A.No.3327 of 2016
in
C.S.No.588 of 2014

**M.M.SUNDRESH, J.**

The suit has been laid for declaration and permanent injunction apart from other incidental reliefs. The declaration is to the effect that the respondents/plaintiffs are the absolute owners of the ½ share of the land and building in suit A schedule property and ½ share of the undivided share in the E schedule property.

2.The averments in the plaint are to the effect that the first applicant/first defendant has been an auditor to the respondents/plaintiffs for several years. In the sketch filed along with the plaint, A and C schedule properties, which is the subject matter of the two sale deeds, are purchased by the families of the respondents/plaintiffs and applicants 1 to 3/defendants 1 to 3. Now the dispute is with respect to the property, which got sandwiched in between the properties, which is the subject matter of the above said sale deeds. This property has been purchased in the name of the 4$^{th}$ defendant. It is also seen that the 4$^{th}$ applicant/4$^{th}$ defendant has come into existence just a week prior to the execution of the sale deed, which is the subject matter of the suit. The averments in the plaint and the documents filed would prima facie show that for the sale deeds executed in favour of the 4th applicant/4th defendant, demand drafts were also given by the respondents/plaintiffs. Thus, in sum and substance, the case of the respondents/plaintiffs is that the 1st applicant/1st defendant committed breach of trust and fraud using the fiduciary relationship inter se parties.

3.Learned counsel for the applicants/defendants submits that the suit is barred by limitation as the sale deed was executed in the year 2007 and in any case, a plea of benami is prohibited by law.

4.As rightly submitted by the learned counsel for the respondents/plaintiffs, the said contention cannot be accepted for the purpose of this application. Certainly, cause of action is available as material facts are sought to be agitated in the application. For deciding the application under Order 7 Rule 11 C.P.C., the averments made in the plaint alone would be sufficient. Therefore, there are sufficient averments and some of them are not in dispute to maintain the suit. There are triable issues. The fact that the 4th applicant/4th defendant came into existence just one week prior to the sale deed was executed and monies have been sent by the respondents/plaintiffs in favour of the vendors through demand drafts for the purpose of sale effected in favour of the 4th applicant/4th defendant are not in serious dispute. In any case, there is prima facie evidence to substantiate the same. It is not as if the respondents/plaintiffs are seeking to set aside the sale deed. Rather they claim title to the suit property along with the applicants/defendants. Therefore, the period of limitation – 3 years will not come into play. After all, the facts of the case would show that it is not a pure question of law that is involved. Hence looking from any angle, this Court does not find any reason to allow the application filed under Order 7 Rule 11 C.P.C. Accordingly, the application stands dismissed.

5.It is made clear that the observations made while deciding the application are only prima facie and thus the parties are at liberty to putforth their respective contentions at the time of trial of the suit. The applicants/defendants are directed to file written statement within a period of three weeks from the date of receipt of a copy of this order, as the suit is of the year 2014.

14.11.2016

mmi

**M.M.SUNDRESH, J.**

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