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

% *Date of Decision : August 12, 2015*

+ **RFA(OS) 78/2015**

VINAY KUMAR SHARDA Appellant

Represented by: Appellant in person

versus

PARAVEEN KUMAR KOHLI & ORS Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.14699/2015

Allowed subject to just exceptions.

CM Nos.14697-98/2015

For the reasons stated in the two applications the delay in filing and re-filing the appeal is condoned.

RFA (OS) No.78/2015

1. Yet another case of an ill-drafted plaint! The result? Rejection of the plaint on the very first date of hearing.
2. The appellant, who was the owner of property bearing Municipal No.7A/68 W.E.A.Karol Bagh, New Delhi, comprising a plot of land ad-measuring 173.3 square yards having thereon a ground floor, first floor and second floor with a terrace above the second floor, executed a general power of attorney in favour of one K.C.Sharma on August 27, 2001 authorizing

him to sell the first and the second floor. There is no mention in the said general power of attorney of terrace right above the second floor. The appellant thus retained the right, as owner, to deal with the ground floor by not empowering any person, much less K.C.Sharma to deal with the said ground floor. The appellant claims that since he did not authorize his general attorney to deal with the terrace, it would be apparent that the right to deal with the terrace would be his.

3. A sale-deed was executed on September 14, 2005 by K.C.Sharma on the strength of the general power of attorney executed by the appellant in his favour, in which a false recital was made that under the general power of attorney K.C.Sharma was authorized to sell, apart from the first and the second floor, even the terrace roof right.

4. The plaint was filed by the appellant on March 13, 2015 in which the grievance was to K.C.Sharma selling the roof rights i.e. the terrace and the appellant's access to the terrace being obstructed.

5. The suit was listed for admission on March 17, 2015. With reference to the recital in the sale-deed, and overlooking the general power of attorney executed by the appellant, the learned Single Judge has held that the appellant did not have any cause of action to sue, a reasoning which ex-facie is perverse for the reason the challenge was to the sale-deed and the argument was that under the general power of attorney executed by the appellant in favour of K.C.Sharma he had authorized K.C.Sharma to deal with only the first floor and the second floor. The learned Single Judge has also held that challenge to the sale-deed executed in the year 2005 had to be within three years and has accordingly held that the suit was barred by limitation.

6. Courts are meant for doing justice, and regrettably when counsel do not provide right assistance, the task of the Judge becomes more onerous. After all, the common man has a sense of justice and if he loses his case on technicalities or bad pleadings, the faith of the common man in the institution of justice recedes; and it therefore becomes the duty of a Judge to ensure that the light of justice continues to glow in the minds of the citizens of this country.

7. In the plaint, the lawyer engaged by the appellant, pleaded that the appellant was the owner of the first and the second floor of property No.7A/68, W.E.A., Karol Bagh, New Delhi along with the terrace above. Unfortunately the lawyer did not plead that the appellant was the owner of the entire property which included the ground floor as well. Pleading in the first paragraph of the plaint that the appellant was the owner of the first and the second floor with terrace above in the next paragraph it was pleaded that on August 27, 2001 the appellant authorized K.C.Sharma to sell the first and the second floor with no mention made to the terrace rights. In the third paragraph of the plaint it is pleaded that acting on the strength of the general power of attorney K.C.Sharma executed a sale-deed on September 14, 2005 selling not only the first and the second floor but even the terrace rights on the roof of the second floor which he was not empowered to sell. In paragraph 4 it is pleaded that approach from the ground floor to the terrace was through a staircase which was accessible to the appellant. In paragraph 5 it was pleaded that when recently the appellant wanted to go to the terrace he found that the design of the staircase had been changed in a manner where he could not access the same. He sent a notice to the defendants on December 27, 2014 asserting his right to the terrace and in reply the

defendants took the stand that they were the owners of the terrace right as well.

8. Without pleading that the appellant learnt about the existence of the sale-deed when the defendants sent a reply to the legal notice, it has been pleaded in the plaint that the defendants cannot have any right to the terrace.

9. The inartistic plaint is by not pleading that the appellant was the owner of the entire property and continues to be the owner of the ground floor as also the terrace right above the second floor roof. The inartistic pleading is not to plead that K.C.Sharma could act as the general attorney of the appellant only with respect to the powers vested in him under the general power of attorney executed by the appellant. The further inartistic pleading is not to plead that the defendants cannot claim any right through K.C.Sharma other than what K.C.Sharma had and for which the pleadings ought to have highlighted that since K.C.Sharma was acting on the strength of a registered general power of attorney the defendants would be deemed to have knowledge of the contents thereof. The further inartistic pleading is not to plead correctly the date when the cause of action accrued for purposes of computing limitation. It is trite that limitation commences when cause of action accrues and in the facts of the instant case the date of accrual of the cause of action would be when the defendants asserted the right under the sale-deeds or did an act which infringed the appellant's claim to the terrace.

10. We speak no further except to highlight that the pleadings have to be read in light of the documents and we find that there is a specific pleading that K.C.Sharma was not empowered to deal with the terrace under the general power of attorney, a plea which has been overlooked by the learned Single Judge.

11. Leaving the issue of limitation open to be decided keeping in view the pleadings of the parties which may ultimately emerge we dispose of the appeal setting aside the impugned order dated March 17, 2015 and we issue summons in the suit filed by the appellant. The suit is revived. Summons shall be issued in the suit to the defendants returnable before the learned Single Judge on October 12, 2015. Service would be effected by ordinary process as well as by Regd. A.D.Post. Process fee shall be filed in the suit within a week. The suit shall be listed before the Roster Judge on October 12, 2015.

12. No costs.

CM No.14696/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 12, 2015

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