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

+ CS(OS) 1241/2010

% ***Judgment dated 01.05.2014***

DEB DUTTA MITRA & ANR Plaintiffs
Through : Mr.S.C. Rana and Ms.Ruchika Bhari,
Adv.

versus

ISAN CHANDRA BASU & ORS Defendants
Through : Mr.Amit Sanduja, Adv. for defendants
no.1 and 4.
Mr.Subrat Deb, Adv. for defendant
no.8/DDA.
Mr.Ajay Mehrotra, Adv. for defendant
no.9.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

I.A. 8153/2010.

1. This is an application filed by plaintiff seeking condonation of nine days' delay in re-filing the suit.
2. Heard and for the reasons stated in the application, delay in re-filing the suit is condoned.
3. Application stands disposed of.

I.A. 14995/2013

4. This is an application filed by defendant no.8/DDA seeking condonation of 159 days' delay in filing O.A.No.120/2013.
5. Heard and for the reasons stated in the application, delay in filing O.A.No.120/2013 is condoned. Let O.A.No.120/2013 be taken on record.

6. Application stands disposed of.

O.A. 120/2013

7. Present appeal has been filed by defendant no.8 against the order dated 21.3.2013 passed by learned Joint Registrar whereby the right of defendant no.8 to file written statement stands closed.
8. Learned counsel for the applicant submits that the written statement could not be filed on time as the previous counsel had resigned on 1.5.2013, the matter was assigned to him only on 13.5.2013 and thereafter parawise comments were sent to the Department for finalisation. Counsel further submits that there are genuine and bonafide reasons for non-filing of the written statement. Counsel, thus, prays that the order dated 21.3.2013 may be recalled and the written statement of defendant no.8 may be taken on record.
9. Heard. For the reasons stated in the application and in view of the stand taken by counsel for the plaintiff, present appeal is allowed. Order dated 21.3.2013 is recalled whereby right of defendant no.8 to file written statement was closed. The written statement is taken on record.
10. Accordingly appeal stands disposed of.

I.A. 1136/2011.

11. This is an application filed by defendant no.9/applicant under Order VII Rule 11 CPC for rejection of the plaint on the ground that the suit of the plaintiff is barred by limitation and lacks cause of action.
12. Before dealing with the rival submissions of counsel for the parties, it would be necessary to notice the averments made by the plaintiffs in the plaint.
13. In the year 1950 a plot of land measuring 1000 sq. yards was purchased by one late Sh.Lalit Kumar Basu in the name of his wife, Smt.Nirod Bala Basu. The said plot was acquired by the DDA and in lieu thereof an

alternate plot, measuring 401.83 sq. yards i.e. plot no.66, Block B-4/66, Safdarjung Residential Area, New Delhi, (hereinafter referred to as the suit property) was allotted by the DDA. Sh.Lalit Kumar Basu pre-deceased his wife and died on 26.1.1955. Smt.Nirod Bala Basu died in the year 1971, leaving behind four sons namely, Sh.Birendera Nath Basu, Sh.Shailender Nath Basu, Sh.Bhupender Nath Basu and Sh.Bhawani Shankar Basu and four daughters, namely, Smt.Mukul Dutta, Smt.Manju Sarkar, Smt.Jaba Mitra and Smt.Ira Dutta. Sh.Birender Nath Basu died in the year 1986, leaving behind four sons and one daughter, Smt.Ajanta Mitra. As per the plaintiffs, who are the children of Smt.Ajanta Mitra (one of the daughters of Sh.Birender Nath Basu, Smt.Ajanta Mitra died on 19.8.1990 whereas as per defendant no.9 Smt.Ajanta Mitra died in the year 1980.

14. The case of the plaintiffs is that after the demise of Smt.Nirod Bala Basu, the suit property devolved upon her four sons; the property was constructed by four brothers; on the demise of Sh.Birender Nath Basu the mother of the plaintiffs acquired 1/5th share out of the 25% share of Sh.Birender Nath Basu.
15. The present applicant i.e. defendant no.9 is the purchaser of the entire suit property, having purchased the same from Sh.Shailendra Nath Basu, Sh.Bhupendra Nath Basu and Sh.Bhawani Shanker Basu, all three sons of late Sh.Lalit Kumar Basu and from Sh.Ishan Chander Basu, Dr.Pratap Chander Basu, Sh.Prosanto Kumar Basu and Dr.Sushanto Basu to whom the 25% share of late Sh.Birender Nath Basu had devolved. It is also pointed out that CS(OS)No.2491/2009 was filed by Sh.Aniruddha Dutta, Sh.Debashish Dutta, Sh.Arijit Dutta and Sh.Debanjan Biswas, being the children of Smt.Mukul Dutta (one of the legal heirs of late Sh.Lalit Kumar Basu and Smt.Nirod Bala Basu). Another suit was filed by Smt. Ira Dutta

(daughter of late Sh.Lalit Kumar Basu and late Smt.Nirod Bala Basu). In both the suits, the present plaintiffs were arrayed as parties. In CS(OS)No.2491/2009 plaintiffs were arrayed as defendants no.5A and 5B. Both these suits were dismissed on an application filed by present defendant no.9 under Order VII Rule 11 CPC by a detailed judgment on 18.11.2011. In para 20 of the said judgment certain undisputed facts were noticed, which are relevant for the purposes of deciding the present application as well and, thus, the same are being reproduced:

“20. Before dealing with the rival submissions of the parties in this regard, there are following undisputed facts placed by the parties during the course of hearing :

- (i) The suit property belonged to Smt. Nirodh Bala. She had 4 sons and 4 daughters. She passed away in February 1972 leaving behind her last Will and Testament dated 1.2.1971. By virtue of the Will she bequeathed the property to her 4 sons and disinherited the 4 daughters;
- (ii) Three of the four sons filed Suit No.12/1975 before the District Judge, Delhi. The said suit was decreed on 15.1.1976 declaring the four sons to be the owners of the said property. The said decree was passed in suit to which the four daughters were also the parties. The plaintiff herein was arrayed as defendant No.5 in the said suit and she herself admitted the claims of her brothers and filed her written statement, as is clear from the said decree.
- (iii) On 15.1.1982, pursuant to the said decree, the DDA executed perpetual lease deed in respect of the said property in favour of the said four sons of Smt. Nirodh Bala. The property was constructed upon and the DDA granted Occupancy Certificate on 1.1.1989.
- (iv) On 29.7.1986, one of the sons, namely Birendra Nath Basu passed away leaving behind his last Will and

Testament dated 6.7.1986 thereby bequeathing his one-fourth share in the said property in favour of his own four sons;

- (v) By order dated 30.6.1994 the District Judge, Delhi granted probate in respect of the said share of late Birender Nath Basu;
- (vi) Later on 25.9.2008, the said 1/4th share of deceased Birendra Nath Basu was mutated by DDA in favour of his four sons;
- (vii) On 21.5.2009 a Conveyance Deed was executed by DDA in favour of three sons of Nirodh Bala and her four grandsons (being sons of Shri Birendra Nath Basu), as aforesaid.
- (viii) In the meantime, one of the sons of Smt.Nirodh Bala, namely, Shri Bhawani Shankar Basu filed a suit No.1228/2006 before the Hon'ble High Court of Delhi for partition of the said property;
- (ix) By order dated 10.1.2007, a preliminary decree was passed by this Court appointing shares in the suit property limited to the three sons of Smt. Nirodh Bala and four of her grandsons, as aforesaid;
- (x) Pursuant thereto by 2 sale-deeds dated 22.10.2009, the defendant No.9 purchased the suit property, after having gone through the title-documents in chain and hence the defendant No.9 is a bonafide buyer of the suit property for valuable consideration.

16. It may also be noticed that one of the reasons for dismissing the suit filed by Smt. Ira Dutta, being CS(OS)No.163/2010, was that in the suit filed by the three sons, the Judge had noticed that Smt.Ira Dutta was not only a party to the said suit, but she had also filed her written statement and admitted the claims of the plaintiffs i.e. the three brothers in the said suit, which was decreed on 15.1.1976.

17. Smt.Mukul Dutta was also a party in Suit No.12/1975. She was proceeded *ex parte* vide order dated 6.1.1975 and despite service she never appeared. Since Smt.Mukul Dutta was a party in Suit No.12/1975, CS(OS)No.2491/2009 filed by him was also dismissed. The Single Judge considered both the suits to be barred by limitation. An appeal filed before the Division Bench, being RFA(OS)115/2011, was also dismissed on 12.12.2011. According to defendant no.9, the said order has attained finality and is binding on the plaintiffs in the present suit as well.
18. Learned counsel for defendant no.9 submits that the judgment of the Single Judge passed in CS(OS)No.2491/2009 and CS(OS)No.163/2010 is fully applicable in fact and law to the facts of the present case and, thus, the present suit should also be dismissed. Another argument, which has been raised by learned counsel for defendant no.9, is that there is no cause of action in favour of the plaintiffs for filing the present suit in view of the fact that the mother of the parties during her life time did not claim any share in the suit property. In support of the above submission, it is submitted by learned counsel for defendant no.9 that another suit was instituted by three sons of late Smt.Nirod Bala Basu in the year 1975 wherein it was settled that there would be four owners of the suit property, being the sons of late Sh.Lalit Kumar Basu and late Smt.Nirod Bala Basu. It is also contended that Sh.Birender Nath Basu, grand-father of the plaintiffs died in the year 1986, leaving behind a duly executed Will dated 6.7.1986. As per the Will 25% share of the late Sh.Birender Nath Basu devolved upon his four sons to the exclusion of his daughter (mother of the plaintiffs).
19. Learned counsel submits that by an order dated 30.6.1994 passed by learned District Judge in Probate Case No.394/1987, Probate/Letters of Administration of the Will dated 6.7.1986 of late Sh.Birender Nath Basu

was granted in favour of Sh.Ishan Chandra Basu, Dr.Pratap Chandra Basu, Sh.Prosanto Kumar Basu and Dr.Sushanto Basu, sons of late Sh.Birendra Nath Basu. It is also pointed out that after the Letters of Administration was granted the abovesaid sons of late Sh.Birender Nath Basu applied to DDA for substitution/mutation of the said property, with respect to 1/4th share of deceased Sh.Birender Nath Basu, in their joint names. The abovesaid four sons and three other legal heirs of late Sh.Lalit Kumar Basu thereafter applied to DDA for conversion of the suit property from lease hold to free hold.

20. Meanwhile a preliminary decree dated 10.1.2007 was passed by the High Court in CS(OS)No.1228/2006, titled as *Shri Bhawani Shankar Basu v. Ishan Chandra Basu*, by which Sh.Bhawani Shankar Basu, Sh.Shailender Nath Basu, Sh.Bhupender Nath Basu and Birender Nath Basu, all the sons of late Sh.Lalit Kumar Basu, were declared to have 1/4th undivided share in the suit property. Since, it was not possible to divide the suit property by metes and bounds, a Local Commissioner was appointed. Thereafter the joint owners of the suit property entered into an Agreement to Sell dated 19.9.2008 with defendant no.9 for sale of the suit property. In the meanwhile, a Conveyance Deed dated 21.5.2009 was issued by the DDA in the joint names of Sh.Bhawani Shankar Basu, Sh.Shailender Nath Basu and Sh.Bhupender Nath Basu (to the extent of 1/4th share), Mr.Ishan Chander Basu, Dr.Pratap Chandra Basu, Mr.Prosanto Kumar Basu and Dr.Sushanto Basu sons of Birender Nath Basu, who had died in the meanwhile, (to the extent of 1/16 share). This document was registered in the Office of Sub-Registrar, New Delhi, as document no.7370, Book No.1, Volume No.3381 on pages 106 to 108 on 21.5.2009. Supplementary agreement to sell in the form of an addendum dated 8.10.2009 was executed between all the sons of late Sh.Birendra Nath Basu and all the

sons of late Sh.Lalit Kumar Basu, on the one side, and defendant no.9 on the other side; possession of the suit property was handed over; and thereafter two registered sale deeds were executed on 22.10.2009.

21. Learned counsel for the applicant (defendant no.9) submits that in the light of above facts it is improbable that the late Smt.Ajanta Mitra, mother of the plaintiffs, was not aware of all these developments, which took place during her life time and after her death her legal heirs, and in case she did not claim any right and respected the wishes of her late father the present plaintiffs would have no right, title and their claim would be hopelessly barred by time. Another argument, which has been raised by learned counsel for defendant no.9 is that the Single Judge in para 20 of the judgment dated 18.11.2011, passed in CS(OS) 2491/2009, had detailed the undisputed facts and since the judgment of the Single Judge has not been challenged by the plaintiffs, they are estopped at this stage from challenging the same in these proceedings.
22. Learned counsel for the plaintiffs submits that the plaintiffs have filed a suit for revocation of the Letters of Administration, however, counsel appearing for defendants no.1 and 4 submits that the said suit already stands dismissed by the Additional District Judge by a detailed judgment dated 27.3.2014.
23. Present application is opposed by counsel for the plaintiffs on the ground that this application is not maintainable as the grounds raised in this application can only be decided upon evidence. It is submitted by counsel for the plaintiffs that the present application is also not maintainable because the co-defendants have applied for conversion in connivance with defendant no.9, they illegally disposed of the suit property without giving shares to the plaintiffs and all the documents of sale, which have been executed, are null and void.

24. I have heard learned counsel for the parties and considered their rival submissions. While relying on a decision rendered by the Supreme Court of India in the case of *Hardwari Lal v. Kanwal Singh*, reported at AIR 1972 SC 515, a Single Judge of this Court in the case of *Sanjay Kaushish v D.C. Kaushish and Others*, reported at AIR 1992 Delhi 118, has held that in case from a bare reading of the plaint and admitted documents and on the basis of the statement of the plaintiff under Order X of CPC, the Court could reach a conclusion that the plaint does not disclose cause of action or the suit is barred by limitation or is not maintainable, the Court can decide the said points even without recording any evidence.
25. The plaintiffs are the grand children of late Sh.Birendra Nath Basu, who was one of the four sons of late Smt.Nirod Bala Basu. The suit property belonged to late Smt.Nirod Bala Basu. She died in February, 1972, leaving behind four sons and four daughters. Smt.Nirod Bala Basu left behind a Will dated 1.2.1971 by which she bequeathed the property to her four sons to the exclusion of her four daughters. Three of the four sons of late Smt.Nirod Bala Basu filed CS(OS) No.12/1975 before District Judge, Delhi. The said suit was decreed on 15.1.1976 declaring the four sons to be owners of the suit property. In CS(OS)12/1975 the daughters of late Smt.Nirod Bala Basu were also parties. Thus, CS(OS)2491/2009, which was instituted by legal heirs of Smt.Mukul Dutta, and CS(OS)163/2010 filed by Smt.Ira Dutta, who was daughter of late Sh.Lalit Kumar Basu and late Smt.Nirod Bala Basu, were both dismissed by a Single Judge of this Court while allowing an application under Order VII Rule 11 CPC on the ground that Smt.Mukul Dutta and Smt.Ira Dutta were parties in CS(OS)12/1975 and the decree so passed attained finality. At this stage, it would be relevant to clarify that the grandfather of the plaintiffs was one of the four sons of late Smt.Nirod Bala Basu. In terms of decree dated

15.1.1976 passed in CS(OS)12/1975 the suit property devolved upon four sons of late Smt.Nirod Bala Basu. Pursuant to the said decree, DDA executed a perpetual lease deed in favour of four sons of late Smt.Nirod Bala Basu. The property was constructed by four sons and occupancy certificate was granted on 1.1.1989.

26. The plaintiffs claim their share in the suit property by virtue of being grandchildren of late Shri Birendra Nath Basu, through their mother, Smt.Ajanta Mitra. Before this question can be answered, it must be seen as to whether Smt.Ajanta Mitra was entitled to any share in her father's 1/4th share in the suit property.
27. Sh.Birendra Nath Basu died on 29.7.1986. This was the first occasion when Smt.Ajanta Mitra could have claimed a share in her father's property. Sh.Birendra Nath Basu left behind a Will dated 6.7.1986 by which he bequeathed his 1/4th share in the suit property in favour of his four sons. Probate, with respect to the Will of late Sh.Birendra Nath Basu, was granted on 30.6.1994 by the District Judge, Delhi. The mother of the plaintiffs did not object to the same and accepted the wishes of her father. The Will of late Sh.Birendra Nath Basu was given effect to when on 25.9.2008 his 1/4th share in the suit property was mutated by DDA in favour of his four sons. Even, at that stage, no objection was raised. On 25.5.2009, a conveyance deed was executed by DDA in favour of three sons of late Smt.Nirod Bala Basu and her four grandsons, being sons of Sh.Birendra Nath Basu, however, no objection was raised. Another suit, being CS(OS)1228/2006, was filed by one of the sons of late Smt.Nirod Bala Basu i.e. Sh.Bhawani Shanker Basu, for partition of the suit property wherein a preliminary decree was passed on 10.1.2007 defining the shares in the suit property in favour of three sons of late Smt.Nirod Bala Basu and four grandsons, however, no objection was raised even at that stage.

Subsequently, the applicant/defendant no.9 purchased the suit property on 22.10.2009.

28. The facts, as narrated hereinabove, have fully been detailed in the judgment passed in CS(OS)2491/2009 in which the plaintiffs were arrayed as defendants no.5A and 5B. The judgment of the Single Judge has attained finality as an appeal filed against the aforesaid order also stands dismissed.
29. As per para 9 of the plaint, Smt.Ajanta died on 19.8.1990. There is no explanation as to why from the year 1990 to the year 2010 the plaintiffs did not enforce their right, as claimed by them, or raised objections when probate was granted to the Will of late Sh.Birendra Nath Basu on 30.6.1994 or when 1/4th share of Sh.Birendra Nath Basu was mutated by DDA in favour of his four sons on 25.9.2008 or when a conveyance deed was executed by DDA on 21.5.2009 in favour of three sons of late Smt.Nirod Bala Basu and her four grandsons.
30. The present plaintiffs also did not become parties in CS(OS)1228/2006, which was filed by one of the sons of late Smt.Nirod Bala Basu in which a preliminary decree was passed on 10.1.2007, defining the shares in the suit property in favour of three sons of late Smt.Nirod Bala Basu and four grandsons. While deciding RFA(OS)115/2011, **Aniruddha Dutta & Ors. v. Bhawani Shankar Basu & Ors**, a Division Bench of this Court referred to a decision rendered in **Smith v. Clay** 3 Bro Ch. 640, wherein Lord Camden said:

‘A Court of Equity has always refused its aid to stale demands where the party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this Court into activity but conscience, good faith and reasonable diligence. Where these are wanting the Court is passive and does nothing. Laches and neglect are always discountenanced, and therefore, from the beginning of

this jurisdiction there was always a limitation to suits in this Court. And where the appeal upon its face shows that the plaintiff is not entitled to relief by reason of lapse of time and of his own laches, the objection may be taken by demurrer.’ In the decision reported as *Lans Dale vs. Smith* 106 US 391 it was observed: ‘Equity withholds relief in all cases where the party seeking it has delayed for an unreasonable time in asserting his claim, and the proper rule of pleading would seem to be that when the case stated by the bill appears to be one in which a Court of Equity will refuse its aid, the defendant should be permitted to resist it by demurrer.’

31. The Division Bench in para 30 of the *Aniruddha Dutta* (supra) observed as under:

“30. It cannot be lost sight of that Sulochana Goyal purchased the property after due title verification and is a bona fide purchaser for valuable consideration under the sale deed dated 26.10.2009 and within 1 month and 20 days thereof CS(OS) No.2491/2009 was filed. It smacks of a concerted action to extract money from Sulochana Goyal and if at all the plaintiffs of the suit were bona fide in their claim we would have appreciated them staking a claim to the sale proceeds and not the property itself. At least then, it could be argued by them that their action was bona fide.”

32. The undisputed facts as detailed above would show that the mother of the plaintiffs during her life time uptill the year 1990 did not lay any stake over the property. She accepted the wishes of her father as per his Will dated 6.7.1986. In CS(OS) 1228/2006 all sons of late Sh.Lalit Kumar Basu were declared 1/4th share holders in the suit property and upon demise of Sh.Birender Nath Basu his share devolved upon his four sons, which was not objected to by their sister, mother of the plaintiffs.
33. Accordingly, no cause of action arisen in favour of the plaintiffs, the present claim is also barred by limitation. Since the mother of the parties did not lay any claim over the suit property during her life time, the present application is allowed and the plaint is rejected.

I.A.NO.8149/2010 (O XXXIX R 1 and 2 CPC).

34. Application stands dismissed in view of the order passed above.

MAY 01, 2014

msr

G.S.SISTANI, J