

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

Judgment Reserved on: September 04, 2015

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Judgment Delivered on: September 11, 2015

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RFA(OS) 62/2015

SIRI BHAGWAN

..... Appellant

Represented by: Mr.Ravi Gupta, Sr.Advocate
instructed by Mr.Pankaj Vivek
and Mr.Sachin Jain, Advocates.

versus

M/S V B M ESTATES PVT LTD & ANR

..... Respondents

Represented by: Mr.Rajesh Yadav, Ms.Ruchira
Arora and Mr.Dhananjay
Mehlawat, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Siri Bhagwan the appellant herein filed a suit being CS(OS) No.2670/2014 before this Court, inter alia, seeking cancellation of the registered sale deed dated November 13, 2006, declaring him as owner of 2/9th share in land bearing Khasra No.852 (4-16) situated in the revenue estate of Village Rajokari, tehsil Vasant Vihar, New Delhi (in short the suit property) and restraining the defendants from dispossessing him from his undivided cultivatory possession of the suit property.

2. It was pleaded in the plaint by Siri Bhagwan that he was recorded co-owner in actual cultivatory possession of the 2/9th share of the suit property besides being the co-owner of other lands bearing khasra Nos.1117 (1-18), 1118(3-8), 1119(5-5), 1120(15-7) of Village Rajokari, Delhi. He produced

the fard khatoni paimaish of said Khata No.531 with respect to khasra No.852 (4-16) of Village Rajokari i.e. the suit property and the site plan. Siri Bhagwan stated that Pramod Aggarwal defendant No.2 in the suit offered to purchase the suit property on November 13, 2006 for a sum of ₹ One crore and paid a sum of ₹30 lakhs as advance and the balance was to be paid within 12 months. Pramod Agarwal took Siri Bhagwan to the office of Sub-Registrar at Kapeshera, Delhi and tendered a cheque for a sum of ₹30 lakhs as earnest money and took thumb impression and signatures of Siri Bhagwan on some typed papers which he could not understand being not versed in English language. Pramod Aggarwal represented that the said documents were deed of agreement to sell which were required to be registered. Though 12 months elapsed but Pramod Agarwal neither paid the balance amount nor turned up for execution and when Siri Bhagwan met him he was told that Pramod Agarwal did not have the balance amount and the same would be paid with 12% interest whenever the market recovered. Not hearing anything from Pramod Agarwal, Siri Bhagwan continued to enjoy his land as before November 13, 2006. In the first week of September 2013 Siri Bhagwan saw a notice regarding mutation of the suit property and upon enquiry from the Halqa Patwari it was revealed that defendant No.1 i.e. V.B.M. Estates Pvt.Ltd. (In short V.B.M. Estates) had applied for mutation on the basis of a release deed dated November 13, 2006. Thus for the first time in September 2013 Siri Bhagwan came to know about release deed which was registered on November 13, 2006 wherein Pramod Agarwal was shown as the authorised signatory of V.B.M.Estates. Siri Bhagwan appeared before the Tehsildar on September 10, 2013 when he did not give his consent to the mutation and got recorded his objection that he was in

possession of suit property and was yet to receive the sum. He further stated that once the money transaction would be over, he would come to give his statement. Since balance amount was not paid by the defendants and they were trying to get the mutation recorded in the garb of the release deed which was stated to be a deed of agreement for sale to Siri Bhagwan, he filed the suit.

3. In the written statement V.B.M.Estates and Pramod Agarwal, inter alia, took the pleas that the suit was without any cause of action, Siri Bhagwan had no locus standi to claim the relief, the suit was barred by limitation, suit for mere cancellation of the release deed and declaration of ownership without the relief of possession was not maintainable under Section 34 of the Specific Relief Act, the suit was barred under Section 185 of the Delhi Land Reforms Act, 1954 (in short the DLR Act). The defendant also took the plea that the execution of release deed has been admitted by Siri Bhagwan before the Tehsildar on September 10, 2013 during mutation proceedings. Hence now he cannot plead ignorance and go beyond the terms of the written document.

4. By the impugned judgment dated May 18, 2015 the learned Single Judge dismissed the suit being barred by limitation, no cause of action accrued in favour of Siri Bhagwan and that the suit for declaration as owner of suit property was barred under Section 185 of the DLR Act, hence the present appeal.

5. The learned Single Judge during the suit proceedings also recorded statement of Siri Bhagwan on SA under Order 10 CPC on May 18, 2015 which is reproduced as under:

“I am 9th class pass and I am plaintiff in this case. I am well

versed in Hindi language. However I cannot read English language. I stated that on 13.11.2006 a registered document had been entered into between myself and defendant No.2 which has been signed by me before the sub registrar. I had accepted a sum of ₹30.00 Lac in terms of that agreement. I did not know the contents of the agreement.

6. The bone of contention in the suit is the statement of Siri Bhagwan made before Tehsildar on September 10, 2013 which freely translated states as under:

“I got release deed of khasra No.852 (4-16) of 2/9th part measuring 1-3-13 biswas in Village Rajokari, in the year 2006. For the mutation I was called today. In this respect I state that at present at the spot I am in possession of the said land. Since the year 2006 the date when the land has been come to me till date is in my possession. I have transaction with M/s. V.B.M. My money transaction shall be completed. I will come for recording my statement at present is it under objection. Do not enter the mutation in the name of objector. Heard the statement and found correct.”

7. From this document it is thus evident that on September 10, 2013 Siri Bhagwan stated that ‘yes’ a document was executed but he was yet to receive the money from V.B.M.Estates and only thereafter he would be able to give his No Objection for mutation and at present he had objection for the same and that he was in possession of the property.

8. In the light of these facts the averment of Siri Bhagwan that not being well-conversant with English he was not aware of the contents of the documents and was informed that the same was a deed of agreement to sell and the sale deed would be executed on the balance payment of ₹70 lakhs cannot be brushed aside.

9. The learned Single Judge dismissed the suit being barred by limitation on the count that the release deed was executed on November 13, 2006 and the suit was instituted on August 20, 2014 which finding deserves to be set aside.

10. It is well settled that the cause of action to sue accrues to a person only when fraud comes to his knowledge and as per Article 59 of the Limitation Act the period of limitation starts when the facts entitling the plaintiff to have the instrument cancelled first become known to him. In the present case the same would be September 10, 2013 when he appeared before the Tehsildar and became aware that the document dated November 13, 2006 was not a deed for agreement to sell but a release deed. In the plaint Siri Bhagwan pleaded that cause of action to file the suit arose in the first week of September 2013 when he learnt that V.B.M.Estates had applied for mutation on the basis of release deed dated November 13, 2006 and on subsequent events. The suit was thus wrongly dismissed by the learned Single Judge holding it to be barred by limitation.

11. As regards the finding of the learned Single Judge of the suit being barred under Section 185 of the DLR Act the learned Single Judge failed to notice the decision in (2001) 3 SCC 24 Shri Ram Vs. ^{1st} Additional District Judge which was cited wherein the Supreme Court held that when a recorded tenure holder having prima-facie title in his favour and being in possession seeks cancellation of a void document obtained by fraud and impersonation, he need not file a suit for declaration before the revenue Court and the Civil Court had jurisdiction to decide such a suit for cancellation and injunction.

12. Supreme Court in Horil Vs. Keshav (2012) 5 SCC 525 held that

though the provisions of CPC have been made applicable to the proceedings under the U.P. Zamindari Abolition and Land Reforms Act but that would not make the authorities specified under Schedule II as “Court” under the Code and those authorities shall continue to be Courts of limited and restricted jurisdiction. The revenue Courts are neither equipped nor competent to affectively adjudicate upon allegations of fraud that have overtones of criminality and the Courts really skilled and experienced to try such issues are the Courts constituted under the CPC. It is well-settled that under Section 9 of the CPC, the Civil Court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other Tribunal or authority. It was further held that nothing in Order XXIII Rule 3A CPC bars the institution of a suit before the Civil Court even in regard to decrees or orders passed in suits and/or proceedings under different Statutes before a Court, Tribunal or authority of limited and restricted jurisdiction.

13. Horil Vs. Keshav (supra) was followed by the Division Bench of this Court in Mansa Ram Vs. Tilak & Anr. RFA (OS) 12/2012 wherein while dealing with an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the suit filed by the appellant therein was barred under the provision of Delhi Land Reforms Act, 1952 and the other revenue law it was held that revenue Courts had no jurisdiction to decide a suit seeking cancellation of general power of attorney having been obtained by fraud and misrepresentation in consequence of which the sale deed had been registered by playing a fraud. The issue of fraud and misrepresentation could only be decided by Civil Court.

14. In the decision reported as (2007) 5 SCC 614 Hardesh Ores Pvt. Ltd.

Vs. Hede and Company the Supreme Court held that whether the plaint discloses a cause of action or not is essentially a question of fact and the test to be applied is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. It was held that the averments in the plaint have to be read as a whole and it was not permissible to cull out a sentence or a passage and to read it out of context in isolation.

15. Hence the impugned judgment dated May 18, 2015 dismissing the suit is set aside. The suit being CS(OS) No.2670/2014 and IA Nos. 16933/2014 and 21628/2014 are restored to their original position. The matter be listed before the learned Single Judge on September 21, 2015.

16. No cost.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 11, 2015
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