

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.119 OF 2012 & CM Nos.18975-76/2012**

Decided on : 19th December, 2013

ALKA SAIGAL

..... Appellant

Through: Mr.Rakesh Tikku & Mr.Kirti Uppal,
Sr.Advs. with Mr.R.K.Garg, Mr.Amar
Bhalla and Mr.Anshumaan Sahni, Adv.

Versus

UOI & ORS.

..... Respondents

Through : Mr.Amit Chadha & Mr.Atin Chadha,
Adv. for R-1 & 2
Mr.Rajiv Nayar, Sr.Adv. with
Ms.Meghna Mishra, Ms.Saloni
Chowdhary, Mr.Varun Kumar, Mr.Fareh
Ahmad Khan and Mr.Rohit Sharma,
Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellant against the judgment dated 27th March, 2012 passed by the learned Additional

District Judge, New Delhi dismissing the appeal bearing RCA No.13/2011 titled Sh.Nirmal Saigal Thr. LRs Vs. UOI & Ors.

2. Briefly stated the facts of the case are that the appellant (Nirmal Saigal (since deceased, now represented through his LR Smt. Alka Saigal) filed a suit bearing No.149/2010 for declaration and injunction against M/s Edward Keventer (Successors) Pvt. Ltd. It was stated in the plaint that the property bearing Khasra no.472/2, situated within the Revenue Estate of Village Arak Pur, Bagh Mochi, Delhi presently known as block No.39 and 48, Keventer Lane, Sardar Patel Marg, New Delhi measuring 22.95 acres was initially leased out to Mr.Edward Keventer vide perpetual lease deed dated 16.10.1920. It was averred in the plaint that Mr.Edward Keventer died in 1937 and during his life time, he had executed a Will bequeathing the suit property in favour of his son one Mr.W.Keventer. The property was kept mutated in the record of L&DO in the name of Mr.W.Keventer on 3.8.1942. Mr.W.Keventer is alleged to have sold the property to one M/s Edward Keventer Ltd. Calcutta. It was further averred that M/s Edward Keventer Ltd. further sold the property to Late

Sh.Narendra Nath Saigal, the father of the plaintiff on 15.5.1946 for a sum of ₹2,00,000/- vide a registered conveyance/sale deed. It was averred that the possession of the suit property was also delivered to Sh.Narendra Nath Saigal and the property was also mutated in the record of the L&DO in favour of Sh.Narendra Nath Saigal on 16.11.1946. On 6th June, 1946, M/s Edward Keventer (successors) Pvt. Ltd. New Delhi(respondent no.3 herein) alleged to have come into existence and it was alleged that the father of the plaintiff namely Sh.Narendra Nath Saigal was alleged to have handed over the possession of the suit land to the respondent no.3 as a sub-lessee in the year 1950. Sh.Narendra Nath Saigal was averred to have shifted his residence to Bombay and thus, the respondent no.3 came to be in possession of the land of the appellant.

3. It was stated that Sh.Narendra Nath Saigal had executed a Will dated 22.1.1961 bequeathing his entire movable and immovable property in favour of his wife Smt.Janki Saigal, mother of the appellant. Sh.Narendra Nath Saigal is stated to have died on 27.2.61 as a consequence of which his widow Smt. Janki Saigal is

alleged to have inherited all the properties. Since there was a family dispute between the appellant and his mother Janki Saigal, the matter was referred to an arbitrator who passed an award on 20.6.1986 in favour of the widow Janki Saigal. The award was alleged to have been made as a rule of the Court by the High Court on 3.8.89 and as a consequence of the decree, the mother of the appellant Janki Saigal was alleged to have declared as an absolute owner of the entire suit property. It is further alleged that in the year 1996, the respondent no.3 by concealment of facts, obtained No Objection Certificate from the respondent no.1 and 2 for commencement of construction over the suit land for residential and group housing purposes. The moment Janki Saigal, mother of the appellant learnt about this fact, she is alleged to have made representations to the L&DO as a consequence of which permission purported to have granted by L&DO was withdrawn in the year 1998 on the ground that the title of the suit land was in dispute. The mother of the appellant/Janki Saigal was alleged to have made a Will dated 10.11.95 in favour of the appellant bequeathing the entire suit land to her. Janki Saigal expired on

26.1.96 and thus the appellant is stated to have inherited the entire suit land from her.

4. It was further alleged that the respondent no.3 filed a writ petition in High Court of Delhi claiming itself to be the lessee in respect of the property since 1920 and sought appropriate relief in this regard. The appellant is alleged to have moved an application for being impleaded, however, the said application was dismissed on 22.8.2008 granting liberty to the appellant to take such appropriate action against the respondent no.3 as may be permissible in law. It was alleged that the respondent no.3 is claiming itself to be the owner on the basis of a release deed dated 13.5.1950 alleged to have been executed by her father. It was further alleged that the release deed was in violation of Section 23 of the Registration Act, 1860 and it was without any consideration and, therefore, was an invalid document. It was also alleged that the said document could not be stated to be a gift deed or the release deed. It further alleged to have been executed by Sh.Narendra Nath Saigal with the help of attorney named Sh.Jamna Dass. It was stated that the father of the appellant Sh.Narendra Nath Saigal was hale and hearty at all times

in the year 1950 and there was no question of appointing Jamna Dass as the attorney for the purpose of execution of the release deed in favour of the respondent no.3. It was stated that the cause of action to file the suit had accrued in favour of the appellant in the year 1908 for the first time when the permission of housing society granted by the L&DO to the respondent no.3 was withdrawn. It further arose in favour of the appellant as an application filed by her for impleadment in a writ petition was dismissed on 3.8.2008 and since the said cause of action to sue continues, therefore, she has chosen to file a suit for declaration claiming herself to be the owner of the suit land and has stated that the release deed dated 13.5.1950 purported to have been executed by her late father Sh. N.N.Saigal is non-existent and a forged and fabricated document.

5. On the suit having been filed, notice was issued to the respondents and they filed their written statement. Along with the written statement, respondent no.3 filed an application under Order 7 Rule 11 praying for rejection of the plaint on the ground that the suit land is beyond the pecuniary jurisdiction of the court concerned. In

this regard, it was stated that in the month of March, 2008, the respondent no.3 was returned a sum of ₹67,57,74,806/- purported to have been deposited by the respondent no.3 towards the conversion charges of the suit land from dairy purposes to residential purpose and since the aforesaid refund of the amount by the L&DO showed the value of the property was very high, therefore, it was beyond the jurisdiction of this Court to try the suit. It was also stated in the application that the suit as framed by the appellant is not maintainable and is liable to be rejected as according to Section 34 of the Specific Relief Act, it was laid down specifically that no Court shall make any declaration where the plaintiff being able to seek further relief omits to seek the consequential relief. In the application, the averments made by the respondent no.3 are that the appellant has claimed a declaration of ownership in respect of the suit land simplicitor. It has also been stated that the appellant himself has admitted in the plaint that she was not in possession of the land in question. Therefore, it ought to have sought a decree of possession also. The suit as framed is

accordingly not maintainable in view of Section 34 of the Specific Relief Act, 1963 and is liable to be rejected.

6. The third ground on the basis of which rejection of the plaint was prayed for, was that the suit is hopelessly barred by time. It was stated that a suit for declaration has to be filed within three years according to Article 58 of Schedule I of the Limitation Act. It was stated that according to the averments made by the appellant himself, it has been submitted that the right to sue accrues in favour of the appellant for the first time on 15.5.1946 when the conveyance deed was purportedly executed by M/s Edward Keventer Ltd., Calcutta in favour of the father of the appellant. It was further stated by the appellant that the release deed dated 13.5.1950 is purported to have been executed by Late Sh.N.N.Saigal in favour of M/s Edward (successors) Ltd. It was accordingly stated that on the basis of these averments, the suit having been filed in the year 2010 is hopelessly barred by time. It was alleged that in the year 1998, the respondent no.1 and 2 had withdrawn the permission to confer the suit land from dairy purpose to residential and Group Housing Society and in any case,

the period of limitation is to be reckoned from 1998 even then the suit is hopelessly barred by time and accordingly, it is liable to be rejected under order VII Rule 11 CPC. It is urged by the learned counsel for the respondent that the suit is beyond the pecuniary jurisdiction. It was stated that the conversion value of the amount would not be taken to be the value of the suit land for the purpose of determination of the pecuniary jurisdiction of the trial court. It was stated that the pecuniary jurisdiction is reflected in the plaint itself by the appellant which has to be accepted to be correct.

7. So far as the question of relief of possession is concerned, it was contended by the appellant in the reply that if one sees the plaint, it is specifically averred by the appellant that she is in part possession of the suit land. Therefore, merely because there is an averment which gives an impression in some of the paragraphs that the respondent no.3 is not in possession of the suit land does not mean that the appellant is not in possession as is sought to be urged by the respondent no.3.
8. So far as the question of limitation with regard to the applicability of Articles 58 of Schedule I of the Limitation Act is concerned, it

was the contention of the appellant that these are mixed questions of fact and law and unless and until the appellant is permitted to adduce evidence, these questions cannot be decided and the suit of the appellant could not be rejected at the threshold itself. Accordingly, it prayed for dismissal of the application of the respondent no.3.

9. The trial court after hearing arguments on the application under Order VII Rule 11 CPC rejected the plaint on the ground that the suit is barred by limitation is also liable to be rejected as the appellant failed to seek relief of possession from the Court. The relevant paragraphs in this regard read as under:-

“10) The plaintiff has not put forward any rebuttal to these allegations in his reply but the question which needs to be decided by the court is, whether the plaintiff as per section 34 of the Specific Relief Act was mandatorily required to seek relief of possession, failing which the present suit should fail?

11) In this regard, I turn to para 9 of the plaint. In para 9 of the plaint, it is stated that in the year 1950, the father of the plaintiff handed over the possession of the suit land to the defendant no.3 as sub-lessee and the defendant no.3 came into possession of the part of the suit land alongwith father of the plaintiff.

12) In para 13 of the plaint, it has again been reiterated that the defendant no.3 remained in possession of the suit land as sub-lessee with the assent of the mother of the plaintiff and, after her death, with the consent of the plaintiff. Meaning thereby, that the plaintiff is not in possession of the suit property. Learned counsel for the plaintiff has contended that the plaintiff is in possession of the part of the suit land and a part of the property was in possession of the defendant no.3. I find this contention to be incorrect and rather misleading. I say so because, in para 9 of the plaint, when the plaintiff says that the defendant no.3 came into possession of the part of the suit land, it nowhere mentions how much of the suit land and which portion of the suit land remained in possession of the plaintiff. On the contrary, it is to be noticed that in the earlier lines, it is stated that father of the plaintiff handed over the possession the suit property to the defendant no.3 and not a part thereof. From para 13 of the plaint (supra), it is further evidence that the plaintiff is not in possession of the suit property. In these circumstances, the plaintiff, who is seeking declaration to the effect that the sale deed dated 15.5.1946, which was executed in favour of the father of the plaintiff, was the last sale deed, is indirectly also seeking a declaration that the release deed dated 13.5.1950 allegedly executed by father of the plaintiff in favour of the defendant no.3 is a nullity. Thus, in fact, the plaintiff is seeking a declaration of title in his favour. When the plaintiff is not in the possession of the suit property and is seeking a declaration of title in his favour, he is mandatorily required to seek a relief of possession as well and, the suit for declaration simplicitor is not maintainable and thus, the plaint is liable to be rejected under

Order VII Rule 11 CPC as the same is hit by the provisions of section 34 of Specific Relief Act.

13) Coming on to the point of limitation, the plaintiff has nowhere informed to the court that when he or his predecessors came to know about the alleged execution of the release deed dated 13.5.1950. It was necessary for the plaintiff to disclose the same because, the plaintiff when he seeks a declaration that the sale deed dated 15.05.1946 in favour of his father was the last sale deed, he is, in fact, seeking a declaration that the release deed dated 13.05.1950 allegedly executed by his father in favour of the defendant no.3 is a nullity in the eyes of law. I say so because, unless the release deed dated 13.05.1950 in favour of the defendant no.3 is declared nullity, there can be no declaration that the sale deed dated 15.05.1950 in favour of the defendant no.3 is declared nullity, there can be no declaration that the sale deed dated 15.05.1946, in favour of the father of the plaintiff, was the last sale deed. The plaintiff has cleverly worded his plaint and shied of disclosing the date on which cause of action occurred in his favour. It has nowhere been declared in clear terms when the plaintiff or his predecessors in interest came to know about the execution of the release deed dated 13.05.1950. Thus, the court has to extract from the plaint about the knowledge of the plaintiff. In para 15 of the plaint, the plaintiff has stated that when his mother came to know that the defendants no.1 and 2 were attempting to illegally assert the title of the defendant no.3 over the suit property, she made representations to the office of L&DO and, sent various other representations. Thereafter, considering her representations, the NOC so granted by L&DO in favour of the

defendant no.3, was withdrawn by the said department in the year 1998 with remarks 'the title of the suit property is disputed'.

14) It is very hard to believe that in the year 1998, when the mother of the plaintiff had made representations and contested the claim of the defendant no.3 and, challenged the mutation and NOC in favour of the defendant no.3, she would not have come to know about the fact that the defendant no.3, on the basis of release deed dated 13.05.1950, was claiming to be the owner of the property in question. Thus, I can safely presume that at least in the year 1998, when upon the representations of the plaintiff's mother, one NOC granted in favour of the defendant no.3 was withdrawn, the plaintiff had come to know about the alleged release deed being executed by his father in favour of the defendant no.3. In these circumstances, a suit seeking nullity of the release deed dated 13.05.1950 (without which it cannot be declared that the sale deed dated 15.05.1946 in favour of the father of the plaintiff was the last sale deed) should have been filed at the most in the year 2001 i.e. three years from the date of knowledge of the alleged execution of the release deed, whereas, the suit has been filed in the year 2010. Thus, I find that the present suit is barred by limitations.

15) As I have found that the suit is hit by section 34 of Specific Relief Act as well as is barred by limitation, the application of the defendant no.3 under Order VII Rule 11 CPC is allowed. The plaint is rejected. File be consigned to the record room."

10. The appellant feeling aggrieved by the said rejection of the plaint preferred an appeal bearing RCA No.13/2011 before the Court of learned ADJ titled *Sh.Nirmal Saigal (now deceased) Thr. his LR Smt. Alka Saigal Vs. UOI & Ors.* In the said appeal, the appellate court had observed that there was no infirmity in the reasoning given by the learned trial court in dismissing the suit of the appellant under order VII Rule 11 CPC.
11. Still feeling dissatisfied, the appellant filed the present regular second appeal against the impugned order.
12. I have heard Mr.Rakesh Tiku and Mr.Kirti Uppal, the learned senior counsel on behalf of the appellant and Mr.Rajiv Nayar, the learned senior counsel on behalf of R-3.
13. This is a regular second appeal and the regular second appeal is governed by the provisions of Section 100 CPC, which reads as under:

“ **100. Second Appeal** – 1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every **decree** passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a **substantial question of law.**”

14. The aforesaid provision would show that a regular second appeal is permissible only against a **decree** and that too when a substantial question of law arises from the appeal.
15. The word ‘decree’ has been defined in Section 2(2) of the CPC as the formal expression of an adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. There is an order which has been passed by the trial court and upheld by the first appellate court rejecting the plaint of the appellant on the ground of same being barred by time under Order 7 Rule 11 (d) CPC, which reads as under:

“11. Rejection of Plaint – The plaint shall be rejected in the following cases: -

a)

b)

c)

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

16. In addition to this, Section 34 of the Specific Relief Act, 1963 reads as under:

“ 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 interest 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 to seek further relief than a mere declaration of title, omits to do so.

17. A perusal of the impugned order shows that the plaint of the appellant has been rejected on two counts and a decree has also been drawn by the appellate court. Therefore, the first requirement is met. The second requirement is whether it involves any substantial question of law only then the appeal could be entertained for hearing on such a question. A perusal of the aforesaid section 34 of the Specific Relief Act, 1963 would show that if a person has a right in a property on which a cloud is sought to be cast, then he can seek declaration. Proviso to Section 34 further amplifies that in case such a declaration is not sufficient and a party is not in possession or he has to necessarily seek some consequential relief, which obviously in such a case, would be

possession. In the instant case, the trial court has already held that the suit of the plaintiff is barred on account of the fact that the appellant has sought declaration but admittedly in his averments in the plaint it has nowhere been reflected that he is in possession. Although, in one of the paragraphs, he has vaguely referred that he is in part possession of the property, but the trial court has rightly observed that it has not been stated in what portion of the property he is in possession. On the contrary, if one sees the plaint in its totality, the case of the appellant is that he has transferred the possession. Therefore, he ought to have sought possession in terms of proviso to Section 34 of the Specific Relief Act. Having not done so, the plaintiff's suit obviously falls in the category of Order 7 Rule 11(d) as being barred by law and there being a concurrent finding in this regard it does not raise any question of law much less a substantial question of law.

18. I am also of the opinion that the suit is hopelessly barred by time inasmuch as the predecessor in interest of the appellant has very cleverly not given any specific date from which the period of limitation is to be reckoned. The period of limitation is to be

reckoned from the date of accrual of the cause of action and in the absence of any specific date having been given in the plaint, it is for the court to assume from the plaint as to the date when the plaintiff is deemed to have acquired knowledge about the accrual of the cause of action and the period of limitation is to be reckoned from the next date from the said date when the cause of action accrued. In the instant case, admittedly, in 1950 Sh. Narendra Nath Saigal, has written a letter to the L&DO, the principal lessor, that he has gifted the property to R-3. I had an occasion to summon the original record and see the said record and there is a letter written in the handwriting of Sh.Narendra Nath Saigal in this regard, which is duly signed by him.

19. There is no doubt about the fact that while rejecting the plaint on the ground of limitation, the averments made in the plaint have to be seen. One of the grievance of the learned counsel for the appellant has been that while considering the question of limitation, the court has not seen the averments made in the written statement as well as the documents filed by the respondent. In order to examine this plea as to whether the suit of the appellant

was barred by limitation or not, it will be pertinent to reproduce para 32 of the plaint, which reads as under:

“32 That the cause of action to file the present suit arose when the mother of the plaintiff came to know about the NOC granted by the defendant no.1 & 2 in favour of the defendant no.3 and she sent a representation and the NOC granted by the defendant no.1 and 2 in favour of the defendant no.3 was withdrawn by the defendant no.1 and 2 in the year 1998 and the cause of action further arose when the plaintiff move to the Hon’ble High Court in writ petition so filed by the defendant no.3 as an intervener on 15.07.2002 but the said application was dismissed on 22.08.2008. The cause of action further arose on 25.07.2008 when the notice under Section 80 CPC was sent by the plaintiff upon the defendant no.1 and 2 to get the mutation corrected in the name of the father of the plaintiff and that he continued to be the owner of the suit land. The cause of action further arose on 12.04.2010 when the plaintiff moved application forgetting the aforesaid land mutated in his name but no action so far has been taken by the defendant no.1 and 2 on the representations and on the notice of the plaintiff and hence the cause of action is continuing one till the time the representations of the plaintiff is decided and the record of property in suit is corrected in the record of the defendant no.1 and 2 by entering the name of the father of the plaintiff being the owner/lessee of the sit land and after his death the plaintiff is the owner/lessee of the suit property.”

20. It is also not disputed that Section 9 of the Limitation Act, 1963 that once the period of limitation has started running then no subsequent inability or disability will stop the same. It is also clear in law that the day the cause of action has accrued, the period of limitation is to be reckoned from the next date. In the instant case, 4-5 sentences of para 32 of the plaint show that cause of action in favour of the appellant/plaintiff arose to file a suit when the mother of the plaintiff came to know about the NOC granted by defendant Nos.1 and 2 that is the respondent nos.1 & 2 in favour of respondent no.3 and she has sent a representation and the NOC granted in favour of R-3 was withdrawn. Admittedly, the NOC was granted in favour of R-3 in the year 1996. The representation was made by the appellant or her predecessor in interest in 1996 and the permission granted by R-1 and R-2 in favour of R-3 was revoked in 1998. No specific date has been given by the appellant in this regard. Therefore, in the light of these averments even if the period of limitation is to be reckoned from 31.12.1998 i.e. the year in which permission to convert dairy into residential complex was withdrawn, that suit ought to have been filed within a period of 3

years and thus the suit having been filed in the year 2010, becomes barred by time. The averments made further in the petition are that the appellant further avers that the cause of action further arose when the appellant filed an application for being impleaded as an intervener in a writ petition filed by respondent no.3. This application was admittedly filed on 15.07.2002. The appellant having chosen to file the application for being impleaded as a party in the writ petition in the High Court of Delhi on 15.07.2002 clearly makes the case that the period of limitation has to be reckoned from 16.07.2002 as she herself has stated that the cause of action accrued to her from 15.07.2002. Even if the period of limitation of 3 years is reckoned from 16.07.2002 even then the suit ought to have been filed latest by 15.07.2005 and on that score the suit of the appellant is barred by time. The appellant states that the said application was dismissed on 22.08.2008 and thereafter she gave a notice under Section 80 CPC and chose to file the suit on 12.04.2010. With utmost respect, it is held that the dismissal of the application for being impleaded as an intervener would not be the starting point for calculating the period of limitation because

the appellant knew that a cloud was being sought to be cast on her title to the suit property and, therefore, apart from an application for being impleaded as an intervener it ought to have been filed immediately a suit for declaration with consequential relief. That not having been done, the suit of the appellant is barred by limitation.

21. I do not feel impressed by the submission of the learned counsel for the appellant that in the instant case, there is a continuing cause of action. On the contrary, in my considered opinion, the cause of action to file a suit arises only once unless it is a continuing cause of action. The period of limitation is to be reckoned from the next date when the cause of action arises. Seen from all these angles, without referring to the averments made in the written statement or the documents relied upon by the respondent, it can be safely said that the suit of the appellant is barred by limitation and this falls squarely within Order 7 Rule 11(d) CPC. Both the trial court and the first appellate court had held the same opinion. Mr.Kirti Uppal, the learned senior counsel for the appellant, has also contended that the question of the suit

being barred by limitation is a mixed question of law and fact and, therefore, the suit ought to have been put to trial. I do not agree with this contention of the learned senior counsel for the appellant that every suit deserves to be put to trial on the question of limitation. In the instant case, the question of limitation is a question of fact which is purely reflected from the averments made in the plaint and seen the averments made by the appellant himself in the plaint, one cannot say that the question of fact qua the limitation would require recording of any evidence. There is a concurrent finding against the appellant in this regard, to which I also agree. Having regard to the aforesaid discussion, I feel that the present appeal does not involve any question of law much less a substantial question of law and the same is dismissed.

V.K. SHALI, J.

DECEMBER 19, 2013
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