

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

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Date of decision: 17th May, 2016

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RFA No. 249/2016

RAKESH JAIN

..... Appellant

Through: Mr. Himat Akhtar, Adv.

Versus

MITHILESH MISHRA & ORS

..... Respondents

Through: None.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The appeal impugns a judgment and decree of the Court of the Additional District Judge (ADJ)-02 (East), Karkardooma Courts, Delhi of dismissal of CS No.2067/16 filed by the appellant (i) for declaration that the irrevocable General Power of Attorney (GPA) dated 24th June, 2004 allegedly executed by the respondent/defendant no.3 Smt. Jaspal Kaur in favour of respondent/defendant no.1 Smt. Mithilesh Mishra regarding property no.X/3458A/2, Gali No.2, Raghuvar Pura No.2, Gandhi Nagar, Delhi – 110 031 is illegal, null and void; and, (ii) for permanent injunction restraining the respondent/defendant no.1 from dealing with the property, consequent to rejection under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) of the plaint on the ground of the relief claimed therein on the basis of averments

in the plaint itself not disclosing a cause of action in favour of the appellant/plaintiff and being barred by time.

2. Having gone through the paper book and being *prima facie* of the view that there is no merit in the appeal, the counsel for the appellant/plaintiff has been given ample opportunity to address on the appeal.

3. The appellant/plaintiff instituted the suit from which this appeal arises pleading (i) that the appellant/plaintiff is an old tenant in the aforesaid property under the respondent/defendant no.3 who is the owner/landlord of the appellant/plaintiff and some other tenants in the property; (ii) that the appellant/plaintiff had paid up-to-date rent to the respondent/defendant no.3; (iii) however the respondent/defendant no.3 started refusing to accept the rent compelling the appellant/plaintiff to deposit the rent under Section 27 of the Delhi Rent Control Act, 1958; (iv) that the respondent/defendant no.1 served notices dated 25th September, 2004 on some of the other tenants in the property claiming herself to be the owner of the property and asking for rent thereof; (v) however upon the other tenants asking the respondent/defendant no.1 to furnish proof of her ownership, she failed to do so; (vi) that the appellant/plaintiff came to know that the respondent/defendant no.1 has purchased the property from the respondent/defendant no.3 in the sum of Rs.6 lacs when the market

value of the property was not less than Rs.10 lacs and the appellant/plaintiff was also ready to purchase the property in the said amount; (vii) complaint dated 5th August, 2004 was made to the respondent / defendant no.2 Sub Registrar (East) of undervaluation of the property but no action was taken; (viii) that on 2nd August, 2009 the respondent/defendant no.1 along with the notice to one of the tenants in the property annexed a copy of irrevocable GPA mentioning the sale consideration at Rs.6,50,000/- and wherefrom the appellant/plaintiff learnt of the said undervaluation; (ix) that the respondent/defendant no.1 on the basis of the said documents had been dealing with the property; and, (x)“that the cause of action to file the present suit firstly arose in favour of the plaintiff and against the defendant on 24.06.2004 when the illegal sale transaction has taken place between the defendant no.1 and 3 and on 05.08.2004 when the matter was reported by the plaintiff to the Revenue Collector/SDM. The cause of action further arose on 02.08.2009 when the plaintiff saw the irrevocable General Power of Attorney dated 24.06.2004. The cause of action further arose when the plaintiff approached the defendant no.2 with the request to cancel the GPA in question. The cause of action is still subsisting and continuing”.

4. The learned ADJ has rejected the plaint, finding/observing/holding (i) that the appellant/plaintiff has no right to ask for declaration as he has no personal interest whatsoever; (ii) the appellant/plaintiff as a tenant in the property cannot compel the owner/landlord to sell the property to him or on any particular terms; (iii) that the suit had been filed to pressurise the respondent/defendant no.3; (iv) that the claim in the suit was otherwise barred by time; (v) that according to the appellant/plaintiff he came to know on 24th June, 2004 when the respondent/defendant no.3 sold the property to the respondent/defendant no.1 and the appellant/plaintiff complained to the respondent no.2 on 5th August, 2004; and, (vi) Article 58 of the Schedule to the Limitation Act, 1963 prescribes the period of limitation for filing the suit for declaration as of three years only and the suit filed on 7th October, 2009 was much beyond the said period of three years from 24th June, 2004 and/or 5th August, 2004.

5. The counsel for the appellant/plaintiff has argued that the learned ADJ erred in computing the period of limitation from 5th August, 2004 when the appellant/plaintiff claimed to have complained. It is argued that the said complaint was on the basis of suspicion only and the appellant/plaintiff got the copy of the General Power of Attorney dated 24th June, 2004 only on 2nd

August, 2009 when the respondent/defendant no.1 along with legal notice to another tenant annexed a copy thereof in her favour. It is further argued that limitation is a mixed question of law and fact and could not have been decided under Order 7 Rule 11 of the CPC. Reliance in this regard is placed on ***Popat and Kotecha Property Vs. State Bank of India Staff Association*** JT 2005 (12) SC 302 and on ***Vaish Aggarwal Panchayat Vs. Inder Kumar*** JT 2015 (8) SC 248.

6. I have considered the contentions of the counsel for the appellant. Though this is a first appeal under Section 96 of the CPC but need to requisition the trial court record is not felt as the order impugned is of rejection of plaint and the appellant alongwith memorandum of appeal has annexed a copy of plaint and other documents.

7. As far as the legal contention of the counsel for the appellant is concerned, question of limitation is not always a mixed question of law and facts and the same depends upon the facts of each case. Reference in this regard can be made to ***Minu Chibber Vs. S.S. Chibber*** MANU/DE/2437/2014 (DB) and SLP(C) No.2068/2015 whereagainst was dismissed on 30th January, 2015.

8. The appellant/plaintiff has not filed the copy of the complaint made by him on 5th August, 2004 to the respondent/defendant no.2. The counsel for the appellant/plaintiff states that the appellant/plaintiff is not in possession of any copy thereof and only has a postal receipt of having dispatched the said complaint by Registered Post –AD. Thus the contents of the complaint cannot be deciphered. All that can be said is that the appellant/plaintiff in para 6 of the plaint admits having complained to the respondent/defendant no.2 of undervaluation.

9. Even if the benefit of principle of, *mofussil* pleadings being required to be construed liberally (see order dated 10th May, 2016 in RFA No.450/2015 titled ***Rajesh Kumar @ Ramu Vs. Sunil Kumar***), were to be given to the counsel for the appellant/plaintiff, and it were to be held that the appellant/plaintiff ought to be given an opportunity to go to trial on the aspect of limitation, I have enquired from the appellant/plaintiff as to what is the locus or the cause of action for the appellant/plaintiff to seek the reliefs claimed.

10. A civil suit can be filed only for a personal injury or for purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law or for restraining public wrongs (see Section 4 of Specific Relief Act, 1963) as a case of undervaluation would be.

11. It may be noted that the appellant/plaintiff is a tenant in the property has no right of pre-emption for purchase of property.

12. The counsel for the appellant/plaintiff states that since the document is likely to be used by the respondent/defendant no.1 to claim to be owner/landlord vis-a-vis the appellant/plaintiff, the appellant/plaintiff has a cause of action.

13. I do not agree. The appellant/plaintiff as a tenant in the property cannot have any grievance as to how owner/landlord deals with the ownership rights of/in the property and merely because respondent/defendant no.3 claims to have dealt with her ownership rights, would not give a locus or a cause of action to the appellant/plaintiff to challenge the same.

14. The counsel for the appellant/plaintiff then states that the documents on the basis of which the respondent/defendant no.1 is claiming title are not even executed by the respondent/defendant no.3.

15. However the counsel is unable to show any plea to the said effect.

16. Moreover, as and when the respondent/defendant no.3 uses the documents to make any claim against the appellant/plaintiff, the appellant/plaintiff in such proceeding would have full opportunity to take all pleas.

17. The counsel for the appellant/plaintiff at this stage invites attention to para 11 of the plaint where it is generally pleaded that the appellant/plaintiff being a tenant in the property would be directly affected by the defect in the title of the person claiming to be the owner.

18. All that can be observed is that it is not for the appellant/plaintiff as a tenant to perfect the title of the respondent/defendant no.1 who is claiming to be the owner/landlord by virtue of transfer effected by the respondent/defendant no.3 whom the appellant/plaintiff also admits to be the owner/landlord.

19. The suit as well as this appeal, I am constrained to observe, is in abuse of the process of this Court and resultantly the appeal is dismissed.

I refrain from imposing any cost on the appellant/plaintiff.

RAJIV SAHAI ENDLAW, J

MAY 17, 2016
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