

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

% Order delivered on: 28th November, 2014

+ **I.A. No.8296/2014 & I.A. No.2022/2014**
in CS(OS) No.724/2006

HARISH RELAN Plaintiff
Through Mr.Sameer Nandwani, Adv. with
Mr.K.L.Nandwani & Mr.Manish
Kaushik, Advs.

versus

KAUSHAL KUMARI RELAN AND ORS. Defendants
Through Mr.Vivek Singh, Adv. for D-1 to 4.
Mr.Sunil Mittal, Adv. for D-6 & 7.
Mr.Ajay Kapur, Sr.Adv. with
Mr.Harshbir Singh Kohli,
Mr.Dinesh Kumar & Mr.Anish Roy,
Advs. for D-8.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. In *The Mahabharata, Book 12: Santi Parva: Mokshadharma Parva: Section CCLXVI at p. 248*, Bhishma said: "..... The mother is as the fire-stick with respect to the bodies of all men. She is the panacea for all kinds of calamities. The existence of the mother invests one with protection; the reverse deprives one of all protection....Able or disabled, lean or robust, the son is always protected by the mother....There is no shelter (protection against the sun) like the mother. There is no refuge like the mother. There is no defence like the mother. There is no one so dear as the mother. For having borne him in her womb the mother is the son's Dhatri. For having been the chief cause of his birth, she is his Janani. For having nursed his young limbs into growth, she is called Amva. For bringing

forth a child possessed of courage she is called Virasu. For nursing and looking after the son she is called Sura...."

In *Ramayana*, at 2.111.9, in Rama's words to Vasishtha who accompanies Bharata to the forests for bringing back Rama to Ayodhya, it is said न सुप्रतिकरं तत्तु मात्रा पित्रा च यत्कृतं (*Na supratikaram tatttu maatraa pitraa cha yatkrutam*), meaning thereby that it is difficult for the children to repay the debt of what the mother and the father have done to bring them up.

Frank Pittman, a U.S. psychiatrist and family therapist in *Man Enough*, (1993) said "However patriarchal the world, at home the child knows that his mother is the source of all power. The hand that rocks the cradle rules his world. . . . The son never forgets that he owes his life to his mother, not just the creation of it but the maintenance of it, and that he owes her a debt he cannot conceivably repay, but which she may call in at any time."

In India, the mother is worshipped as the goddess Lakshmi (Goddess of prosperity) of the house. The Sruti (Taittiriya Upanishad) emphatically declares: "MATRU DEVO BHAVA" (Let thy mother be thy God).

2. In the present case, the defendant No.1 is the mother of the plaintiff. She is about 92 years old widow lady. She has undergone a major heart surgery. She is on wheelchair and bed-ridden. She claims to be the absolute owner of the suit property and is being forced to stay in the rented premises. She has no sufficient source of income for her daily medical, household expenses and other expenses. She is requesting to the plaintiff to provide one room, who has three bedrooms in his possession at the third floor. She was present in Court. She wishes to die in her own house. She has informed that it has become impossible to survive. The plaintiff is not agreeable to accommodate her. He says that he has no spare

accommodation and he is residing with his own family of three members.

3. Under these circumstances, still this Court feels to decide the matter on merits. The plaintiff has filed a suit for partition, declaration and permanent injunction in respect of property bearing No.N-18, Jangpura Extension, Delhi- 14 (hereinafter referred to as the “suit property”) against the defendants seeking the following reliefs:-

- a) Property bearing No.N-18, Jangpura Extension, New Delhi- 110014 may please be ordered to be partitioned by giving 1/5th share each to plaintiff and defendants No.1 to 4.
- b) Preliminary decree for declaration may please be ordered to be passed declaring Relinquishment Deeds dated 18.11.99, Rectification Deed dated 30.3.2000 and Sale Deeds dated 4.3.2002, 3.12.2004 and 16.8.2005, to be null and void.
- c) A decree for permanent injunction be also passed in favour of the plaintiff and against defendants restraining the defendants from interfering in the possession of the plaintiff in the third floor of property bearing N-18, Jangpura Extension, New Delhi.
- d) Cost of the application be also awarded.

4. The *status quo* order in respect of basement and third floor was passed on 1st May, 2006. The said order is continuing as of today.

5. The following issues were framed on 31st January, 2014:-

“(I) Whether the suit as framed is barred by limitation?
OPD

(II) If the answer to issue No.(I) is in negative, whether the plaintiff is entitled to a declaration that the

relinquishment deeds dated 18.11.1999 and 30.3.2000 are null and void? If so, to what effect?
OPP

(III) If the answer to issue No.(II) is in affirmative, whether the plaintiff is entitled to a declaration that the sale deeds dated 4.3.2002, 3.12.2004 and 16.8.2005 are null and void? If so, to what effect?
OPP

(IV) If the answer to issue No.(III) is in affirmative, whether the plaintiff has any share in the property bearing No.N-18, Jangpura Extension, New Delhi. If so, then what share? OPP

(V) Whether the plaintiff is entitled to permanent injunction, as prayed for? OPP

(VI) Relief.”

6. It is apparent from the said order that the Court while framing the issues has observed that the suit is hopelessly time barred. Counsel for the plaintiff was given an opportunity to address the Court to show as to how the suit is within limitation. The matter was put up for arguments on the preliminary issue for 28th April, 2014. In the meanwhile, the plaintiff filed an application for amendment of the suit. The Court on 2nd May, 2014 passed the following order:

“1. The learned counsel for the defendant has stated that the present application under Order 6 Rule 17 CPC has been filed to circumvent the observations passed by this Court on 31st January, 2014 with regard to the maintainability of the suit on the ground of limitation. He further states that although he shall file reply to the application however the question of maintainability will be decided at the first instance. Needless to state that learned

counsel for the plaintiff will have to first address the Court with regard to the maintainability of the suit in terms of the order dated 31st January, 2014 and only if the suit is shown to have been maintainable subsequent thereto the application will be considered. Let reply to the application be filed within four weeks with an advance copy to the plaintiff who may file rejoinder thereof within two weeks thereafter.

2. List on 11th August, 2014”.

7. The said order was challenged by the plaintiff in an appeal being FAO (OS) No.295/2014 which was ultimately disposed on 3rd September, 2014 which reads as under:

“FAO(OS) 295/2014 and CM No.10709/2014

1. Impugned order dated May 02, 2014 reads as under:-

“1. The learned counsel for the defendant has stated that the present application under Order 6 Rule 17 CPC has been filed to circumvent the observations passed by this Court on 31st January, 2014 with regard to the maintainability of the suit on the ground of limitation. He further states that although he shall file reply to the application however the question of maintainability will be decided at the first instance. Needless to state that learned counsel for the plaintiff will have to first address the Court with regard to the maintainability of the suit in terms of the order dated 31st January, 2014 and only if the suit is shown to have been maintainable subsequent thereto the application will be considered. Let reply to the application be filed within four weeks with an advance copy to the plaintiff who may file rejoinder thereof within two weeks thereafter.

2. List on 11th August, 2014.”

2. Suffice it to state that the learned Single Judge is putting the cart before the horse.

3. It is trite that an application under Order VI Rule 17 of the Code of Civil Procedure has to be decided before issue of maintainability of the suit is taken up for consideration especially when the amendment prayed for is to clarify on the existing hearing in relation to a plea raised qua non-maintainability of the suit.

4. To follow a procedure contra vice would mean that if a learned Judge holds that the suit is not maintainable the jurisdiction to decide the application for amendment of the pleading would be lost.

5. The appeal is disposed of setting aside the impugned order dated May 02, 2014.

6. Learned Single Judge is directed to decide the application filed by the plaintiff under Order VI Rule 17 CPC and thereafter the issue of maintainability of the suit.

7. No costs.

CM No.10709/2014

Dismissed as infructuous.”

As directed by the orders passed by the Hon’ble Division Bench, let me now decide the application for amendment of plaint first.

8. By way of application filed by the plaintiff being I.A.No.8296/2014 under Order 6 Rule 17 CPC read with Section 151 CPC seeking amendment of the plaint whereby the plaintiff seeks amendment of paras 2, 6, 12 and 21, insertion of paras 4, 13, 14, 18 and deletion of para 3 in the light of amended para 2 and para 15 in the light of amended para 14. The amended paras 2, 6, 12 and 21 are reproduced as below:-

"2. That late Shri Aishi Lal Relan, who was husband of defendant No.1, father of defendants No.2 to 4 and plaintiff was allotted vide Lease dated 14.12.1960 House No.N-18 A&B, Jangpura Extension, New Delhi by Govt. of India. After allotment late Shri Aishi Lal Relan constructed the ground floor on the property where he resided with his wife i.e. defendant No.1 and his children i.e, plaintiff and defendants No.2 to 4. Shri Aishi Lal Relan expired on 25.09.1999 leaving behind the plaintiff and defendants No.1 to 4. Thereafter, the said property as inherited by plaintiff and defendants No.1 to 4 in equal proportions by Law of Inheritance."

"6. That Smt. Promila Kapoor, who is eldest sister of the plaintiff was married in the year 1984 and after marriage she along with her daughter and husband also used to resides in the same house. Due to responsibility of the family plaintiff was got married in the year 1994. Now after the death of her husband, Defendant No.3 has come back to live with her in-laws at Lajpat Nagar, New Delhi and has also joined proceedings before this Hon'ble Court. The defendant No.3 has also filed her written statement which has been adopted by defendants No.1, 2 and 4."

"12. That the plaintiff shifted to the third floor of the property in question in the last of year 2000 in the beginning of 2001. Simultaneously, defendant NO.7 also entered the premises and occupied second floor of the said property. When plaintiff asked the defendant No.1 as to how the defendant No.7 has entered the second floor of the property in question, he was told by defendant No.1 to the plaintiff that he has entered in property as tenant as she required money to repay the loans which she had incurred for reconstruction of the said property. The plaintiff was again assured by defendant No.1 as his share was only qua first floor of the property, therefore, he need not to worry of the second floor. The plaintiff thereafter enquired from the defendant No.7 whether he has entered the property as tenant to which answer of the defendant No.7 was negative and he stated that he has entered the

premises as owner as he has paid substantial sum of Rs. 40,00,000/- for sale of the property. The plaintiff again confronted defendant No.1 that defendant No.7 stated to have purchased the second floor for Rs. 40,00,000/- and as to where the said money has been siphoned off by defendant No.1 . The defendant No.1 kept on deli-delaying the matter and thereafter told the plaintiff that she has actually sold the property in order to pay the debts incurred by defendant No.2 due to his betting habits. She further under pressure and influence of defendant No.2 and 4 told the plaintiff has to sign the Sale Deed of defendant No.7 as defendant No.7 had become disturbed by constant questioning of plaintiff in case plaintiff wanted first floor to be registered in his name. Thus, just in compulsion and in order to secure his own interest the plaintiff signed the Sale Deed of the second floor as a witness. The Sale Deed was registered on 04.03.2002 and the sale consideration was shown only to be Rs.9,00,000/-. The loan documents as shown to the plaintiff were from one Nagpal Fiance and Leasing and later on from Citifiance. The copy of the same are filed herewith for the kind perusal of this Hon'ble Court."

"21. That the cause of action has arisen in favour of the plaintiff and against the defendants on various dates i.e. on 18.11 .1999 when Relinquishment Deed was got signed by defendant No.1 in her favour on false promise that first floor of the reconstructed property would fall in share of the plaintiff, thereby making it a sham transaction. The cause of action further arose on 30.03.2000 when the Ratification Deed was executed by the plaintiff in favour of defendant No.1 based upon same promise and in good faith and on representation and agreement by defendant No.1. The cause of action further arose in favour of the plaintiff and against the defendants in April 2005 when fraud being played upon plaintiff came to know that first floor of the said property has already been sold by defendant NO.1 on 03.08.2004 vide registered Sale Deed without any knowledge and consent of the plaintiff and which was promised to be plaintiffs share in the undivided property.

The cause of action further arose when the defendants acting in above mentioned fraudulent manner benefitted from the sale of the said property and even did not pay a single penny to the plaintiff out of the said sale proceeds nor disclosed the same to the plaintiff. The cause of action further arose in year 2005 when the plaintiff came to know about sale of ground floor by defendant No.1 in conspiracy with defendants No.2 to 4. The cause of action further arose when plaintiff requested the defendant No.1 to transfer the third floor of the said property and basement in favour of the plaintiff in the year 2005 but the defendant No.1 refused to do so despite being served with legal notice dated 17.11.2005. The cause of action is still continuing and subsisting in favour of the plaintiff and against the defendants."

9. Replies to the application have been filed by defendant No.8 and defendants No.1, 3 and 4 where a prayer has been made that the application for amendment of plaint be dismissed mainly on the ground that the amendment sought is time barred.

10. When the matter was taken up on 19th November, 2014, the defendant No.1 was present in the Court who also pressed her application for vacation of interim order. The submission is made on her behalf that the suit is not maintainable, the question of amendment of plaint does not arise over the suit is time barred.

11. The defendant No.1 has also filed the application being I.A.No.2022/2014 under Order 39 Rule 4 CPC seeking modification of the order dated 1st May, 2006 to the extent to permit her to reside in third floor of the suit property during pendency of this suit.

12. In her application, she has narrated the following facts:-

(i) The husband of defendant No.1 i.e. Late Shri Aishi Lal Relan vide lease deed dated 14th December, 1960 was

allotted the suit property by Government of India and constructed the ground floor on the suit property and resided along with the plaintiff and defendant No.1 to 4. Thereafter, Late Shri Aishi Lal Relan died on 25th September, 1989 leaving behind the plaintiff and the defendant No.1 to 4.

- (ii) The defendant No.3 got married in the year 1984 and started residing with her husband at her matrimonial home situated at I-34, Lajpat Nagar, New Delhi and thereafter in the year 1996, defendant No.3 shifted to United States of America.
- (iii) In the year 1994 the plaintiff got married and shifted to a rental premises along with his family at B-1/59, opposite Mandir, Lajpat Nagar-I, New Delhi as the suit property constructed by Late Shri Aishi Lal Relan was becoming small for the family.
- (iv) In the year 1999, the plaintiff and defendant No.2 to 4 executed a relinquishment deed dated 18th November, 1999 with regard to the suit property in the favour of the defendant No.1 and on the basis of the said relinquishment deed, the property was transferred in the name of defendant No.1 vide conveyance deed dated 4th January, 2001.
- (v) Thereafter, in the year 1999, defendant No.1 started construction of ground floor, first floor, second floor and third floor on the suit property which was completed in the year 2000.
- (vi) It is stated that on completion of the suit property, the plaintiff requested defendant No.1 to 4 to allow the plaintiff

to take possession of the first floor of the property. But however, the defendants told the plaintiff that since the suit property has been constructed by taking loan and were to be repaid only by letting out the first floor of the property, the plaintiff should take the third floor and as and when the loan is repaid, the plaintiff would be shifted to the first floor. Thereafter, the plaintiff agreed to the request of defendants No.1 to 4 and shifted to the third floor of the suit property and has been living there since 2000. Simultaneously, the defendant No.7 was also shifted to the second floor.

- (vii) It is alleged that the plaintiff came to know from defendant No.4 that defendant No.7 had been shifted to 2nd floor of the suit property which he had purchased from defendant No.1 vide sale deed dated 4th March, 2002 without the consent of the plaintiff.
- (viii) In spite of representation made by the defendants No.1 to 4 that the first floor will not be given on rent, the same was rented out to Mr.Banerjee, Director of M/s J.K.Tyres for a period of 2 years. The basement and ground floor were still lying vacant. However, after some time the defendant No.5 shifted to the ground floor of the suit property.
- (ix) It is alleged that in furtherance of conspiracy by defendants No.1 to 4 to deprive the plaintiff of his 1/5th share in the suit property moved out of the suit property and sold the first floor of the suit property to one Sh. Sarin. The plaintiff also requested defendants No.1 to 4 not to dispose of basement and 3rd floor which was in occupation of the plaintiff and to

transfer the said floor in his share but the defendants No.1 to 4 were adamant and bent upon disposing of basement as well as 3rd floor in order to deprive the plaintiff of his share in the property.

- (x) Thereafter the plaintiff served defendant No.1 with the legal notice dated 7th November, 2005 but in spite of notice the defendants did not agree to the request of the plaintiff to give his due share in the suit property.
- (xi) It is stated in the application that the estimated cost of construction as proposed by the constructor prior to the construction was only 45 lakhs, however till the time of construction was completed in the July, 2000 which was finalized by January, 2001 the cost reached more than 1 crore and defendant No.1 was heavily indebted as initially the defendant No.1 had taken money from friends and family members for the construction of the suit property. It is further stated that if the plaintiff would have helped defendant No.1 in getting the loan then she would have got the loan @ 7% to 8% per annum instead of 20% per annum. The wife of the plaintiff was also third guarantor in the said bank loan taken from the Citibank, however, it is alleged by the plaintiff that the plaintiff was not aware of any loan taken by the defendant No.1.

Thereafter the defendant No.1 tried to repay the bank loan but was not able to repay as there was no source of income and hence defendant No.1 was forced to sell the second floor and first floor of the suit property in December, 2004. It

is contended that the plaintiff himself signed as a witness in the sale deed of the second floor. Despite of selling both first floor and second floor of the suit property, the defendant No.1 failed to repay the loan and requested the plaintiff to vacate third floor as the defendant No.1 wanted to sell the same.

- (xii) Further on refusal of the plaintiff to vacate the third floor premises, defendant No.1 had to vacate the ground floor property and sell the same in order to repay the loan amount.
- (xiii) It is also stated that the defendant No.1 being unaware of the aforesaid *status quo* and in order to sustain and survive in her old age, sold the basement of the suit property on 9th May, 2006 for Rs.9 lakhs but however, there was no sale as no consideration amounts were paid and already stay was granted by this Court prior to the date of sale. It is contended that in the year 2001, defendant No.1 was getting a pension of Rs. 4000/- which was increased to Rs.8700/- however from January, 2005 the defendant No.1 despite being the absolute owner of the suit property was forced to stay in rental premises by paying a monthly rent of Rs.14,000/-.
- (xiv) In July, 2011 defendant No.1, mother of plaintiff filed an application under Section 4 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 before the Maintenance Tribunal for grant of Rs. 12,000/- as maintenance and for direction to the plaintiff to vacate the

third floor of the suit property. By order dated 22nd December, 2011 and 5th January, 2012 the Tribunal directed the defendant No.1 to live in portion of the third floor of the suit property and the plaintiff to pay a sum of Rs. 10,000/- as maintenance to defendant No.1.

Against the order of the Tribunal the plaintiff preferred Writ Petition (C) No.400/2012 wherein this Court vide order dated 10th September, 2013 disposed of the writ petition and directed the plaintiff to pay the defendant No.1 a sum of Rs.10,000/- per month in terms of the order passed by the Tribunal and set aside all other directions given by the Tribunal.

- (xv) It is contended that this Court has only granted a *status quo* on the further sale or transfer of the suit property. The *status quo* order does not prohibit the defendant No.1 to claim her right to reside in the suit property even during the pendency of any litigation on the suit property.

It is stated that the suit property was allotted to the husband of defendant No.1 and the defendant No.1 has spend considerable part of her life in the suit property therefore, the suit property has emotional value for the defendant No.1. The last and only wish of defendant No.1 is to reside in her property in her last days of her life which originally belonged to the late husband of the defendant No.1.

13. Before coming to the conclusion on the application under Order VI Rule 17 CPC filed by the plaintiff, it is necessary to refer facts

apart from the statement made by defendant No.1 (mother of the plaintiff).

14. In the written statement, the defendant No.5, *inter alia*, on the issue of limitation raised the following defence:-

- (i) That in the month of July, 2005 the said defendant was in search of a residential property and ultimately be got the reference in respect of the ground floor of the property No.N-18, Jangpura Extn., New Delhi and before purchasing the same the answering defendant has asked for the title documents in respect of the said property from the seller i.e. defendant No.1 who has produced and supplied the complete chain. He has received the following documents from the defendant No.1:
 - a. Registered Lease Deed dated 04.01.1961 executed by the President of India in favour of Shri Aishi Lal.
 - b. Relinquishment Deed dated 18.11.1999 executed by the legal heirs of Late Shri Aishi Lal including the plaintiff in favour of the defendant No.1 duly registered in the office of the Sub-Registrar, New Delhi.
 - c. Rectification (in Relinquishment Deed) Deed dated 30.3.2000 executed by the legal heirs of Late Shri Aishi Lal including the plaintiff in favour of the defendant No.1 duly registered in the office in the Sub-Registrar, New Delhi.
 - d. Substitution Letter dated 16.5.2000 issued by the L & DO in favour of the defendant No.1.

- e. Conveyance Deed dated 07.02.2001 for conveying freehold rights in favour of the defendant No.1 by the President of India through the L & DO.

On scrutiny of documents and after taking legal opinion from the legal experts it was clear that Smt. Kaushal Kumari Relan (defendant No.1 herein) is the sole and absolute owner of the property in question and has got clear, marketable and unencumbered right, title and interest in the property, believing the same, he has purchased the said property from the defendant No.1 by virtue of Sale Deed dated 16.8.2005 and has got the vacant and physical possession and has been living with his family in the said property and has also paid the entire consideration.

- (ii) Admittedly the plaintiff has executed the relinquishment deed dated 18.11.1999 in favour of defendant No.1 thereby giving up his share in favour of defendant No.1 at long ago he purchased the ground floor of the said property. It is stated that the defendant No.1 was the absolute owner of the property by way of the title documents. The defendant Nos. 6 and 7 have also purchased and got the possession of the properties long back.
- (iii) The relinquishment deed has been registered on 18.11.1999 and subsequently rectification deed dated 30.3.2000 and the same has not been revoked or challenged in any court of law by the plaintiff within limitation from the date of execution hence the suit of the plaintiff is barred by limitation and without any cause of action the suit is filed and is liable to be dismissed with heavy cost.

- (iv) In the entire plaint has not asked for any relief against the answering defendant and he has been made party to the suit with ulterior motive. He is dragged in litigations of family dispute. The suit of the plaintiff has not been properly valued and the plaintiff has paid deficient court fee and has kept the value of the property at lower side and the documents filed by the plaintiff himself are of higher side hence the suit be dismissed.

15. The defendant No.7 in his written statement has raised the similar defences *inter alia* on limitation:-

- (i) He is aged about 69 years. He along with his family visited the suit property, more particularly the II floor of the same which was possessed by the defendant No.1. The copies of the above documents were provided by the defendant No.1 to the answering defendant. He is a bonafide purchaser having purchased the second floor of property bearing No.N-18 Jangpura Extn., New Delhi for consideration from defendant No.1 by virtue of sale deed dated 4.3.2002 duly registered with the Sub Registrar of Assurances being document No.1475 book No.8 volume 2720 on pages 194 – 201 on 4.3.2002 with the Sub Registrar-V, New Delhi. The plaintiff has no right to challenge the relinquishment deed voluntarily executed by him and also subsequent transaction entered into by defendant No.1 based upon the said relinquishment deed dated 18.11.1999 and rectification deed dated 30.3.2000, which is barred by the law of Limitation.
- (ii) He is the owner of the second floor portion of the suit property bearing No.N-18 Jangpura Extn. New Delhi in terms of

registered sale deed dated 3.12.2004. The plaintiff has no cause of action against him. The suit has been filed to cause him innumerable hardships and inconvenience besides mental distress. The plaint as against the answering defendant is liable to be dismissed for want of cause of action.

- (iii) That the assertion of the plaintiff in the suit that he is not aware of the various sale deeds executed by defendant No.1 in favour of defendant Nos.5 to 7 is incorrect for the reasons:
 - (a) Plaintiff is a witness to agreement to sell dated 7.11.2000 and General Power of Attorney dated 19.11.1990.
 - (b) The plaintiff is a witness to the first sale deed dated 4.3.2002 for second floor by defendant No.1 in favour of defendant No.7.
 - (c) The plaintiff is well aware of the sale of the first floor to the answering defendant No.6 as also the occupation of same by the answering defendant No.6. The house warming ceremony was carried out on 19th December, 2004 by defendant No.6 which was duly attended by defendant Nos. 1, 2 and 4 answering defendant and the plaintiff being in the same building had knowledge of the same. The staircase being common for all floors the plaintiff had first hand knowledge of the sale and the occupation of the first floor by the answering defendant.
 - (d) The plaintiff has inter alia prayed from the court (against defendant No.1 to 4 claiming a portion of sale proceeds of ground, first and second floors. This proves clear recognition by plaintiff of the legal title of the defendant

No.1 to the said property and its subsequent sale to defendant Nos.5 to 7.

From the perusal of the legal notice dated 7.11.2005 purportedly served by the plaintiff on defendant No.1, filed along with the suit would show that the plaintiff is only keen on his share in the sale proceeds of ground floor, first floor and second floor of the property from defendant No.1. The present suit is contrary to the purported claim of the plaintiff as stated in the legal notice. The suit of the plaintiff with regard to partition of the ground floor, first floor and second floor of the property bearing No.N-18, Jangpura Extn. New Delhi-110014 as also challenge to the relinquishment deed dated 18.11.1999, rectification deed dated 30.3.2000 and the sale deed in respect of the said portion of the property dated 4.3.2002, 3.12.2004 and 16.8.2005 is not maintainable and the same deserve to be dismissed.

- (iv) That the suit of the plaintiff seeking relief of injunction against the answering defendant from interfering in possession of the plaintiff in the third floor of the property bearing No.N-18 Jangpura Extn., New Delhi is also not maintainable.

16. The written statement was also filed by the defendant No.6. On the issue of limitation, it was stated in the written statement that the plaintiff admits that he along with the defendants No.2 to 4 executed the relinquishment deed in favour of the defendant No.1 on 18th November, 1999 and rectification deed dated 30th March, 2000 in respect of the suit property. The same were registered with the Sub Registrar, New Delhi. He is aged about 81 years and

is suffering from many ailments. He along with his son-in-law visited the suit property particularly the first floor which was at the time in the possession of the defendant No.1 who had after satisfaction of all the documents purchased the first floor of the suit property by virtue of sale deed dated 3rd December, 2004 registered with the Sub-Registrar on 30th December, 2004. Thus, the plaintiff has no right to challenge the relinquishment deed which is voluntarily executed by him and in subsequent transaction entered into by the defendant No.1 based upon the said relinquishment deed. Thus, the suit is barred by law of limitation. It is asserted in the written statement that the statement made by the plaintiff now in the suit that he was not aware about the various sale deeds executed by the defendant No.1 is incorrect and false and he is a witness to the sae deed dated 4th March, 2002 for the second floor by the defendant No.1 in favour of defendant No.7. As far as first floor is concerned, the plaintiff was in occupation of the said building and he attended the house warming ceremony of the said floor carried out on 19th December, 2004. The staircase being common for all floors, the plaintiff got the full knowledge about the relinquishment deed dated 18th November, 1999. And rectification deed dated 30th March, 2000 as well as sale deed in respect of the other portion of the property i.e. 4th March, 2002, 3rd December, 2004 and 16th August, 2005. Thus, the suit filed in April, 2006 is not maintainable.

17. The written statement was also filed by the defendant No.3, who is sister of the plaintiff. She has confirmed the statement made by her mother/defendant No.1 in the application for vacation

of the interim order. It is confirmed by her that in the year 1999 the plaintiff and defendants No.2 to 4, sons and daughters of defendant No.1, executed a relinquishment deed in favour of the defendant No.1 relinquishing their rights in the suit property vide registered relinquishment deed dated 18th November, 1999 making the defendant No.1 as sole owner of the said property. On 30th March, 2000 they also executed a rectification deed as there were some typographical errors. After the said execution of the document, the entire property was transferred in the name of the defendant No.1 vide conveyance deed dated 7th February, 2001 by L&DO office and the property was also converted into freehold property. The plaintiff in the conveyance deed also signed as a witness to the said conveyance deed. It is stated in the written statement that despite being the absolute owner of the property, the defendant No.1 was forced to stay on the rental premises by the plaintiff. The defendant No.1 has no sufficient source of income of her own.

18. The order of the Division Bench has been perused by this Court. It appears that by filing of the application under Order VI Rule 17 CPC, despite of having the knowledge by the plaintiff from the material available on record, the plaintiff is trying to delay further proceedings in the matter by raising the other issues in order to cover up the delay in filing of the suit against the defendants. Even these amendment paras are taken into account, still I feel that the suit filed by the plaintiff is time-barred.

It is settled law that if on the face of it the suit is barred by limitation, the Court can exercise its discretion to reject the plaint unless the Court finds that the issue of limitation is to be

determined after the trial in doubtful matter. In the present case, the Court has to see that on the face of the material and facts whether the suit filed by the plaintiff is barred by limitation.

19. In the judgment of the Supreme Court in the case of ***N.V.Srinivasa Murthy vs. Mariyamma***, (2005) 5 SCC 548 (paras 10-12, 14-18), wherein the Court had observed that the mutation proceedings in the year 1994 did not give rise to a fresh cause of action as it was only in furtherance to the sale deed dated 5th May, 1953 and that it appeared to have been made as a camouflage to get over the bar of limitation. Therefore, the Court had dismissed the suit under Order 7 Rule 11 CPC.”

20. It is settled position in law that if by means of clever drafting a camouflage has been created in order to create an illusion of a cause of action, such cases should be nipped in the bud at the first hearing itself i.e. even before admitting the suit and issuing summons or any time thereafter. The judgments of the Supreme Court in the case of ***T. Arivandandam Vs. T.V. Satyapal***, (1977) 4 SCC 467 (para 5); and ***Church of Christ Charitable Trust Vs. Ponniamman Education Trust***, (2012) 8 SCC 706 (paras 10, 12 & 13); and ***Ajay Goel Vs. K.K.Bhandari***, 1999 (48) DRJ 292 (paras 2, 5-8, 15) are relevant in this regard. Therefore, this Court can suo-moto exercise its powers under Order 7 Rule 11 CPC without there being a formal application for the said purpose.

21. The Supreme Court in the case of ***Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.***, JT 2009 (13) SC 366 held as under:

“20. The learned counsel for the respondents further relied on the decision in *Heeralal vs. Kalyan Mal & Ors.* (JT 1997 (9) SC 267: 1998 (1) SCC 278) wherein the court proceeded on the basis that the earlier admissions of the defendant cannot be allowed to be withdrawn. The court examined the facts and held that the defendant cannot be permitted to withdraw any admission already made.

38. The rule, however, is not a universal one and under certain circumstance, such an amendment may be allowed by the court notwithstanding the law of limitation. The fact that the claim is barred by law of limitation is but one of the factors to be taken into account by the court in exercising the discretion as to whether the amendment should be allowed or refused, but it does not affect the power of the court if the amendment is required in the interests of justice. *Ganga Bai vs. Vijai Kumar* (1974) (2) SCC 393): *Arundhati Mishra vs. Sri Ram Charitra Pandey* (1994) (2) SCC 29)”.

22. The Supreme Court in the case of ***Radhika Devi vs. Bajrangi Singh.***, JT 1996 (2) SC 238 held as under:

“The appellant has instituted Partition Suit No.24/88 in the Court of Subordinate Judge, Aurangabad for partition of certain properties. Respondents 16 to 20 herein filed written statement on June 15, 1988 wherein they pleaded that Ramdeo Singh had executed and registered a gift deed in their favour on July 28, 1978 bequeathing the properties covered there under. They became owners of those lands and the appellant is bound by the same. Pending the suit, the appellant filed an application under Order 6 Rule 17, CPC on November 11, 1992 seeking declaration that the gift deed was obtained by the respondents illegally and fraudulently and, therefore, it was ineffective and does not bind the appellant. Though the trial

Court by order dated November 24, 1992 allowed the petition, the High Court in Revision No.1657/92 by order dated August 13, 1993 allowed the petition and set aside the order directing amendment of the plaint. Thus, this appeal by special leave. Shri S.K. Sinha, learned Counsel for the appellant has contended that the appellant had no knowledge of the execution of the gift deed by Ramdeo Singh and by the amendment of the plaint, the appellant is not defeating the right of the respondents but is merely seeking to avoid the gift deed executed which was detrimental to appellant's right, title and interest in the property. Therefore, the amendment does not alter either the character of the suit or the nature and the relief already sought, viz., partition of the property. Shri Sanyal, the learned senior counsel for the respondents, contended that the appellants had lost the right to seek the above declaration as being barred by limitation. The registration of the document is a notice to everyone claiming any right, title and interest therein; even otherwise, the respondents in the written statement filed on June 15, 1988 has specifically pleaded about the gift being made by Ramdeo Singh in their favour. Despite that, the appellant had not taken any steps till November 1992 by which time even the suit for declaration within the limitation of three years from the date of knowledge had got time-barred. Therefore, the appellant is not entitled to amend the plaint which would prejudicially affect the rights of the respondents.

We find no force in the contention of the appellant. No doubt, the amendment of the plaint is normally granted and only in exceptional cases where the accrued rights are taken away by amendment of the pleading, the Court would refuse the amendment. This Court in *Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala* MANU/SC/0019/1963 : [1964]2SCR567 held thus :

“It is, no doubt, true that, save in exceptional cases, leave to amend under 0.6, Rule17 of the Code will ordinarily be refused when the effect, of the amendment would be to take away from a party a legal right which had accrued to him by lapse of

time. But this rule can apply only when either fresh allegations added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading. The present is & fortiori so. The defendants here were not seeking to add any allegation nor to claim any fresh relief which they had prayed for in the pleading already filed”.

In that case this Court considered the cross-objections to be treated as a cross suit since no alteration was being made in the written statement to treat it was a plaint originally instituted. The amendment which was sought to be made was treated to be clarificatory and, therefore, this Court had upheld the amendment of the written statement and treated it to be a cross suit. The ratio therein squarely applies to a fact situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. In the present case, the gift deed was executed and registered as early as July 28, 1978 which is a notice to everyone. Even after filing of the written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint.”

23. In the present case, the documents available on record show that the plaintiff and other legal heirs of Sh.Aishi Lal Relan have executed relinquishment deed dated 18th November, 1999 in favour

of defendant No.1 and rectification deed dated 30th March, 2000. The plaintiff is also the witness to the first sale deed dated 4th March, 2002 for second floor by the defendant No.1 in favour of the defendant No.7. After the execution of the said document, the entire property was transferred in the name of the defendant No.1 by conveyance deed dated 7th February, 2001 in the office of L&DO. The plaintiff in the conveyance deed also signed as a witness. It is undisputed fact that the plaintiff at his own willingness has transferred the entire rights in the name of the defendant No.1. It is also undisputed that the plaintiff has got full knowledge about the purchase of the property by the defendants No.5 to 7 from the defendant as he was residing in the same building. Thus, the present suit was filed in April, 2006 in which the plaintiff is seeking declaration declaring the relinquishment deeds dated 18th November, 1999, rectification deed dated 30th March, 2000 and sale deeds dated 4th March, 2002, 3rd December, 2004 and 16th August, 2005 to be null and void and the suit filed by him for partition be decreed and an order be passed for portioning the suit property by giving 1/5th share to the plaintiff and the defendants No.1 to 4.

24. In the present suit, the declaration sought by the plaintiff is barred by time on the face of the documents. Thus, the suit filed by the plaintiff is barred by limitation. The relinquishment deed was executed in favour of the defendant No.1 on 18th November, 1999. The present suit is filed in 2006 i.e. after about more than six and half years. Thus, the submission of the Court cannot be accepted. It appears to the Court from all the angles, i.e. from the date of

relinquishment deed or from the dates of three sale deeds executed in favour of defendants No.5 to 7, the suit filed by the plaintiff is not within time.

25. From the above mentioned facts and settled law, it is clear that the suit is time barred as admittedly the plaintiff has denied the execution of relinquishment deed in the year 1999. Subsequently, when the other floors were sold, the plaintiff had full knowledge and even the plaintiff was the witness to the said transaction. On the face of said registered documents which are not denied and cannot be denied by the plaintiff. The plaintiff is not entitled to cover up such delay on flimsy reasons which have no application in law. Once the suit is time barred the application for amendment is not maintainable. The suit and the application being I.A. No.8296/2014 under Order 6 Rule 17 CPC is dismissed. The interim order dated 1st May, 2006 is vacated by allowing the application under Order 39 Rule 4 CPC by the defendant No.1 who is declared to be the owner of the property of N-18, Jangpura Extension, Delhi-110014.

26. The plaint is rejected on the ground of limitation. No costs. All other pending applications also stand disposed of.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 28, 2014