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

+ **Date of Decision: 05.08.2014**

% **RFA(OS) 117/2014**

MR. ANAND J. DATWANI

..... Appellant

Through: Mr. S.P. Jha and Mr. Naveen Kr
Choudhary, Advocates

versus

MRS. GEETI BHAGAT DATWANI & ORS

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

S. RAVINDRA BHAT, J. (OPEN COURT)

C.M. No.12454/2014

Having regard to the reasons stated in the application, the delay is condoned.
Application stands disposed of.

C.M. No.12455/2014

Exemption allowed, subject to all just exceptions.

RFA(OS) 117/2014

1. The appellant impugns the judgment and decree dated 06.12.2013 rejecting the plaint in C.S. (OS) No.758/2008 under Order 7 Rule 11 CPC. The brief facts are that the plaintiff claimed decrees for partition, declaration and consequential injunction in respect of the property which included land and building at 32, Shivaji Marg, Westend Greens, Rangpuri, New Delhi (“the Suit Property”). The partition sought was for one half share of the property between him and the first defendant – his wife, and a declaration that the undertaking given by him on 29.04.2004 was null and void. A consequential permanent injunction to restrain the wife from dealing with the suit property was also sought.

2. The plaintiff and the first defendant were married on 13.10.1994; two children were subsequently born out of the wedlock. The suit alleged that the first defendant, after consulting the other party defendants, expressed a desire to develop the suit property and requested the plaintiff to provide the finances. It is not in dispute that the suit property was purchased by the first defendant wife with her resources through a registered sale deed dated 09.02.1989 and was partly constructed upon. The Municipal Corporation of Delhi (MCD) had granted sanction for construction on 30.07.1990, and completion certificate was issued on 28.07.1993. The suit proceeded to premise the claim upon a development agreement alleged to have been executed by the parties sometime in 1996, in terms of which it was alleged that the plaintiff spent considerable amount towards the development of the property and, therefore, acquired an equal share in it.

3. The occasion for approaching this Court was apparently the first defendant invoking the provisions of the Protection of Women from Domestic Violence Act, 2005 (“DV Act”) through an application under Section 12 on 10.10.2007.

4. During the course of the proceedings, earlier the defendant had unsuccessfully urged that the suit was barred under the Delhi Land Reforms Act; however, the matter was allowed to proceed. At the stage of framing of issues, the defendant sought for rejection of the plaint – contending that the entirety of the suit averments read together with the documents and materials on record by the appellant/plaintiff did not disclose a cause of action and showed that the suit claim was time barred. It was specifically urged that the allegations with respect to the development agreement were vague, and that such a document, without it being registered, in any event, could not confer any property right. As far as the declaration in the affidavit of undertaking dated 29.04.2004 was concerned, the plea urged by the first defendant was that the suit was time barred, having not been filed within a period of three years from the making of the said declaration.

5. The learned Single Judge noticed that the plaintiff had preferred a complaint under Section 156(3) of Cr.P.C alleging that the Development agreement of 1996 (upon which the suit was based), was stolen by the first defendant. The Single Judge noticed that the complaint only generally referred to some documents, but made no specific reference to the Development agreement. The complaint specifically spoke of valuables and sought the assistance of the police in recovering the stolen goods. The Single Judge also took note of the order of 21.11.2012 made by the learned

Metropolitan Magistrate in the DV Act proceedings.

6. In the light of these circumstances, the learned Single Judge held that the suit was not maintainable. His reasoning rests on the following observations:

“19. Since it is the Plaintiff’s case that the DA confers on him rights and title to the suit property, the burden was on him to produce the document. It is not the case of the Plaintiff that there was any oral agreement between the parties. His specific case was that a DA was in fact executed some time in 1996. Secondly, there can be no doubt that the suit property was worth several crores and, therefore, if the DA purportedly conferred joint title thereto in favour of the Plaintiff it was required to be registered and stamped in accordance with law. With there being no such document at all on record, it is inconceivable that the Plaintiff can seek any relief in relation thereto.

*20. Although the Court is required to proceed on the basis of the averments made in the plaint, even those averments, on a bare reading, do not even prima facie satisfy the Court that the Plaintiff’s claim is genuine and that the plaint discloses a cause of action. It is not just the plaint that has to be examined but also the documents filed with it [See **Liverpool & London S.P. & I Asson. v. M.V. Sea Success I (2004) 9 SCC 512**]. Clearly, the undertaking dated 29th April 2004, a copy of which has been filed by the Plaintiff, contradicts what the Plaintiff states in the plaint. This explains his seeking a declaration of the inavlaidity of the said undertaking. However, the undertaking was given on 29th April 2004 and a declaration is being sought by a suit filed on 5th April 2008. Clearly, that relief is barred by limitation. Even otherwise, the plaint lacks the particulars regarding the alleged coercion and undue influence relating to the undertaking dated 29th April 2004.*

21. On the question of the delay and laches in the Plaintiff seeking to assert its rights under the alleged DA, it is inconceivable that the Plaintiff would have taken no action till 2008 when according to him the DA was executed 'in the year 1996'. On his own showing, the disputes between the parties arose in 2004 itself. The Plaintiff's explanation for not seeking relief earlier is not satisfactory. The averments in relation to the DA are also vague. The Plaintiff is unable to disclose the precise date of the said DA and in whose presence it was executed. In other words, the averments in relation to the DA are bereft of any material particulars to constitute a cause of action for claiming relief in relation thereto. In terms of the law explained in **Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express** (supra), the Court is not satisfied that the plaint discloses a cause of action.

22. Furthermore, the Plaintiff does not dispute that the suit property was purchased by Defendant No.1 from her own funds, much prior to her marriage with the Plaintiff. Defendant No.1 has placed on record the registered Sale Deed dated 9th February 1989 executed in her favour by the erstwhile owner, Mrs. Sangeeta Gupta. The Plaintiff is not seeking any relief in relation thereto. Defendant No.1 continues, therefore, to be the absolute owner of the suit property. She also has placed on record the documents showing that she applied for and was sanctioned building permission by the MCD way back on 30th July 1990. The sanction was revalidated up to 29th July 1993. All these events were prior to the marriage between the Plaintiff and Defendant No.1. In the circumstances, it is inconceivable that the alleged DA of an indefinite date, which is admittedly unregistered, would confer title in favour of the Plaintiff.

23. To summarise the conclusions, the averments in the plaint are vague, indefinite and lacking in material particulars. The documents necessary to support even prima facie the averments in the plaint have not been produced. The explanation for the delay in seeking relief in relation the DA is unsatisfactory. The relief of declaration of invalidity of the undertaking dated 29th April 2004 is barred by limitation. The

plaint even otherwise fails to disclose a cause of action to enable the Plaintiff to seek the reliefs prayed for. Proceeding to trial on the basis of such plaint would be a futile exercise”.

7. It is argued that the plaintiff ought to have been permitted to lead evidence with respect to the Development Agreement and that the learned Single Judge ought not to have surmised that the allegations relating to it were vague and unacceptable.

8. Learned counsel emphasized that since the parties were married at the stage of execution of the Development agreement, he was entitled to claim that the document really amounted to a family settlement and that the first defendant had relinquished her proportionate property rights to him in consideration of the plaintiff financing the further development upon the property. He also relied upon – what is termed as defendants admission, with respect to certain amounts paid by his uncle, which the first defendant stated was gift. It is thus contended that the learned Single Judge ought to have allowed the suit to proceed to trial.

9. Learned counsel submits that the findings in the impugned judgment with respect to the suit being time barred – (as far as claim for declaration is concerned), is untenable and cannot be upheld. Referring to Article 59 of the First Schedule to the Limitation Act, it was urged that the cause of action in respect of the suit claim for declaration *vis-a-vis* the undertaking arose only when the plaintiff became aware that the documents was, in fact, in the possession of the first defendant. All along, the plaintiff was under the impression that the documents had been torn and destroyed by the first defendant.

10. From the materials on record and the impugned judgment, it is apparent that the suit property was purchased by the first defendant from out of her own funds and through a registered sale deed on 09.02.1989 before she married the plaintiff. She even carried out certain constructions upon the suit property. The plaintiffs' claim for partition is based upon an alleged undated Development Agreement of 1996, which has not been produced by the plaintiff. The allegations with respect to this Development agreement arose for the first time after 12.10.2007 when the first defendant preferred a complaint under the DV Act. At that stage, the plaintiff appears to have approached the Metropolitan Magistrate claiming that his valuables and goods had been stolen by the first defendant; in the documents produced with the suit, he produced a copy of the complaint as well as the order of the Metropolitan Magistrate under section 156(3). The learned Single Judge significantly noticed that this was bereft of any reference to the alleged Development agreement and concluded that if such an agreement, in fact, had existed, it defied logic that the plaintiff would not have particularly mentioned it. Furthermore, the learned Single Judge noticed that the plaintiff nowhere mentioned that the Development agreement was a registered document, which alone could have conferred any rights upon him in respect of the suit property. The plaintiff has not set up a case of a family arrangement at any stage whatsoever, even for claiming a partition – family arrangement would have been necessary. The plaint and other documents placed on record did not point to any such circumstance; the pleadings were bereft of any particulars in that respect. Even if the plaintiff's submissions are assumed to be correct, it would not be sufficient to clothe the Development Agreement the status of a title document to seek a decree for

partition. This Court also recollects Sections 3 and 4 of the Benami Transactions (Prohibition) Act, 1988, which forecloses any such claim, unless the relationship of the parties is familial or the spouse concerned specifically alleges and produces documents disclosing that money was spent on acquiring the property. However, those exception cannot apply having regard to the pleadings in the present case. No such arguments were made during the course of the proceedings before the learned Single Judge or in this Court. As a result, we are of the opinion that the findings of learned Single Judge with respect to the first claim in the suit – for partition do not call for interference.

11. So far as the claim for declaration with respect to the undertaking of 29.04.2007 is concerned, the plaintiff nowhere disputes that the said document specifically stated that he could not assert any claim in respect of the suit property; it was his case before the learned Single Judge in the suit that family circumstances apparently constrained him to execute it. The pleadings in this regard are vague. Furthermore, if the plaintiff had some cause of action to seek a declaration that such undertaking was void and unenforceable, nothing prevented him from approaching the Court within a few days and at the most a few months, or atleast within the period of limitation, i.e. three years from the date of its execution. He approached the Court much later by filing a suit on 05.04.2008. This clearly supports the finding of the learned Single Judge that the suit claim in this regard was time barred. As far as the last relief claimed in the suit, i.e. a decree for permanent injunction goes, the same is a consequential relief as is apparent from a reading of the plaint averments. We, therefore, concur with the

observations and affirm the finding of the learned Single Judge.

12. For the aforesaid reasons, the appeal lacks in merit and is consequently dismissed.

S. RAVINDRA BHAT, J

VIPIN SANGHI, J

AUGUST 05, 2014

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