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

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FAO(OS) 152/2014

Date of decision : 2nd February, 2016

RAJESH KUMAR ARORA & ANR. Appellant

Through: Mr. Vivek Singh, Adv.

versus

KUNDAN LAL GERA & ORS Respondent

**Through: Mr. Rahul Gupta,
Mr. Shekhar Gupta and
Mr. Umang Gupta, Adv. for
R-1
Mr. Nitin Gupta, Adv. for
R-2 to 5**

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

Gita Mittal, J

CM No.5333/2014

Heard.

For the reasons stated, delay in filing the appeal is condoned.

This application is allowed in the above terms.

FAO(OS) No.152/2014

1. The appellant assails in the present appeal the order dated 19th October, 2013 to the extent that it has rejected IA No. 6706/2009 filed by him in CS(OS) No. 432/2006 being an application under Order VII Rule 11 of the CPC seeking rejection of the plaint on

grounds of limitation. The appellant also assails the order dated 21st April, 2014 passed in Review Petition No. 508/2013 rejecting the appellant's petition of review of the order dated 19th August, 2013.

2. So far as rejection of the application is concerned, it has been urged by Mr. Vivek Singh that the appellant had clearly admitted that the suit property had fallen to the share of Sh. Kanshi Ram Gera under a family settlement executed in 1960 which family settlement stood acted upon. It is urged that as per the suit, the oral settlement of 1960 was sought to be reduced to writing in the year 1978 which was not done and gave rise to the cause of action for filing the suit. The submission is that as such, the suit challenging the alienation made by him with regard to the Krishna Market, Kalkaji property filed 19 years after the partition of 1960 is not maintainable. As per Mr. Singh, therefore, the suit filed in 2006 was hopelessly barred by limitation on the face of the plaint. Therefore, I.A.No.6706/2009 which was filed by the appellant/plaintiff under Order VII Rule 11 of CPC seeking rejection of the plaint on the ground that the suit was barred by the law of limitation, deserved to be accepted.

3. It is pointed out by Mr. Rahul Gupta appearing for respondent no.1 that it was the case of his client who is the plaintiff in the suit that his father Sh. Raj Kumar Gera, from him he derived rights in the suit property, expired only on 29th July, 2005 whereupon his rights were activated. It is, further, submitted that in the plaint, the plaintiff has pleaded that only in the year 2002, he learnt about the fraud committed by his uncle Shri Kanshi Ram Gera in filing a suit and obtaining a fraudulent decree dated 1st May, 1978 about the suit

property and as such, the suit filed in 2006 was within the period of limitation. The appellant disputes these assertions of the respondent/plaintiff and his plea of the limitation bar is premised on this contest.

4. It is trite that while considering an application for rejection of a plaint under Order VII Rule 11 of the CPC, the scope of examination by the court is limited to the plaint and the documents filed by the plaintiff and to nothing else.

5. So far as the rival contentions in this application is concerned, the learned Single Judge has held as follows :-

“18. The above contentions give rise to the triable issues. As regards plea of limitation, it is a mixed question of fact and law. Evidence will have to be led by the parties to demonstrate when exactly Shri Kundan Lal Gera came to know of the above decree dated 1st May, 1978 and whether the suit, CS(OS) 432 of 2006 is within limitation computed from the date of such knowledge. It obviously cannot be determined at this stage. The other contentions raised by the applicant also give rise to triable issues and therefore cannot be determined at this stage. The Court is of the considered view that there are no grounds made out for rejecting the plaint under Order VII Rule 11 CPC.”

6. In the instant case, the plaintiff has asserted fraud and has urged a date on which he became aware of the same. Prima facie, these assertions have not been displaced by any other pleadings in the plaint. The case of the appellant to the contrary has to be proved in evidence. The above observations of the learned Single Judge are as per well settled legal principles and cannot be faulted.

7. We also find that by the order dated 19th August, 2015, the

learned Single Judge has framed an issue on the question of limitation and the parties have been given an opportunity to prove their rival contentions in accordance with law.

For all these reasons, we find no merit in this appeal which is hereby dismissed.

CM Nos.5332/2014 and 5334/2014

8. In view of the orders passed in the appeal, these applications do not survive for consideration and are hereby disposed of.

GITA MITTAL, J

I.S.MEHTA, J

FEBRUARY 02, 2016