-plaintiffs alleged in the plaint that defendant nos. 1 and 2 are their brother and mother respectively; whereas defendant nos. 3 and 4 are their uncles. Defendant no. 4 is their aunt and defendant nos. 6 and 7 are their cousins.

4. Their grandfather-Hari Singh Arora and his wife-Bhajan Kaur along with defendant nos. 3 and 4 had purchased the property bearing no. 7/7, East Punjabi Bagh, Village Basai Dara Pur, New Delhi – 110026. Father of appellants was also running a printing press in the name and style “Amritsar Printing Press” from a tenanted premises at Najafgarh, Delhi. After the death of late Hari Singh Arora, his 50% share in the Punjabi Bagh property devolved upon Shri Surinder Singh Arora (father of appellants), Shri Narender Singh Arora and defendant nos. 3 and 4 in equal proportions. Property no. 31, Circular Road, Amritsar, Punjab was also owned by the grandfather of appellants and on his death the same devolved upon his legal heirs, that is, appellants and respondents. Late Shri Surender Singh Arora also owned several other properties details whereof were mentioned in para 6 of plaint. Shri Surender Singh Arora was suffering from various ailments and

was not in perfect senses and a disposing mind as on 25th March, 2006 and 10th April, 2006 and he ultimately expired on 20th April, 2006. Appellants and defendant nos. 1 and 2 were legal heirs of late Shri Surinder Singh Arora and have inherited all his estates in equal shares. However, defendant no. 1 claimed that his father had executed a Will on 25th March, 2003 duly registered with the Sub Registrar Office on 10th April, 2006 whereby bequeathed all his movable and immovable properties in favour of defendant no. 1 and debarred the appellants and defendant no. 2. It was alleged that Will was a forged and fabricated document, inasmuch as, was got executed and registered by the defendant no.1 by exercising fraud, undue influence, pressure and inducement. Accordingly, appellants claim relief of declaration that Will dated 10th April, 2006 be declared as null and void ab initio.

5. From the facts narrated hereinabove it is apparent that reliefs b, c and d are consequential to the relief a, that is, relief of declaration that Will dated 10th April, 2006 was null and void ab initio.

6. Article 56 to 60 of the Limitation Act, 1963 (the Act, for short) prescribes periods of limitation for filing suits relating to declaration. Since the appellants claim declaration regarding cancellation of Will being null and void Article 59 of the Act is

attracted in this case. Article 59 prescribes a period of three years for claiming the relief of cancellation or setting aside of an instrument from the date when the facts entitling plaintiff to have the instrument cancelled or set aside first become known to the plaintiff.

7. In Ramti Devi (Smt) versus Union of India (UOI) 1995 (1) SCC 198, Supreme Court has held thus: “Article 59 of the Schedule to the Limitation Act, 1963, relied on by the appellant herself, postulates that to cancel or set aside an instrument or decree or for the rescission of a contract, the limitation is three years and it begins to run when the plaintiff entitles to have the instrument or the decree cancelled or set aside or the contract rescinded first become known to him. As seen, when the appellant had knowledge of it on January 29, 1949 itself the limitation began to run from that date and the three years limitation has hopelessly been barred on the date when the suit was filed”. In Shri Rajiv Suri versus Shri Rajesh Goel and Anr. 2008 ILR 9 Delhi 148 plaintiff had sought declaration of invalidity and cancellation of a deed of power of attorney and Will both dated 30th May, 2001. Defendant had remained ex-parte in the said case since the suit was filed in the year 2007; whereas the documents were executed in 2001 to

which plaintiff was aware. It was held that suit was beyond the period of limitation. In para 14, it was observed as under :-

“In this case, the plaintiff asserts that the documents were executed in 2001, to secure a loan transaction. The loan, according to him, was returned in 2001 itself. The plaintiff was thus aware at that time itself that the defendants assuming the allegations to be correct – ought to have been returned. This does not by itself suggest that the documents were void, or even voidable; the plaintiff was aware about its true nature. The plaintiff’s awareness did not remain suspended as it were, till 2007 when the alleged threat about its misuse arose; the true construction of Article 59 would be that the threat arose for the first time, in 2001, when the loan amount was allegedly returned to the defendant, despite which he held on to the documents. All other reliefs really flow out of the cause of action for the relief of declaration and cancellation. For these reasons, it has to be concluded that the suit is also time barred”.

8. By placing reliance on para 37 of plaint trial court has held that the appellants came to know about the claim raised by the defendants regarding estates of deceased on the basis of Will upon death of their father on 20th April, 2006, thus, cause of action in favour of the appellants to file the suit first arose on the said date and the suit having been filed on 20th August, 2011, that is, after about five years was beyond the period of limitation as prescribed under the Act.

9. Relevant it would be to refer to relevant portion of para 37 at this stage, which reads as under :-

“That the cause of action for filing present suit accrued to the plaintiffs and against the defendants when father of plaintiffs Sh. Surinder Singh Arora had expired on 20.4.2006, when the defendant No.1 started claiming himself to be exclusive owner of movable and immovable assets left by father of plaintiffs, on the basis of so called Will dated 25.3.2006, registered on 10.4.2006.”

10. From the wholistic reading of plaint and particularly para 37 it is clear that appellants came to know about the existence of Will in question immediately after the death of their father which took place on 20th April, 2006. Appellants have cleverly not disclosed the exact date and month when this fact came to their knowledge upon the death of their father. Admittedly suit was filed on 20th August, 2011, that is, after about 5 years of death of their father, thus, suit was, on the face of it, barred by limitation and has rightly been so held by the trial court.

11. There is no gainsaying that trial court can exercise the power under Order 7 Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of trial. Order 7 Rule 11 (d) of the Code, inter alia, mandates rejection of plaint if the suit on the face of it is barred by any law. An application under this provision is to be decided entirely on a perusal of plaint and documents filed along with it. Defence of the defendant is not relevant for the

purpose of Order 7 Rule 11 of the Code nor can it be looked into. If the case is based on documents the same have also to be read along with the averments made in the plaint. In this case, trial court has relied on the plaint alone for holding that suit was filed beyond the period of limitation and nothing wrong can be found with such an approach.

12. Learned senior counsel has vehemently contended that the issue of limitation is a mixed question of law and fact and can be resolved only after a full-fledged trial, thus, trial court has committed a patent error in rejecting the plaint. Reliance has been placed on Anil Singh & Anr. versus M.L. Ahuja & Ors. 2010 (116) DRJ 48. Indubitably, issue of limitation is a mixed question of law and facts but it is not always necessary to undergo rigmarole of a full-fledged trial in each and every case. In case, from the undisputed facts, it emerges that the suit is beyond limitation court will not hesitate to throw out such a case at any stage of proceedings. In such cases where on the averments made in the plaint it is clear that the suit is beyond limitation court would be justified to invoke jurisdiction under Order 7 Rule 11(d) of the Code and reject the plaint. No straight jacket formula can be adopted and each case has to be viewed in its own facts. In this case, overall reading of plaint makes it clear that after the death of

their father defendant no. 1 started claiming himself to be sole legatee in respect of the estates left behind by his father on the basis of Will in question and appellants came to know about it upon the death of their father. This can safely be deduced from a wholestic reading of the plaint.

13. For the foregoing reasons, appeal is dismissed being devoid of merits.

A.K. PATHAK, J.

MAY 22, 2013

ga