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

% *Date of Decision : July 31, 2015*

+ **RFA(OS) 107/2014**

SUSHIL JAIN

..... Appellant

Represented by: Mr.Ashish Mohan, Advocate with
Mr.Varun Garg, Advocate

versus

RITU JAIN & ORS

..... Respondents

Represented by: Mr.Pradeep Aggarwal, Advocate with
Ms.Vivya Nagpal, Advocate for R-1
Mr.Pankaj Sinha, Advocate with
Ms.Nupur Grover, Advocate for R-5

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Way back in 1930, in the decision reported as AIR 1930 PC 270 *Mt.Bolo v. Mt.Koklan*, Sir Binod Mitter, speaking for the Council, with reference to Article 120 of the Limitation Act, 1908, which provision correspondence to Article 113 of the Limitation Act, 1963 stated as under: -

“There can be no “right to sue” until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.”

2. The view was cited with approval the next year in the decision reported as AIR 1931 PC 89 *Gobinda Narayan v. Sham Lal*. It was held that the expression ‘right to sue’ means the right to bring the particular suit

with reference to which the plea of limitation is raised and that the starting point for limitation is when the rights are invaded.

3. The aforesaid views were summed up by the Supreme Court in the decision reported as AIR 1960 SC 335 Rukhmabai v.Laxminarayan in the following words: -

“The legal position may be briefly stated thus: the right to sue under Art.120 of the Lim. Act accrues when the defendant has clearly and unequivocally threatened to infringe, the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.”

4. Aforesaid three decisions were noted with approval by a Division Bench of this Court in the decision reported as AIR 1985 Delhi 358 Shah Construction Company Ltd.,Bombay v. Municipal Corporation of Delhi.

5. With the aforesaid understanding of the law we note the pleadings of the appellant in paragraph 6 of the plaint filed by him regarding the accrual of the cause of action. It reads as under:-

“6. That the cause of action firstly arose on 1996-97 when the suit property was purchased by the Plaintiff benami in the name of his wife i.e. Defendant No.1 and the payment in respect of the same was paid by the Plaintiff from his various accounts. It again arose when in lieu of the sale consideration, registered General Power of Attorney, Special Power of Attorney and Will was executed in favour of the Plaintiff in respect of the suit property. It again arose on various occasions when the complaints were made against the Defendant No.1. It again arose on 03.08.2010 when the Plaintiff came to know that the Defendant No.1 had got executed and registered a Sale Deed dated 30.03.2010 in her favour from defendant No.2 to 4 in

respect of said property. It again arose on 12.09.2010 when the Plaintiff came to know that the Defendant No.1 is in the process of illegally and unlawfully disposing of the suit property of which otherwise the Plaintiff is the owner. The cause of action is still subsisting and continuing as the above threats are still continuing and subsisting.”

6. The case of the appellant is that the first respondent (impleaded as defendant No.1 in the suit) is his wife and when the chemistry between the two was not fouled by the economics, he paid ₹22,25,000/- (Rupees Twenty Two Lacs and Twenty Five Thousand only) to Manoj Mehra, Madhu Mehra and Manish Arora (impleaded as defendants No.2 to 4 in the suit) for purchase of property bearing No.27, 2nd Floor, Mandakini NRI Complex, Greater Kailash Part IV, New Delhi as full and final sale consideration and got executed an agreement to sell dated January 16, 1996 in favour of his wife i.e. defendants 2 to 4, as sellers, agreed to sell the property in question to his wife as the purchaser. On March 27, 1997 a general power of attorney was executed by defendants No.2 to 4 in his favour authorizing him to deal with the property. He pleaded that relations between him and his wife soured and the two parted physical company on October 07, 2009. He pleaded that he learnt in the evening of November 11, 2010 that his wife had got a sale-deed executed in her name with the executants being defendants No.2 to 4. The prayer made in the suit, on aforesaid pleadings, was to declare the sale-deed dated March 30, 2010, knowledge whereof was gained by him on September 12, 2010, as null and void. He prayed that the same be cancelled. He sought a declaration of being declared the lawful owner of the property.

7. Vide impugned order dated May 19, 2014, the learned Single Judge

has held that the suit was barred by limitation and for which the pleadings in paragraph 6 of the plaint concerning accrual of cause of action have been relied upon by the learned Single Judge. The learned Single Judge has held that since the appellant himself pleaded that the cause of action accrued to him in the year 1996-97 when defendants 2 to 4 executed an agreement to sell in the name of his wife the suit had to be filed within 3 years because Article 58 of the Ist Schedule to the Limitation Act, 1963 provided the period of limitation to be three years when the cause of action accrued.

8. Whereas pleadings of fact have to be attributed to the litigating parties, pleadings of law are the ink and the thought of the author of the pleading i.e. the lawyer. How would a client know as to how a cause of action is to be pleaded.

9. The learned Single Judge has fallen into error by going by the literal words of paragraph 6 of the plaint. The learned Single Judge overlooked the fact that the counsel was thoroughly confused by pleading what was the cause of action and when did the right to sue accrue. Needless to state a pleading of the cause of action required the appellant to plead all facts to sustain the right and then to state the act of wrong committed by the defendants. It was the act of wrong which gave birth to the right to sue; and we simply highlight that limitation commences to obtain a decree for declaration when the right to sue first accrues and has no concern with an event which constitutes a part of the cause of action.

10. Since the declaration sought essentially concerned the sale-deed dated March 30, 2010, the plaint which was filed in September 20, 2010 was well within the period of limitation.

11. Clarifying that since the learned Single Judge has rejected the plaint

holding the suit to be barred by limitation, our instant decision would relate only to the issue of limitation and any other issue concerning the maintainability of the suit or its sustainability would be decided by the learned Single Judge, we allow the appeal and set aside the impugned order dated May 19, 2014.

12. CS (OS) No.1977/2010 is restored. It shall be listed for directions before the Roster Judge on August 17, 2015.

13. Parties shall bear their own costs in the appeal.

CM No.11760/2014

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 31, 2015

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