

*** HIGH COURT OF DELHI AT NEW DELHI**

+ RSA No.91/2015

Date of Decision : 13.03.2015

SHRIMATI ANGOORI DEVI Appellant
Through: Mr.Devraj Singh, Adv.

Versus

SHRI M.B. TIWARI & ORS. ... Respondent
Through: Mr.Sunil Sharma, APP.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J (ORAL).

1. This is a regular second appeal filed by the appellant against order dated 7th November, 2014, by virtue of which, the order of the Civil Judge, rejecting the plaint of the plaintiff-appellant under Order VII Rule 11 CPC has been upheld.

2. I have heard Mr.Devraj Singh, the learned counsel for the appellant. It has been contended by the learned counsel for the appellant that the suit of the plaintiff-appellant for possession and permanent injunction has been rejected by the learned Civil Judge as well as the learned Appellate Court erroneously by taking the

period of limitation not from the date, when the respondent tried to register the agreement to sell dated 22.12.2003 and the subsequent agreement dated 7/9.09.2005.

3. It is contented since the respondent-plaintiff sought to register the agreement only some time on 10.01.2011 that is the day when 'cause of action' accrues to him and, accordingly, the plaint was within limitation. For this purpose, the learned counsel has placed reliance on two judgments Rukhmabai Vs. Laxminarayan & Ors., **AIR 1960 SC 335** and Nanak Chand & Ors. Vs. Raja Rakesh & Ors., **191 (2012) DLT 454**.

4. I have considered the submission and gone through the judgments.

5. At the outset, I must state that the two judgments, which have been relied upon by the appellant, are not at all applicable to the facts of the case. The Apex Court in Haryana Financial Corporation Vs. Jagdamba Oil Mills & Anr., **AIR 2002 SC 834** case has categorically stated that before a principle of law laid down in a particular judgment is made applicable to any case the Courts must

co-relate the facts in the context in which the law has been laid down with the facts of the case in which it is sought to be applied. It has categorically observed that the application of law is not to be done like a mathematical proposition. There is no co-relation between the facts of the case, which have been relied upon by the appellant with the facts of the case in hand. Therefore, the judgments cited have no application.

6. In order to see the correctness of the concurrent finding rejecting the case of the appellant, it would suffice to mention that the appellant filed a suit seeking a declaration that agreement dated 22.12.2003 and the subsequent agreement dated 07/9.09.2005 be declared as null and void as the same were against the provisions of law. A decree for permanent injunction was also sought against the defendant No.1, seeking a restraint that defendant No.1 should not register any sale deed executed by the defendant Nos.2 and 3 and defendant Nos.2 & 4 be restrained from transferring, alienating and creating any third party interest.

7. A perusal of the aforesaid reliefs would clearly show that the declaration, which was sought by the plaintiff-appellant, was the principal relief, while as permanent injunction was only a subsidiary relief to the main relief.

8. The respondent filed an application under Order VII Rule 11 CPC raising objection regarding the maintainability of the plaint on the ground of the same being barred by limitation. The trial Court accepted the plea of the respondent-defendant and the said plea was also upheld by the first Appellate Court.

9. In order to see whether the said plea has been rightly accepted or not it may be pertinent here to mention that the appellant-plaintiff in his own plaint has averred at para 19 that **“cause of action for filing the present suit arose in favour of the plaintiff and against the defendant Nos.2 on 4th to 9th September, 2005, when the compromise was arrived at between the plaintiff and the defendant No.2”**. Thereafter he goes on to aver that ‘cause of action’ further arose on different dates.

9. The law regarding limitation is very clear and is enshrined in Section 9 of the Limitation Act, 1963 which clearly lays down that once the 'cause of action' accrues the period of limitation starts running and if the period of limitation starts running then no subsequent inability or disability will stop the same thereby meaning that the period of limitation is like a stop clock which once put into motion does not get stopped by any subsequent interjection.

10. In the instant case, the plaintiff has himself stated that the 'cause of action' accrued to him on 9th September, 2005. Having made these averments the period of limitation seeking declaration starts running from the next date to 9th September, 2005, which would be 10th September, 2005 and would come to an end on 9th September, 2008 that is after expiry of three years, while as the suit has been filed some time in 2011.

11. The plaintiff after having made this mistake in the averments mentioned in the plaint with regard to date of accrual of 'cause of action' cannot be permitted to retrace his steps and take the period

of limitation from the date from, which the agreement was sought to be registered or notice was given by him to the defendant No.1.

12. On the same analogy, the learned trial Court has rejected the plaint, and the judgment has been upheld by the first appellate Court. Accordingly, I find that the submissions made by the learned counsel for the appellant do not raise any question of law much less a substantial question of law as the question of limitation in the present case is a question of fact.

13. The appeal is totally misconceived and is dismissed.

V.K. SHALI, J.

MARCH 13, 2015
SS