

HIGH COURT OF TRIPURA
AGARTALA

RSA No.08 of 2024

Sri Birendra Sinha,
S/o Late Dhan Sinha, resident of Rajbari, P.O. Dharmanagar, P.S. Dharmanagar, Dist. North Tripura, Pin 799250.

..... **Appellant(s)**

- V e r s u s -

- 1. H.H. Bhakti Purushottam Swami,**
G.C. & Co-Director, ISKCON, P.O. Sri Mayapur Dham, District Nadia, West Bengal, Pin 741313.
- 2. H.G. Premeadata Das,**
the Temple President, ISKCON, Radhagovinda Temple, Math Chowmohani, Agartala, West Tripura, Pin 799001.
- 3. Sri Akshyadananda Das,**
President/In-Charge, ISKCON, Nama Hatta, Mandap Para, Rajbari, P.O. & P.S. Dharmanagar, District North Tripura, Pin 799250.
- 4. Sri Nipu Chandra Nath,**
S/o Late Kuti Chandra Nath, resident of Padmapur, P.O. & P.S. Dharmanagar, District North Tripura, Pin 799250.

..... **Respondent(s)**

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER

This appeal has been preferred against the order dated 08.12.2023 passed by learned District Judge, North Tripura, Dharmanagar in Title Appeal No.14 of 2022 dismissing said appeal and by affirming the order dated 31.01.2022 passed by learned Civil Judge (Sr. Division), Court No.2, North Tripura, Dharmanagar

in TS 38 of 2020 whereby the plaint of the plaintiff-appellant was rejected under Order VII Rule 11 CPC.

[2] Plaintiff-appellant filed said TS 38 of 2020 averring, inter alia, that with a pious intention to gift some land to ISKCON, he executed a gift deed bearing No.1-1191 dated 30.06.2010 which was accepted by H.H. Shrimant Bhakti Purushottam Swami Maharaj on behalf of ISKCON and the defendant-respondent No.4 actively assisted him in execution of such deed. However, on 17.01.2014, when H.H. Shrimant Bhakti Purushottam Swami Maharaj attended certain religious events at Dharmanagar, he disclosed to the plaintiff that he had never visited Dharmanagar on 30.06.2010 and had not put his signature in the gift deed in testimony of acceptance of such gift. Then the appellant came to know that somebody else had put the signature of H.H. Shrimant Bhakti Purushottam Swami Maharaj in the gift deed by causing forgery of his signature at the instance of said defendant-respondent No.4 and his associates. According to the plaintiff-appellant, execution of said gift deed was due to undue influence and fraud exercised on him at the instance of respondent No.3, respondent No.4 and others including the deed writer namely, Sri Pannalal Sharma (not a party to the suit). The plaintiff-appellant, finally, prayed for following reliefs in the suit:

- (a) Declaring the instrument in question vide Registration bearing No.1-1191 dated 30.06.2010 mentioned in Schedule of the Plaint made by the Defendants is void ab-initio, void and voidable and be declared cancelled with further direction to send a copy of the decree to**

the Sub-Registrar, Dharmanagar for taking note in the copy of the Gift Deed No.I-1191 dated 30.06.2010;

- (b) Declaring the Plaintiff as the owner of the Suit land and as a right, title, interest over the suit land in question mentioned in the Schedule below;
- (c) For mandatory injunction compelling the Defendant not to construct any temporary or permanent construction as well as other works which may be changed the nature and character of the suit land by way of consequential relief;
- (d) Cost of the suit and incidental thereto;
- (e) Issue notice upon the Advocate and Deed writers as well as attesting witnesses at the time of taking evidence;
- (f) Granting any other relief/reliefs to which the Plaintiff is found entitled to.

[3] Two other important paragraphs of the plaint which are relevant for consideration by this Court are also extracted below:

"8. That, the Plaintiff, submits that on 13.06.2014 a suit was filed seeking various reliefs along with cancellation of Gift Deed bearing No.1-1191 dated 30.06.2010 which case was registered as Title Suit 10 of 2014 and was decreed in favour of Plaintiff on 09.10.2015.

Being aggrieved and dissatisfied with the Judgment and Decree dated 09.10.2015 and 16.10.2015 respectively the defendant no.1,2,3 and 4 preferred appeal on 16.12.2015 and was registered as RFA 21 of 2015. The Regular First Appeal No.21 of 2015 was allowed on 02.01.2020 observing that it is made absolutely clear that only the pro-forma-defendant No.2 might command locus-standi if he had reasons to challenge the validity or legality of the gift deed 1-1191 dated 30.06.2010 (Exbt.G2).

.....
.....

14. That, the Plaintiff preferred a separate petition along with this Plaint seeking Condoning the delay of 73 days in filing the present suit."

[4] Based on a petition filed under Order VII, rule 11, CPC by the defendants, while rejecting the plaint, learned trial court observed as follows:

"..... In the present case, it is an admitted fact that the earlier suit regarding cancellation of give deed no. 1-1191 had not been filed

by the plaintiff of this case. Thus, thought the subject-matter of the earlier suit and the present suit is apparently the same, these two suits are not between the same parties. Therefore, the principle of *res judicata* would not apply in the present case.

Accordingly, the first contention of the defendant side fails and it is hereby held that the plaint of this case cannot be rejected on the ground of *res judicata*.

On the other hand, order VII rule 11(d) of CPC lays down that a plaint can be rejected when from the statement of the plaint it appears that the suit is barred by any law. Thus, for the purpose of rejection of plaint under order VII rule 11(d) of CPC, the Court is not required to look into written statement, evidence or other materials in the record and the only material to be looked into is the plaint. This being the requirement of law, the question of rejection of plaint under order VII rule 11(d) can be decided by the Court immediately on presentation of the plaint and it does not have to wait for the next stages of the suit to come.

Hon'ble Supreme Court of India in the case of *Saleem Bhai Vs. State of Maharashtra, AIR 2003 SC 759* held that the trial Court can exercise the power under order VII rule 11 of CPC at any stage of the suit, either before registering the plaint or after issuing summons to the defendant or at any time before the conclusion of trial.

Thus, in the case in hand, in the present stage, the Court can deal with the question of rejection of plaint under order VII rule 11(d) of CPC.

Now, looking into the plaint, we find that under para no. 6, the plaintiff stated that on 17.01.2014 he came to know from the defendant no.1 that the latter had not put his signature on the give deed no. 1-1191 and that fraud had been played upon the plaintiff by the defendant no. 4.

Article 59 of the Schedule of the Limitation Act, 1963 lays down that the limitation period for cancellation of an instrument is three years from the date when the facts entitling the plaintiff to have the instrument cancelled first become known to him.

Thus, in the present case, it is the plaint itself which puts forward that the plaintiff came to know about fraud on him by the defendants in the year 2014 and he filed the suit on 23.11.2020 after more than 3 years of the prescribed period of limitation. Therefore, the present case is time-barred.

Hon'ble the High Court of Tripura in its judgment dated 02.01.2020 passed in case no. RFA 21 of 2015 observed in the concluding part that '*only the proforma defendant no. 2 might command locus standi*

if he had reasons to challenge the validity or legality of the gift deed no. 1-1991'.

Thus, in the aforesaid order, Hon'ble the High Court of Tripura did not grant leave to the plaintiff of this case to institute the case even after expiry of the limitation period prescribed by law.

Hence, the defendant side has proved that from the plaint of this case it is clear that the suit is barred by the law of limitation, and accordingly, this is a fit case for application of order VII rule 11(d) of CPC.

As a conclusion to the above discussion, the plaint of this case is rejected.

The case stands disposed off on contest with costs."

[5] In the appeal, learned District Judge observed as follows:

"..... In the matter in hand the appellant in paragraph No.6 & 13 of the plaint filed before the Ld. Trial Court clearly averred that he came to know about execution of the said gift deed on 17-01-2014 and as per article 59 of the Limitation Act the appellant was supposed to file the suit before the Ld. Trial Court within a period of 3 years. However the suit was filed after a lapse of 7 years and there was no application to condone the delay.

Hence it is clear that the suit filed by the appellant before Ld. Court is hit by limitation.

In this respect the Ld. Trial Court rightly referred to the judgment of Hon'ble Apex court of Saleem Bhai & others vs State of Maharashtra & others reported in 2003 1 SCC 557 where it has been held that the trial court can exercise the power under Order-VII Rule-11 of CPC at any stage of the suit.

Situated thus, the appeal is devoid of merit and it is dismissed....."

[6] Ms. S. Deb (Gupta), learned counsel submitted that prior to filing of this suit, another suit bearing No. Title Suit 10 of 2014 was filed by the daughter of the present appellant in the Court of learned Civil Judge (Sr. Division), North Tripura, Dharmanagar for declaring the said gift deed with another gift deed as void which was decreed partly by the trial court by declaring said

gift deed No.1-1191 dated 30.06.2010 as void and in the first appeal bearing No.RFA 21 of 2015, the Division Bench of this Court set aside the judgment of the trial court by dismissing the suit. Ms. Deb (Gupta), learned counsel also contended that in the judgment of first appeal, the High Court incidentally observed that only the proforma defendant No.2 might command locus-standi if he had reasons to challenge the validity or legality of abovesaid gift deed dated 30.06.2010. Therefore, according to Ms. Deb (Gupta), learned counsel, though previous decree was set aside by the High Court on the ground of maintainability of the suit but the observation of the Court that it was a void deed was not disturbed.

[7] Learned counsel further argued that when the allegation of fraud was there, there could be no limitation period prescribed for instituting the subsequent suit by the appellant and in this regard she relied on a decision of this Court in the case of ***Sri Sanjit Poddar vs. Smt. Jayanti Dey [Dhupi] & Ors., RSA No.08 of 2020*** decided on 31.05.2021, wherein another coordinate bench of this Court observed that when an instrument of lease is void or nullity in the eye of law, no court of law can decide any right in favour of a person on the basis of the said lease deed and so far the question of limitation is concerned, for such void instrument no limitation would apply and from the date of knowledge as regards the status of the document the suit can be filed by the person whose right is affected by execution of such deed within the prescribed limitation. Learned counsel, Ms. Deb

Gupta continued to bolster her submission that when the gift deed itself was void, it was *non-est* in the eye of law and no separate declaration was required to be sought for getting the same struck down and moreover, the limitation would also not run in that case.

[8] Learned counsel also argued that apart from declaring the said gift deed void, the plaintiff also sought relief of recovery of possession which was not time barred; but such submission appears to be beyond the record as no such relief for recovery of possession was made in the plaint. Anyway, Ms. Deb (Gupta), learned counsel finally relied on a decision of Hon'ble Supreme Court in ***Saranpal Kaur Anand vs. Praduman Singh Chandhok & Ors. [(2022) 8 SCC 401]*** in the matter of principles to be applied for invoking jurisdiction under Order VII, rule 11 CPC, and the relevant Para No.43 is extracted below:

"43. The basic postulate underlined in clause (a) and clause (d) of Rule 11 Order 7 is that while rejecting the plaint under the said provisions, the court is required to see only the averments made in the plaint and the documents, if any, annexed to the plaint, and not to the written statement or other documents which are not part of the plaint. In *Kamala v. K.T. Eshwara Sa (2008) 12 SCC 661*, it has been observed that for the purpose of invoking Order 7 Rule 11 (d) CPC, no amount of evidence can be looked into and that the conclusion that the suit is barred under any law must be drawn from the averments made in the plaint. To be precise, it was held as under:- (SCC pp.668-69, paras 21-22 & 25)

"21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. *Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up.* Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. *What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint.* For that

purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. *Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.*

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

* * * *

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact of law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for registration of plaint should be entertained.”

(emphasis supplied)

At para 11, it was also observed that Section 17 of the Limitation Act does not defer the starting point of limitation merely because the defendant has committed a fraud. Section 17 does not encompass all kinds of frauds, but specific situations covered by clauses (a) to (d) to Section 17(1) of the Limitation Act. Sections 17(1)(b) and (d) encompass only those fraudulent documents or acts of concealment of documents which have the effect of suppressing the knowledge entitling the party to pursue his legal remedy. Once a party becomes aware of antecedent facts necessary to pursue legal proceedings, the period of limitation commences.

[9] Ms. Deb (Gupta), learned counsel also referred to another decision of Allahabad High Court in **Jai Prakash Singh vs. Bachchu Lal & Ors. [2019 SCC OnLine All 3522]** wherein

reference was made to another decision of Allahabad High Court in case of **Ram Padarath vs. 2nd Addl. D.J & Ors. [1988 SCC OnLine All 685]** to the effect that so far as voidable documents like those obtained by practising coercion, fraud, misrepresentation, undue influence etc., are concerned, their legal effect cannot be put to an end without its cancellation. But a void document is not required to be cancelled necessarily.

[10] As regards the point as raised by Ms. S. Deb (Gupta), learned counsel that the impugned gift deed was void ab-initio is concerned, this Court does not find much force in such submission, for, in view of provision of Section 19 of the Contract Act, 1872, it is a voidable document. So far the submission relating to institution of previous suit by daughter of the appellant vis-a-vis the observations and decisions of the Courts are concerned, same also cannot be taken into consideration at this stage as same has not been part of the plaint except the assertions made in the Para 8 of the plaint as extracted above. Under Article 59 of the Limitation Act, 1963, to cancel or set aside an instrument or decree or for the rescission of a contract, a suit is required to be filed within three years when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

[11] As per the plaint's version itself, the appellant came to know about the fraudulent activities of defendant No.4 and others

first on 17.01.2014 but the suit was filed much beyond the period of three years therefrom. Though the appellant has given some reference of the previous suit bearing No. Title Suit 10 of 2014 and RFA No.21 of 2015 but the plaint's averments are silent as to who filed that suit. No specific averments are also made in the plaint to get benefit of exclusion of period of limitation under Section 14 of the Limitation Act, 1963. Rather, at Para 14 of the plaint as extracted above, the plaintiff has admitted that the suit was barred by limitation and therefore, a separate petition was filed along with the plaint seeking condonation of delay of 73 days in instituting the suit. Said petition is, however, not placed before this Court. In fact, Section 5 of the Limitation Act, 1963 has no applicability in case of any original suit, unless any special enactment is there in any statute making the same applicable. Law is already settled that while rejecting the plaint, Court is to confine itself only to averments made in the plaint and documents, if any, annexed to the plaint and not any other material. In fact, no document has been annexed with the plaint in the case in hand, but learned trial court travelled beyond its jurisdiction at this stage by referring to the observation made in RFA No.21 of 2015 by the High Court. Said judgment was not part of the plaint. Anyway, such defect will not change the situation as already discussed above, from the plaint's averments itself, it is apparent that the suit is time barred.

For the reasons as discussed above, it is held that learned trial court and the First Appellate Court committed no

perversity in rejecting the plaint and therefore, no substantial question of law is found involved in the second appeal for entering into the same and accordingly the appeal is disposed of being not admitted.

Pending application(s), if any, also stands disposed of.

JUDGE

