

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

% Order delivered on: 22<sup>nd</sup> December, 2014

+ **I.A. No.14828/2009, I.A. No.648/2010, I.A. No.806/2010,  
I.A. No.825/2010 & I.A. No.1888/2010 in CS(OS) 2184/2009**

SH.JAGDISH SINGH ..... Plaintiff  
Through Mr.Pranay Agrawala, Adv.  
  
versus

JASVINDER SINGH & ORS ..... Defendants  
Through Mr.Raman Kapur, Sr.Adv. with  
Mr.Aviral Tiwari, Adv. for D-4.

**CORAM:  
HON'BLE MR.JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The plaintiff filed the suit for declaration and injunction against the defendants seeking the following prayers:

“(i) Pass a decree of declaration declaring that the order dated 24.04.2007 passed in I.A. No.4651/2007 filed in CS(OS) No.2066/2006 and recording the compromise between the Defendant No.2 and Defendant Nos.4 and 5 was illegal and thus null and without any authority and void under Indian Contract Act, 1872; and

(ii) Pass a decree of declaration that the Defendant Nos.1 and 2 and Late Kunwarni Padmini Shah has no right, title and/or interest in the suit property and consequently the Defendant Nos.3, 4 and 5 have no right, title and/or interest of any nature in the suit property; and

(iii) Pass a decree of permanent prohibitory injunction against the Defendants and/or any person or body incorporate claiming through them from interfering and/or dealing with and/or staking any claim with respect to the said property in form and/or nature; and

(iv) Award the cost of the suit in favour of the Plaintiff and against the Defendants.”

2. The above mentioned applications are pending for disposal. It would be appropriate that first of all, the application, being I.A. No.648/2010 under Order VII Rule 11 CPC, filed by the defendant No.4 be considered at the first instance.

3. The defendant No.4 submits that the plaint is liable to be rejected on the following grounds:

(i) The present suit is for declaration and consequential relief of injunction. Relevant clauses of Court-Fees Act applicable are Section 7(iv)(c) with proviso read with Section 7 (v)(e) according to which the valuation has to be as per market value of the house or garden.

(ii) The present suit relates to house/property bearing No.E-108, Malcha Marg, Chankyapuri, New Delhi constructed on plot admeasuring 375 sq. yds. The Plaintiff has grossly undervalued the suit since value of suit property is above Rs.25 Crores as per the circle rate and the present market value of the same is more than Rs.60 Crore and Plaintiff is liable to pay court fee at the above market value and pay appropriate Court Fees. Plaintiff has valued the relief

of declaration at Rs.20 Lacs and injunctions at Rs.200/- and has paid advalorem court fees of Rs.21,925/-.

(iii) Plaintiff in para 2(d) & (e) of the plaint has stated that his father late Sh.Har Kishan Singh entered into agreement to sell the suit property on 18<sup>th</sup> August, 1959 (no document on record though) and receipt-cum-agreement dated 7<sup>th</sup> October, 1959 with Kanwar Rani Padmini Shah for a sale consideration of Rs.1,35,000/- and agrees that Sh.Har Kishan Singh received Rs.1,20,000/- from her. Defendant has placed on record documents showing that late Sh.Har Kishan Singh received entire sale consideration and handed over possession to her. Thus, the present suit filed by plaintiff after 50 years of late Sh.Har Kishan Singh selling the property, receiving entire sale consideration and handing over possession to her, is patently barred by limitation.

(iv) Late Sh.Har Kishan Singh sold the property to one Ms.Padmini Shah w/o Sh.A.B. Shah vide Agreement to Sell dated 7<sup>th</sup> October, 1959, received the entire sale consideration and handed over symbolic possession to Ms.Padmini Shah.

(v) In written statement filed by Late Har Kishan Singh in the Court of Rent Controller in case 'Kanwar Singh Butalia and Ors. Vs. Shri Har Kishan Singh', unequivocally and clearly admitted that he had sold the suit property to Ms.Padmini Shah had received the entire sale consideration and that he was left with no right, title or interest in the property and that Ms.Padmini Shah was the owner and had inducted her own tenant in the property.

(vi) Ms.Padmini Shah vide Agreement to Sell dated 10<sup>th</sup> December, 1992 sold the property to M/s Business Associates (Delhi) Pvt. Ltd. through its Director Sh.Harmit Singh Ghai and executed and registered General Power of Attorney and Will in favour of one Mr.Jaswinder Singh also dated 10<sup>th</sup> December, 1992.

(vii) M/s. Business Associates (Delhi) Pvt. Ltd. and Sh.Jaswinder Singh were able to evict the tenant earlier let out by Ms.Padmini Shah, Concord for India, from the property and Sh.Harmit Singh Ghai, Director of M/s. Business Associates (Delhi) Pvt. Ltd. and Sh.Jaswinder Singh started staying in the property since 1993-94 as owners of the property.

(viii) In a suit for specific performance filed by Ms.Padmini Shah being Suit No.295/1998 against plaintiff and other legal heirs of late Sh.Har Kishan Singh, learned Additional District Judge, Delhi was pleased to pass a decree in favour of Ms.Padmini Shah and pursuant to the same, under orders of the court, Sale Deed of the property was registered in favour of Ms.Padmini Shah dated 2<sup>nd</sup> March, 2002 though Ms.Padmini Shah, as set out above, had already sold the property to M/s. Business Associates (Delhi) Pvt. Ltd. and Sh.Jaswinder Singh and having executed and registered General Power of Attorney and Will in favour of Sh.Jaswinder Singh.

(ix) M/s. Business Associates (Delhi) Pvt. Ltd. and Sh.Jaswinder Singh jointly sold the property to defendant No.4 vide registered Agreement to Sell dated 9<sup>th</sup> March, 2006 and Sh.Jaswinder Singh as attorney of Ms.Padmini Shah executed and registered General Power

of Attorney in defendant No.4's favour and both Sh.Harmit Singh Ghai as Director of M/s. Business Associates (Delhi) Pvt. Ltd. and Sh.Jaswinder Singh, handed over vacant and peaceful possession of the property to defendant No.4 and at that time, plaintiff had jointly purchased the property with one Mr.Anil Wadhawan who subsequently relinquished his share, also in defendant No.4's favour and he became sole and exclusive owner of the property and defendant No.4, is since then in exclusive possession of the same.

(x) Sh.Jaswinder Singh as attorney of Ms.Padmini Shah, had applied to the office of L & DO for mutation of the property in favour of Ms.Padmini Shah on 1<sup>st</sup> March, 2006 and the same was accepted by L & DO, who vide letter dated 11<sup>th</sup> May, 2006, directed deposit of sum of Rs.21,68,586/- towards unearned increase and certain amount towards damages.

(xi) However, before letter dated 11<sup>th</sup> May, 2006 could be received from L & DO, defendant No.4 had already purchased the property from M/s. Business Associates (Delhi) Pvt. Ltd. and Sh.Jaswinder Singh and therefore, he paid the aforesaid unearned increase and damages with L & DO and also applied for conversion of the property from lease hold to free hold in his name on 20<sup>th</sup> March, 2006 with L & DO and deposited further sum of Rs.5,01,296/- as conversion charges.

(xii) After the purchase of property by defendant No.4 for considerable value and sudden rise in prices of property, intentions of plaintiff became malafide and he started writing frivolous letters to L &

DO staking claim in the property which his father had sold nearly 50 years ago. However, after taking legal opinion L & DO has first mutated the property in the name of Ms.Padmini Shah and thereafter, converted the property from lease hold to free hold and registered the Conveyance Deed in favour of defendant No.4 in the year 2012, finding documents of defendant No.4 to be correct and complete in all respect.

(xiii) The plaintiff also filed applications I.A. Nos.13912-13914/2008 in CS(OS) No.2066/2006, i.e. a suit between defendant Nos.1 to 2 and defendant Nos.4 and 5 in which settlement took place, which after arguments, being not maintainable, were withdrawn by the plaintiff with liberty to initiate independent civil proceedings.

(xiv) The prayer clause in the present suit reveals that plaintiff is seeking declaration that compromise recorded in I.A. No.4651/2007 in CS(OS) No.2066/2006 dated 24<sup>th</sup> April, 2007 between defendant No.2 and defendant Nos.4 and 5 as illegal and null and void. Plaintiff was neither party to the transaction between Defendant No.2 and Defendant Nos.4 and 5 nor was a party to CS(OS) No.2066/2006. As such, Plaintiff has no right to challenge the said compromise arrived at in I.A. No.4651/2007 in CS(OS) No.2066/2006 and remedy, if any, Plaintiff feels that he has, then he has to independently claim the same against Defendant No.2 and Defendant Nos.4 and 5 and not by seeking challenge to the above compromise.

(xv) The plaintiff had also filed an application under Order IX Rule 13 CPC for setting aside decree passed in suit No.295/1998. After

taking adjournments on various occasions, since the same was liable to be dismissed, plaintiff has subsequently on 22.05.2014 withdrawn the abovesaid application.

4. I.A. No.825/2010 is moved by defendant No.3 under Order 1 Rule 10 CPC for deletion from array of parties, since defendant No.3 is father of defendant No.4 and has no right, title or interest in the suit property except acting as attorney of defendant No.4 in CS(OS) No.2066/2006.

5. I.A. No.806/2010 is moved by defendant No.5 under Order 1 Rule 10 CPC for deletion from array of parties, since defendant No.5 had earlier purchased the suit property jointly with defendant No.4 and had subsequently relinquished his share in the said property vide Release Deed dated 14<sup>th</sup> August, 2008 duly registered on 29<sup>th</sup> August, 2008 thereby making defendant No.4 the sole owner of the suit property.

6. Learned counsel for the plaintiff has argued that the suit has been properly valued for the purposes of court fee and jurisdiction. The plaintiff is seeking relief of declaration at Rs.20 lacs. Hence, the proper court fee has been paid. The suit is not liable to be rejected under Order VII Rule 11 (c) CPC. As regards the other objection raised by defendant No.4 in his application under Order VII Rule 11 CPC, it is stated by the plaintiff that the defendants No.1 and 2 in connivance had filed Suit No.295/1998 seeking specific performance of non-existing agreement to sell dated 7<sup>th</sup> October, 1959 wherein defendants No.1 and 2 obtained an *ex parte* decree dated 21<sup>st</sup>

January, 1999 by forging signatures of the plaintiff on the summons issued by the Court. The plaintiff has already challenged the *ex parte* decree and judgment dated 21<sup>st</sup> January, 1999. There was no occasion earlier to challenge the said agreement, as the suit property was abandoned by the parties i.e. late Sh.Harkishan Singh and late Kanwarni Padmini Shah. The suit of the plaintiff is not barred by time.

7. It is the admitted position that the present suit is for declaration and consequential relief. Section 7( iv)(c) of the Court-Fees Act, 1870 provides as under:

“Section 7(iv) (c): to obtain a declaratory decree or order, where consequential relief is prayed;

Provided further that in suits coming under sub clause (c), in cases where the relief sought in is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for sub clause (v) of this Section.”

8. Therefore, from the above it is apparent that in a suit to obtain declaratory decree or order where consequential relief is prayed for, under Proviso to Sub-Clause (iv) in case where consequential sought is with reference to property such valuation has to be calculated in the manner provided under sub-clause (v) (e) of Section 7 of the Court Fees Act.

Section 7(v)(e) provides as under:

“Section 7(v)(e): Where the subject matter is a house or garden – according to the market value of the house or garden.”

9. Therefore, a suit for declaration with consequential relief in case the subject matter of the suit is house or garden, in terms of Section 7(iv)(c) with proviso thereto read with Section 7(v)(e), the valuation has to be as per market value of the house or garden.

10. Admittedly, subject matter of the present suit is house/property constructed on plot admeasuring 375 sq. yards. The plaintiff is seeking declaration and consequential relief with respect to aforesaid suit property and, therefore, plaintiff has to value the suit according to market value of the suit property.

11. During the course of arguments, the learned counsel for the plaintiff has not denied the fact that the value of the suit property is in crores. However, he still says that the suit for declaration is maintainable and he has valued the suit at Rs.20 lacs and paid ad-valorem court fee of Rs.21,925/-. In case Section 7 of the Court Fees Act is read in a meaningful manner, it appears that the suit has not been properly valued for the purposes of Court fee and jurisdiction as the value of the suit property is in crores even as per the circle rate applicable to the suit property. With regard to the merit of the case, the plaintiff himself has admitted in paras 2(d) and 2(e) of the plaint that Late Sh.Har Kishan Singh entered into agreement to sell the suit property on 18<sup>th</sup> August, 1959 (though no such document has been filed ) and receipt-cum-agreement dated 7<sup>th</sup> October, 1959 with Kanwarni Padmini Shah for a sale consideration of Rs.1,35,000/- and agrees that Late Sh.Har Kishan Singh received Rs.1,20,000/- from Kanwarni Padmini Shah though defendant No.4 has placed on

record written statement filed by late Sh.Har Kishan Singh in 1963 in eviction petition titled as “Brig. Kanwar Mohinder Singh Butalia & Another vs. Late Sh.Har Kishan Singh” in which Late Sh.Har Kishan Singh admits to have received entire sale consideration, having sold the suit property to Kanwarni Padmini Shah and handing over possession thereof to her. Plaintiff further alleged that the suit property was HUF property and had been purchased from joint family funds and his father Late Sh.Har Kishan Singh had no right whatsoever to sell the suit property.

12. In case the plaintiff was aware that his father wrongly sold the property to Kanwarni Padmini Shah in 1959, the plaintiff ought to have filed the suit within the prescribed period of limitation when he became major. The suit has been filed after 50 years of late Sh.Har Kishan Singh selling the suit property to Kanwarni Padmini Shah, having received the sale consideration and handing over possession to her. The suit is apparently barred by limitation. It is also the admitted position that the perpetual lease was in the name of the father who sold the suit property to Kanwarni Padmini Shah. Late Sh.Har Kishan Singh admitted in 1963 in the eviction proceedings the said sale and has not challenged the said transaction between his father and Kanwarni Padmini Shah. The defendants No.1 & 2 and defendants 4 & 5 are subsequent purchasers of the suit property who have entered into a settlement by virtue of compromise in CS(OS) No.2066/2006. The plaintiff is challenging the compromise between the subsequent purchasers of the suit property. He was not a party

when the suit property was sold by his father in 1959. Once the plaintiff is not claiming any right in the property or possession, he has no right to challenge the sale between the subsequent purchasers.

13. For this purpose, reliance has been placed on 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 5<sup>th</sup> 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.

14. In view thereof, the prayer made in the application is allowed.

15. The suit of the plaintiff is highly belated and barred by limitation and the plaint is liable to be rejected under sub-clause (a) of Rule 11 of Order VII CPC. Ordered accordingly.

16. In view of the order passed in the abovementioned application, pending applications are also disposed of.

**(MANMOHAN SINGH)**  
**JUDGE**

**DECEMBER 22, 2014**