

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

+ **CS(OS) No.2798/2011**

% **19th October, 2015**

SH. SUSHIL YADAV AND ANR. Plaintiffs
Through: None.

Versus

M/S VALLEY VIEW DEVELOPERS PVT LTD AND ORS.

..... Defendants
Through: Mr. Sanjay Manchanda, Advocate
with Mr. Anand Chaudhuri, Advocate
for defendant Nos.1 and 5.
Mr. Rajesh Yadav, Advocate for
defendant No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. On the first call, no one appeared for the plaintiffs and therefore the matter was passed over. On the second call, no one appears for the plaintiffs and counsels appearing for the defendant nos.1, 2 and 5 very vehemently oppose the adjournment as it is stated that plaintiffs are deliberately not appearing so as to avoid a decision in the suit which is

barred by limitation and therefore issues do not have to be framed, and for which purpose the suit is listed today.

2. The subject suit is a suit for declaration, cancellation and permanent injunction by which the plaintiffs seek declaration and cancellation of sale deeds of different dates as also cancellation of a general power of attorney and a Will. The reliefs sought with respect to the documents can be understood from the prayer clause of the plaint and which prayer clause reads as under:-

- “a. Pass the decree of declaration thereby declaring the following sale deed as null and void qua the share of Late Sh. Dharam Singh, plaintiff’s father:
 - i. Sale deed bearing Registration no.6188 Addl. Book No.I, Vol. No.1160 pages 33-40 dated 2.5.1995.
 - ii. ii. Sale deed bearing Registration no.7360 Addl. Book No.I, Vol. No.841 pages 1-8 dated 26.8.1996.
 - iii. iii. Sale deed bearing Registration no.7362 Addl. Book No.I, Vol. No.841 pages 18-23 dated 26.5.1996.
 - iv. iv. Sale deed bearing Registration no.7358 Addl. Book No.I, Vol. No.840 pages 184-191 dated 26.8.1996.
 - v. v. Sale deed bearing Registration no.6186 Addl. Book No.I, Vol. No.1160 pages 18-25 dated 5.6.1997.
 - vi. vi. Sale deed bearing Registration no.4128 Addl. Book No.I, Vol. No.397 pages 42-48 dated 13.12.2000.
- b. Pass the decree of declaration thereby declaring General Power of Attorney, registered vide registration no.1089, Book no.IV, volume no.2090 on pages no.158-162 dated 24.2.94, as null and void. It is further prayed that the decree of cancellation in respect of the above said GPA may kindly be passed.

- c. Pass a decree of declaration thereby declaring the will in favour of the defendant number 1, which was registered as registration no.951 Addl. Book no.III, volume no.766 on pages 100 and 101 dated 24.2.1994, as null and void. It is further prayed that the decree of cancellation in respect of the above said will may kindly be passed.
- d. Issue direction to the concern Sub-Registrar directing him to cancel the registration of the above said documents/instruments registered with its office.
- e. Pass a decree of the permanent injunction in favour of the plaintiff and against the defendants, restraining thereby the defendants, their associates, employees agents and nominees etc from dispossess in the plaintiff from the land admeasuring about 3 bighas, falling in khasra no.861(1-10), 901(0-10) and 807(1-0), situated within the revenue estate of village Rajokari, New Delhi.”

3. The suit land is described in para 1 of the plaint which reads as under:-

“1. That the father of the plaintiffs namely Sh. Dharam Singh was bhumidhar of $1/36^{\text{th}}$ share of the land bearing khasra no.806 (4-16), 807 (4-16), 808 (3-6), 809 (6-16), 854 (4-16), 857/2 (1-3), 858 (4-16), 859 (4-16), 860 (4-16), 861 (4-16), 864/2 (2-12), 865 (4-16), 866/1 (0-16), 871/2 (3-16), 872/1 (2-4), 897/1 (2-8), 898 (4-16), 900 (4-16), 901 (7-4), 902(2-18), 903 (4-16), 904-907 (4-16), 908 (6-10), 909-910 (4-16), 978 (4-9), 993 (4-9), 1047 (1-0), 1053/1(0-9) and 1053/2(0-13) situated within the revenue estate of village Rajokari. He was in actual cultivatory possession of his total area of about 3 bighas and 13 biswas, out of the above said land, which was well demarcated, pursuant to family settlement amongst his father and forefather.”

4. The cause of action as stated in the plaint is that the defendant no.5 Sh. Ramesh Chander Aggarwal approached the father of the plaintiffs in the year 1994 and offered to purchase his $1/36^{\text{th}}$ share in the land bearing

khasra numbers 806 (4-16), 808(3-6), 809(6-16), 897/1(2-8), 898(4-16), total admeasuring about 13 biswas, out of the suit land. It is further pleaded that the father of the plaintiffs was in need of money and therefore out of about 3 bighas and 13 biswas of land belonging to the father of the plaintiffs, the father of the plaintiffs decided to sell only 13 biswas and kept 3 bighas of land for himself. For this transaction, the father of the plaintiffs entered into documentation by signing on 24.2.1994 agreement to sell, GPA etc. The documents being GPA and Will are registered before sub-Registrar as stated in para 6 of the plaint. Plaintiffs have further pleaded that the father of the plaintiffs expired on 4.11.1999 leaving behind the plaintiffs as the only male successors besides their mother. The mother of the plaintiffs has also expired on 12.3.2006. It is argued that there was a fraud played upon the father of the plaintiffs inasmuch as it transpired when the plaintiffs obtained a khatoni of the land that $1/36^{\text{th}}$ share of only 5 bighas and 12 biswas was mutated in their names while the other entire holding of their father had already been mutated by seven different mutation orders in favour of different persons. Fraud is pleaded by the plaintiffs to have been played upon the father of the plaintiffs by the defendant no.5 who is said to have obtained signatures of the father of the plaintiffs on GPA in favour of one Sh. Prakash Sharma and a Will in his favour, of the entire holding of the

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father of the plaintiffs instead of the land falling in khasra no.806(4-16), 808(3-6), 809(6-16), 897/1(2-8), 898(4-16) and which was actually intended to be sold by the father of the plaintiffs. Para 13 of the plaint states that signatures of the father of the plaintiffs were obtained fraudulently and by misrepresentation and that the documents are sham and void having no force in the eyes of law. This misrepresentation and fraud against the father of the plaintiffs by defendant no.5 is again pleaded in para 15 of the plaint. On these averments, plaintiffs have claimed the reliefs of declaration etc in the suit.

5. Learned counsels for the defendants argue that plaintiffs are admittedly claiming through their father and rights of the plaintiffs therefore cannot be better than their father. Putting it in other words, it is argued that if the father of the plaintiffs could not have filed the present suit in the year 2011 as the suit will be barred under Article 59 of the Limitation Act, 1963, plaintiffs also cannot file the suit which is barred by Article 59 of the Limitation Act as per which a suit to challenge voidable documents has to be filed within three years of execution of documents i.e the present suit had to be filed for challenging the documents of the year 1994 by 1997, but the suit has been filed 17 years later in 2011. Reliance is placed upon the judgment

of the Supreme Court in the case of ***Prem Singh and Others Vs. Birbal and Others (2006) 5 SCC 353*** which pronounces upon the applicability of Article 59 of the Limitation Act, 1963 by differentiating between void documents and voidable documents i.e voidable documents under Article 59 of the Limitation Act would be those documents when averments as to coercion, undue influence, fraud etc are required to be proved by a person who is a party to the documents sought to be declared void. The relevant paras in the case of ***Prem Singh and Others (supra)*** are paras 17 and 18 and which paras read as under:-

“17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary article would be.

18. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. (See *Unni v. Kunchi Amma: ILR (1891) 14 Mad 26* and *Sheo Shankar Gir v. Ram Shewak Chowdhri: ILR (1897) 24 Cal 77.*)”

6. I have already stated above the gist of the plaint and at this stage in order to understand that the suit will fall under Article 59 of the Limitation Act, 1963, it is required to reproduce paras 13 and 15 of the plaint and these paras read as under:-

“13. That the plaintiffs immediately applied for the copies of the mutation proceedings and orders, which were issued on 5.5.2011. It was revealed to the plaintiffs that the defendant number 5 had obtained the signatures of father of the plaintiffs on GPA in favour of one Sh. Prakash Sharma and a will in his favour, in respect of his entire holding instead of the land bearing khasra no.806(4-16), 808(3-6), 809(6-16), 897/1(2-8), 898(4-16), which was actually intended to sell by the father of the plaintiffs. The signatures were obtained by misrepresentation and fraudulently, as such, the GPA and other documents in respect of entire holding are sham, void having no legal force in the eyes of law.

XXXXX

15. That thereafter, the plaintiffs become aware that the above said Gen Power of attorney in favour of one Shri Prakash Sharma is registered as registration no.1089, Book no.IV, volume no.2090 on pages no.158-162 dated 24.2.94. Likewise, the will in favour of the defendant number 5, was registered vide registration no.951 Addl. Book no. III, volume no.766 on pages 100 and 101 dated 24.2.1994. These documents were obtained by the defendant no.5 by misrepresentation and fraudulently just to grab the plaintiffs land. In fact, the father of the plaintiffs intended only to execute General Power of Attorney and the will in favour of the defendant no.5 or his nominee, in respect of his 1/36th share in the land bearing khasra no.806(4-16), 808(3-6), 809(6-16), 897/1(2-8), 898(4-16) only but the defendant no.5 obtained his signatures on the impugned General Power of Attorney and will in which, his other land was also mention. As such, the impugned General Power of Attorney and will are sham, illegal and non-operating in respect of the other land of the father of the plaintiffs except the land bearing khasra numbers 806(4-16), 808(3-6), 809(6-16), 897/1(2-8), 898(4-16) situated within the revenue estate of village Rajokari.”

7. A reading of the aforesaid two paragraphs makes it clear that the plaintiffs claim that documents of the year 1994 being agreement to sell, GPA and Will etc were got executed by the defendant no.5 under misrepresentation and fraud. Clearly therefore the suit is a suit which will be

covered under Article 59 of the Limitation Act and which Article 59 of the Schedule of the Limitation Act reads as under:-

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Article	Description of suit	Period of Limitation	Time from which period begins to run
59	To cancel or set aside an instrument or decree or for the rescission of a contract	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.

”

8. The plaintiffs are claiming through their father and the father himself was bound within three years from execution of the documents of the year 1994 to seek declaration/cancellation of the documents on the alleged ground of fraud, misrepresentation etc. Since the father did not file the suit within limitation, the plaintiffs who stepped into the shoes of the father are also bound by the provision of Article 59 of the Limitation Act, 1963 that they cannot in the year 2011 seek declaration as void i.e effectively cancellation of the documents which were executed around 17 years prior to the filing of the present suit.

9. In view of the above, the suit is dismissed as barred by limitation by exercising powers by this Court under Order XII Rule 6 of the

Code of Civil Procedure, 1908 as prayed on behalf of the defendants.

Parties are left to bear their own costs.

OCTOBER 19, 2015

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VALMIKI J. MEHTA, J.