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

\+ CS(OS) No. 1908/2015 and IA No. 13346/2015

SHRI HARI RAM ..... Plaintiff
Through : Mr. S. C. Phogat, Adv.

versus

SMT. SHANTI DEVI & ORS. ..... Defendants
Through : None

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

<u>O R D E R</u>
% 05.10.2015

1. The present suit for declaration and permanent injunction has been instituted by the plaintiff praying, inter alia, for the following reliefs:

> "(i) Direct the defendants to place on record the copy of Regd. Sale deed No.17999, Addl. Book No.1, Vol. No.3206, pages 58 to 66 dated 6.12.2010 for Rs.32,50,000/- executed between defendant no.1 and defendant no.2 to 5.
>
> (ii) Pass a decree of Declaration/cancellation in favour of the plaintiff and against the defendants thereby declaring/cancelling the Sale Deed bearing Documents No.17999, Addl. Book No.1, Vol. No.3206, Pages 58 to 66 dated 6.12.2010 in respect of property/plot measuring 475 sq. yards i.e. $1/4^{th}$ share in comprising Kh.No.31/19/2 (1-18) situated in extended Lal Dora Abadi of Village Shakur Pur, Delhi-110034, as null and void.
>
> (iii) To pass a Decree of Permanent Injunction in favour of the plaintiff and against the defendants, thereby

> restraining the defendants, thereby restraining defendants, their, agents, servants, legal representative etc. from alienating, selling or creating any third party interest and dispossessing the plaintiff from the plot measuring 475 sq. yards i.e. 1/4th share in comprising Kh. No. 31/19/2 (-18) situated in extended Lal Dora Abadi of village Shakur Pur,Delhi-110034."

2. The case set up in the plaint is that the plaintiff is the owner and in possession of 1/4th share in the subject land along with his brother, Jagdish and some other relatives, who are also owners to the extent of 1/4th share. In the month of October, 1993, Shri Kishan Singh (deceased husband of the defendant No.1) had approached the plaintiff and asked him to execute documents for transferring his share in the subject land in the name of his brother, Jagdish and he had informed the plaintiff that Jagdish was unavailable due to some urgent work. The plaintiff claims to have signed some documents at the asking of the husband of the defendant No.1.

3. It has been averred that later on, in the month of January, 1994 Shri Jagdish had met the plaintiff who told him that he had been asked by the defendant No.1's husband (Kishan Singh) to get the papers prepared for transfer of the subject land in his favour. At that time, Jagdish had told the plaintiff that Kishan Singh might have played a fraud on him. Immediately thereafter, the plaintiff

claims to have contacted Kishan Singh on 27.1.1994 and asked him to hand over the papers which he had made him sign but the former had flatly refused to do so and he informed the plaintiff that he had got the plaintiff's 1/4th share in the subject land transferred in his wife's name, i.e., the defendant No.1 herein. On receiving this information, the plaintiff had served a legal notice dated 28.1.1994 on Shri Kishan Singh which was duly replied to by him, through counsel, vide letter dated 10.2.1994.

4. Without throwing any light on the stand taken by Kishan Singh in his reply refuting inter alia, the plaintiff's claim and asserting that he had executed a set of documents for sale of his 1/4th share in the subject land in favour of the defendant No.1, including a payment receipt, affidavit, registered will etc., the plaintiff has gone on to state in the plaint that on 17.2.1994, he came to know that the defendant No.1 and her husband were negotiating with some persons in the village to sell the subject land and he had immediately filed a suit for permanent injunction against them in the very same year, which was ultimately dismissed on merits by the trial court.

5. In the captioned suit instituted by the plaintiff against defendant No.1 and her husband, he had prayed for a decree of

permanent injunction for restraining the defendants, their agents, servants, legal representative, etc., from alienating, selling or creating any third party interest and dispossessing him from the subject land to the extent of his share therein.

6. Defendant No.1 and her husband had contested the said suit and asserted in their written statement that the plaintiff had concealed the correct facts from the Court and he was not in possession of the subject land. They had averred that on 21.10.1993, the plaintiff had in fact agreed to sell his $1/4^{th}$ share in the subject land in favour of the defendant No.1 and he had received the entire sale consideration against a valid receipt. The plaintiff had also executed other supporting documents of sale including an agreement to sell, affidavit, Will, etc., in favour of the defendant No.1 and had handed over to her, the possession of his $1/4^{th}$ share in the subject land. The defendants had contended that under the garb of a suit for permanent and mandatory injunction, the plaintiff was in fact seeking the relief of declaration and cancellation of the sale documents, which is impermissible and accordingly they had prayed for dismissal of the suit.

7. On completion of pleadings, the following issues were framed by the learned Civil Judge on 5.7.1996 :

"1. Whether there is no cause of action in filing the suit?
OPD

2. Whether the suit of the plaintiff is bad for misjoinder of necessary parties?
OPD

3. Whether suit of the plaintiff is not maintainable in present form?
OPD.

4. Whether the suit is properly valued for purpose of court fees & jurisdiction?
OPD

5. Whether plaintiff is entitled to the injunction as prayed for?
OPP

6. Relief."

8. After the evidence was recorded in the suit, the learned Civil Judge had dismissed the same vide judgment dated 03.10.2001 and observed that under the garb of filing a suit for injunction, the plaintiff was actually seeking the relief of declaration and cancellation of documents and that he had not approached the court with clean hands and had concealed material facts. It was also noted that plaintiff had failed to disclose the fact that he had personally appeared before the Sub-Registrar on 29.10.1993 and had executed a Will in favour of the defendant No.1 in respect of the subject land. Accordingly, all the issues framed in the said suit

were decided against the plaintiff and the suit was dismissed.

9. Aggrieved by the aforesaid decision, the plaintiff had filed an appeal before the learned Senior Civil Judge which was later on withdrawn by him. However, no averment has been made by the plaintiff in the plaint with regard to the date of withdrawal of the said appeal; nor is the counsel for the plaintiff in a position to inform the Court of the exact date.

10. After the passage of almost a decade and half, the plaintiff has instituted the present suit on the ground that in the last week of September, 2014, defendant No.5, Mahesh Kumar had visited him and informed him that he and his brother had purchased the subject land from the defendant No.1 through a registered sale deed dated 6.12.2010, and defendant No.5 was threatening him to vacate the same. The plaintiff has thus instituted the present suit claiming *inter alia* that Sh. Kishan Singh, deceased husband of the defendant No.1 had fraudulently got the plaintiff to sign the documents of sale in respect of his $1/4^{th}$ share in the subject land in favour of his wife and she had in turn illegally sold the said land to the defendant No.5 by virtue of a sale deed dated 6.12.2010, which ought to be declared as null and void.

11. The present suit was listed for admission on 8.7.2015 and on

the said date, the Court had expressed a *prima facie* view that it appears to be barred by limitation particularly in the light of the averments made in the cause of action para of the plaint. It was also noticed that the plaintiff had cursorily referred to the institution of the earlier suit for permanent injunction against the defendant No.1 and her husband in respect of the subject land, but he had failed to file a copy of the judgment dated 3.10.2001, passed by the learned Civil Judge. While directing the plaintiff to file the relevant documents, the case was adjourned to 22.7.2015, for arguments on the maintainability of the suit.

12. On 22.7.2015, lawyers were abstaining from appearing in Court and as a result, the case as adjourned to 24.8.2015. On 24.8.2015 the plaintiff had appeared in person and sought an adjournment. At his request, the case was adjourned for today. It was, however, made clear that no further accommodation will be granted to the counsel for the plaintiff who ought to come prepared for arguments on the aspect noted above.

13. Today, learned counsel for the plaintiff argues that the suit is not barred by limitation and the relief prayed for here is entirely different from one that was prayed for in the earlier suit instituted by the plaintiff in the year 1994. He contends that in the earlier suit

only the relief of permanent injunction against defendant No.1 and her husband with respect to the subject land was prayed for whereas in the present suit, the plaintiff is asking for cancellation of the sale deed dated 6.2.2010, execution whereof came to his knowledge as recently as in September, 2014. He therefore, asserts that the present suit has been filed well within the period of limitation, reckoned from September, 2014.

14. To examine the aspect of limitation, in the first instance, it is necessary to refer to Articles 58 and 59 of Schedule 1 of the Limitation Act, 1963 which prescribe the period of limitation for filing a suit for a decree of declaration and for a decree of cancellation of an instrument, and state as below:-

The Schedule
Periods of Limitation
[See Sections 2(j) and 3]

First Division – Suits

PART III-Suits relating to Declarations			
	DESCRIPTION OF SUIT	**PERIOD OF LIMITATION**	**TIME FROM WHICH PERIOD BEGINS TO RUN**
58.	To obtain any other declaration	Three years	When the right to sue first accrues

PART IV-Suits relating to Decrees and Instruments			
	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.

It is also relevant to note that Section 9 the Limitation Act prescribes that once time has begun to run, no subsequent disability or inability to institute a suit or make an application, stops it.

15. To decide the issue of limitation, the averments made by the plaintiff in the cause of action para of the plaint gain significance and are reproduced herein below:-

> "13. That the cause of action arose in favour of the plaintiff and against the defendants in the month of October, 1993 when late Kishan Singh fraudulently got some paper signed by the plaintiff which were misused by defendant No. 1 and late Kishan Singh. The cause of action again arose on 27.1.94 when the plaintiff demanded the papers back from late Kishan Singh. The cause of action again on 28.1.94 when the plaintiff got issued legal notice. The cause of action further arose on 10.2.1994 when the husband of the defendant no. 1

replied to the legal notice. The cause of action further arose on 06.12.2010 when the defendant no. 1 illegally got the sale deed registered in name of defendant no. 2 to 5. The cause of action further arose in the last week of September, 2014 when Shri Manoj Kumar disclosed that they have purchased the plot in Kh. No. 38/11/13 (0-7) and on verification by the plaintiff, it was revealed that the defendant no. 1 also sold the plot in Kh. No. 31/19/2 (1-18) to the defendant no. 2 to 5 and the cause of action is still subsisting in favour of the plaintiff."

16. On a meaningful reading of the pleas taken in the plaint in conjunction with the cause of action para reproduced hereinabove, it is manifest that even as per the plaintiff, the cause of action to sue had arisen in his favour in month of October, 1993 when Sh. Kishan Singh, (husband of the defendant No.1) had "fraudulently" got some papers signed by the plaintiff which were allegedly misused by the husband and wife as long back as on 27.1.1994, when the plaintiff had demanded that the papers be returned to him and further, the cause of action had arisen on 28.1.1994, when the plaintiff had got a legal notice served on the defendant No.1 and her husband.

17. The law on the aspect of the date when the cause of action for instituting a suit arises, is well settled. In the case of Khatri Hotels vs. U.O.I. & Anr. **2011 (10) Scale 190**, when the Supreme Court was required to examine a situation where a right to sue

accrues on multiple causes of action and decide as to when will the period of limitation begin to run for instituting a suit, the following pertinent observations were made:-

> "24. The Limitation Act, 1963 (for short "the 1963 Act") prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 13 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Section 4 to 24, be dismissed even though limitation may not have been set up as defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the schedule.
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> 25. Article 58 of the 1963 Act, which has a bearing on the decision of this appeal, reads as under:
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> The Schedule
> Periods of Limitation
> [See Sections 2(j) and 3]
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> First Division - Suits

Description of suit	Period of limitation	Time from which period begins to run
PART III – Suits Relating to Declarations		
58. To obtain any other declaration.	Three years	When the right to sue first accrues."

> "26. Article 120 of the Indian Limitation Act, 1908 (for short, 'the 1908 Act') which was interpreted in the judgment relied upon by Shri Rohtagi reads as under:-

	Description of suit	Period of limitation	Time from which period begins to run
120.	Suit for which no period of limitation is provided elsewhere in this schedule.	Six years	When the right to sue accrues.”

27. **The differences which are discernible from the language of the above reproduced two articles are:**

(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo v. Mt. Koklan* and it was held: (IA p. 331)

> “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, a clear or unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.”

The same view was reiterated in *Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar* and *Gobinda Narayan Singh v. Sham Lal Singh*

29. In *Rukhmabai v. Laxminarayan*, the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (*Rukhmabai* case, AIR p. 349, para 33)

> "33. ….**The right to sue under Article 120 of the 1908 Act accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit.** Every threat by a party to such a right, however ineffective or 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."

> 30. **While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words `sue' and `accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."** (emphasis added)

18. Thus the Supreme Court had concluded that when it comes to computation of the period of limitation for instituting a suit, the said period will begin to run from the date when the right to sue has first accrued. It was clarified that the said right would first accrue under Article 58 of the Act when the right asserted in the suit is infringed upon or when there is clear or unequivocal threat to infringe that right.

19. In the present case, as per the averments made in the plaint,

which are taken as true and correct and accepted on their face value, the plaintiff was extended a threat by the defendant No.1 and her husband in respect of subject land in the month of October, 1993 which had compelled him to serve a legal notice on them on 28.1.1994. In these circumstances where the defendant no. 1 and her husband had allegedly extended a threat to the plaintiff and asserted a title on the subject land, the period of limitation for instituting a suit for declaration shall have to be computed under Article 58 and 59, from October, 1993 or at best, February, 1994 when the defendant no. 1 and her husband had first repudiated the pleas of ownership taken by the plaintiff in his legal notice dated 28.1.1994. However, the plaintiff elected to institute a suit only for the relief of permanent and mandatory injunction against the defendant no. 1 and her husband. While filing their written statement in the said suit, the defendant no. 1 and her husband had reiterated their stand that the plaintiff had sold his 1/4th share in the subject land in favour of the defendant no. 1by executing a set of sale documents. Despite the pleas taken by the defendants in the suit, the plaintiff did not take any steps to amend the plaint and ask for the relief of declaration and cancellation of documents in respect of the subject land, which was available to him.

20. The judgment dated 3.10.2001 passed by the trial court is a telling comment on the conduct of the plaintiff and the manner in which he had deliberately withheld material facts and approached the court with unclean hands. The learned Civil Judge had gone to the extent of observing that under the garb of instituting a suit for injunction, the plaintiff was seeking the relief of declaration and cancellation of documents, which is impermissible. Inspite of the said observations and dismissal of his suit, the plaintiff did not take any step to institute a fresh suit for declaration and cancellation of the sale documents executed in favour of the defendant no.1. Instead, he withdrew the appeal preferred by him against the judgment dated 3.10.2001.

21. In this background, for the learned counsel for the plaintiff to urge that for computing the period of limitation for instituting the present suit, the Court cannot take into consideration documents executed by the plaintiff in the year 1993, as they were unregistered, is fallacious and contrary to the settled legal position. The plaintiff was all along aware of the stand taken by the defendant no. 1 and her husband in respect of the subject land and was also conscious of the fact that his rights, if any, therein was under open threat from the defendant No.1 and her husband. This

position was crystallized when the defendant No.1's husband had specifically repudiated the assertions of fraud levelled by the plaintiff against him, in the reply dated 10.02.1994 issued in response to the plaintiff's legal notice dated 28.01.1994 and pleaded so in the written statement filed by them in the suit he had instituted.

22. The sale deed subsequently executed by the defendant No.1 in favour of the defendant No.5 on 06.12.2010 in respect of the subject land cannot give a fresh cause of action to the plaintiff to invoke his legal remedies for the simple reason that if his rights in the subject land were jeopardised by the defendant No.1 and her husband in the year 1993-1994, then the said threat had given rise to a compulsory cause of action in his favour and this shall have to be treated as the first date from which the right to sue for declaration would have to be computed for instituting a suit. If the plaintiff had a grievance in respect of the sale documents purportedly executed by him under ignorance or on misrepresentation, as alleged, then the moment he became aware of the alleged fraud played on him, he ought to have approached the Court for appropriate relief. Section 9 of the Limitation Act leaves no manner of doubt that once the time has begun to run, it

does not stop and no subsequent disability or inability to institute a suit would be a ground to extend the prescribed period of limitation.

23. Going by the pleas taken by the plaintiff in the plaint, the cause of action for instituting the suit had arisen in the year 1993-1994 and the period of three years reckoned therefrom would have expired in the year 1996-1997. However, he elected to file a misconceived suit in the year 1994, only asking for the relief of permanent injunction without seeking the relief of declaration and cancellation of sale documents, which was ultimately dismissed on merits vide judgment dated 03.10.2001. The said judgment has attained finality for the reason that the plaintiff had opted to withdraw the appeal preferred against the said decision, thus accepting the findings on merits returned by the trial court. In these circumstances, this Court has no hesitation in holding that the present suit is patently and hopelessly barred by limitation and is liable to be dismissed under Order VII Rule 11(d) of the CPC.

24. At this juncture, reliance is sought to be placed by learned counsel for the plaintiff on the judgment of the Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr. **183 (2011) DLT 1 (SC)** to contend that the legality and authenticity of documents like GPA, Will etc in respect of an

immovable property is questionable and in the absence of registration of the said documents, no right can flow in favour of the beneficiary and an agreement of sale itself does not create any interest or charge in a property. He submits that for an immovable property to be legally transferred, only a registered deed of conveyance is permissible and the documents in the nature of GPA, Will etc. that were executed in favour of the defendant No.1, cannot convey a title in her favour.

25. The decision in the case of Suraj Lamp (supra) cannot be of any assistance to the plaintiff in the case in hand for the reason that even in the said decision, the Supreme Court had hastened to clarify that the observations made therein were not intended to in any way affect the validity of the sale agreements and powers of attorney executed in genuine transactions and that the said transactions will be treated as complete transactions and further, that nothing can prevent the affected parties from getting registered, Deeds of Conveyance to complete their title. In this background, the plaintiff cannot be permitted to argue that the documents of sale executed by him in respect of the subject land in favour of the defendant No.1, as long back as in the year 1993, should be completely overlooked when computing the period of

limitation available in law for instituting the present suit or that the court must only take into consideration, the sale deed dated 06.12.2010, executed by the defendant No.1 in favour of defendants No.2 to 5 and the fact that the said transaction came to his knowledge in September, 2014, which would entitle him to institute a suit within a period of three years reckoned from the said date.

26. This is clearly a case where the plaintiff has tried to create an illusion of a cause of action by resting his suit on the Sale Deed dated 6.12.2010, executed by the defendant No.1 in favour of the defendants No.2 to 5 and on his plea that the said transaction came to his knowledge in September 2014, when neither of the two events have any relevance for computing the period of limitation for maintaining the present suit. The cause of action for instituting a suit for declaration and cancellation of documents first arose in the year 1993-94 and the period of limitation reckoned from the said date got extinguished in the year 1996-97.

27. Taking a cue from the decision of the Supreme Court in the case of T.Arivandandam Vs. T.V.Satyapal & Anr. reported as **(1977) 4 SCC 467**, wherein it was held that if on a meaningful and not formal reading of the plaint, it is found to be manifestly

vexatious and meritless, in the sense of not disclosing a right to sue, the court ought to exercise its powers under Order VII Rule 11 CPC, this court is of the opinion that the present suit is an ingenuous attempt on the part of the plaintiff to throw a cloud on the title of the subject land by seeking a decree of declaration and cancellation in respect of the Sale Deed dated 6.12.2010, without having taken any steps for seeking a declaration in respect of the documents of sale executed by him in favour of the defendant No.1 way back, in the year 1993. Such a suit is not only liable to be rejected under Order VII Rule 11 (d) of the C.P.C., being barred by limitation, it has also to be treated as an abuse of the process of the court and ought to be nipped in the bud. Accordingly, the present suit is dismissed as barred by limitation, along with the pending application.

HIMA KOHLI, J

OCTOBER 05, 2015
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