

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

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Date of decision: 13th May, 2016

+ RFA 314/2016, CM No.18049/2016 (for exemption from filing complete trial court record), 18050/2016 & 18051/2016 (both for condonation of delay of 588 days in filing and 24 days in re-filing the appeal)

SUNIL KOHLI & ORS

..... Appellants

Through: Mr. Manoj Singh & Mr. Abhay Singh,
Advs.

Versus

SUBHASH CHAND DUA & ORS

..... Respondents

Through: None.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This first appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 impugns the judgment and decree dated 23rd April, 2014 of the Court of Additional District Judge (ADJ)-02, (North-West), Rohini Courts, Delhi of dismissal of suit bearing CS No.890/2013 for the reliefs of declaration, recovery of possession of immovable property, permanent and mandatory injunction and recovery of *mesne profits* / damages for use and occupation consequent to rejection of the plaint under Order 7 Rule 11 of the CPC on the ground of the relief claimed being barred by time.

2. Having gone through the paper book and *prima facie* finding no merit in the appeal and being of the view that for scrutinizing the validity of the rejection of the plaint, only the plaint is required to be seen and copy of which is annexed to the memorandum of appeal and the trial court record is

not required to be requisitioned, the counsel for the appellants / plaintiffs has been given full opportunity to argue.

3. It is the case of the appellants / plaintiffs in the plaint:

- (i) that their mother Smt. Pushpa Rani Kohli had entered into an agreement dated 22nd July, 1988 with one Sh. Ranjit Singh Rekhi for purchase of plot of land ad-measuring 175 sq. mtrs. bearing No.133, Block B-2, Paschim Vihar, New Delhi for a total sale consideration of Rs.4,00,000/- and was on 10th August, 1988, on payment of the entire purchase consideration, put into notional possession of the said plot of land and the said Sh. Ranjit Singh Rekhi executed Agreement to Sell, General Power of Attorney, Will, Affidavit etc. with respect to the said plot in favour of the mother of the appellant;
- (ii) that Sh. Ranjit Singh Rekhi was in the process of making some construction on the plot and as per the agreement, he only was to complete the said construction in about 15 days time and for this reason, only notional possession and not physical possession of the plot was given;
- (iii) that when the said Smt. Pushpa Rani Kohli visited the plot after 8 or 10 days, she found respondent no.1 Subhash Chand Dua in possession thereof and who claimed to have purchased the same from Narender Singh / Jaswant Singh vide documents executed in May, 1987;

- (iv) that Smt. Pushpa Rani Kohli immediately contacted Sh. Ranjit Singh Rekhi who denied having transferred the plot to Sh. Narender Singh / Jaswant Singh or having executed any documents in their favour;
- (v) that Smt. Pushpa Rani Kohli in the year 1993 learnt that the respondent / defendant no.1 Sh. Subhash Chand Dua in connivance with Sh. Narender Singh / Jaswant Singh aforesaid trespassed in possession of the plot and the construction thereon and had on the basis of forged and fabricated documents also got the conveyance deed of freehold rights in the said plot executed from the respondent/defendant no.4 Delhi Development Authority (DDA) in the name of his wife Smt. Usha Rani Dua;
- (vi) that on Smt. Pushpa Rani Kohli complaining to the police, Sh. Ranjit Singh Rekhi was called, who again denied having sold the property to anyone and confirmed that he had executed the documents aforesaid in favour of Smt. Pushpa Rani Kohli;
- (vii) that though Smt. Pushpa Rani Kohli on 31st March, 1994 applied to the respondent / defendant no.4 DDA for transferring the plot in her favour but respondent / defendant no.4 DDA did not comply therewith;
- (viii) Smt. Pushpa Rani Kohli filed a civil suit before the Civil Judge, Delhi for permanent and mandatory injunction impleading the respondent / defendant no.1 Sh. Subhash Chand Dua and Sh.

Ranjit Singh Rekhi but the said suit was dismissed on 21st September, 1999 as not maintainable;

- (ix) Smt. Pushpa Rani Kohli thereafter continued to complain to various authorities and ultimately died on 3rd January, 2008 leaving the appellants as her only heirs;
- (x) that upon the appellants / plaintiffs raising the grievance in a public hearing held by the respondent no.4 DDA on 22nd September, 2009, the respondent no.4 DDA commenced an inquiry in the matter;
- (xi) that a complaint was again lodged by the appellants / plaintiffs with the police;
- (xii) that in pursuance to the aforesaid complaints, the respondent no.4 DDA has on 12th November, 2010 cancelled the conveyance deed of freehold rights earlier executed in favour of the wife of respondent / defendant no.1 Sh. Subhash Chand Dua; the wife namely Smt. Usha Rani Dua, of the respondent/defendant no.1 Sh. Subhash Chand Dua since died leaving the said Sh. Subhash Chand Dua and respondent no.2 Ms. Meera Arora and respondent no.3 Mr. Arun Dua as her only legal heirs;
- (xiii) W.P.(C) No.8696/2010 filed by the respondent / defendant no.1 Sh. Subhash Chand Dua in this Court impugning the cancellation of the conveyance deed was dismissed as withdrawn on 29th March, 2012;

(xiv) that Sh. Devender Singh, son of Sh. Ranjit Singh Rekhi filed CS(OS) No.1081/2011 in this Court against the respondents no.1 to 3 viz. Sh. Subhash Chand Dua, Ms. Meera Arora & Sh. Arun Dua, also impleading the aforesaid Narender Singh / Jaswant Singh as defendants thereto, for declaration and injunction but during the pendency of the said suit, the said Sh. Devender Singh died and the suit was dismissed as abated.

4. The learned ADJ has rejected the plaint holding the suit to be time barred, finding/observing/holding:

- (a) that the respondent / defendant no.1 Sh. Subhash Chand Dua, to the knowledge of the appellant / plaintiff, had on 17th June, 1993 got the leasehold rights in the land subject matter of the said plot converted into freehold in the name of his wife Smt. Usha Rani Dua and the appellants / plaintiffs / their predecessor were obliged in terms of Article 58 of the Schedule to the Limitation Act, 1963 to, within three years therefrom, seek declaration with respect to the said conveyance deed but had failed to do the same;
- (b) that the cause of action thus accrued to the appellants / plaintiffs / their predecessor on 17th June, 1993 and the suit for declaration ought to have been filed within three years therefrom;
- (c) that the suit was thus hopelessly barred by time.

5. The counsel for the appellants / plaintiffs contends that the order of the learned ADJ rejecting the plaint on the ground of the appellants /

plaintiffs being required to file a suit for declaration and which was barred by time is contrary to the dicta of my judgment in **Ashok Kumar Vs. Mohd. Rustam** 227 (2016) DLT 385 holding that in suits claiming relief with respect to immovable property, the relief of declaration even if claimed is superfluous and the limitation for the suit would be governed by the limitation provided for the relief of possession, if possession is claimed, and the longer limitation period provided for instituting a suit for recovery of possession would not be curtailed by the lesser limitation of three years provided for a suit for declaration.

6. There can be no doubt that the observations of the learned ADJ to the contrary are not correct and are liable to be set aside.

7. However *de hors* the same, finding the suit to be otherwise also barred by time, I have enquired from the counsel for the appellants / plaintiffs that even if the appellants / plaintiffs were to be governed by the limitation provided for a suit for recovery of possession of immovable property, which Article of the Schedule to the Limitation Act would apply.

8. The counsel for the appellants / plaintiffs refers to Article 65.

9. However, Article 65 provides limitation of 12 years commencing from the date when the possession of the defendant becomes adverse to the plaintiff, for a suit for recovery of possession of immovable property or any interest therein “based on title”. I have enquired as to how the appellants / plaintiffs, merely on the basis of the Agreement to Sell, Power of Attorney and Will can be said to be having title to the plot/property. Attention in this regard is also invited to the dicta of the Supreme Court in **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana** (2012) 1 SCC 656 holding that

such documents do not convey any title in immovable property and merely vest a right to seek specific performance of the agreement.

10. In my view the apposite Article of the Schedule to the Limitation Act applicable to the facts of the present case would be Article 64 which provides limitation of 12 years commencing from the date of dispossession for a suit for recovery of possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed. However, tested on the anvil of the said Article also, the appellants / plaintiffs, even if deemed to have been put into possession at the time of agreement to sell, admittedly were dispossessed within eight or ten days of the agreement to sell and / or in the year 1993 and the suit was filed much beyond the 12 years therefrom.

11. Having said that, since the agreement to sell is of a date when agreements to sell coupled with delivery of possession were not required to be registered and even if it were to be considered that the rights under Section 53A of the Transfer of Property Act, 1882 would constitute a title, even then the respondent / defendant no.1 and his wife, having as far back as in 1993 got the conveyance deed executed of freehold rights in the land in their favour, to the knowledge of the appellants / plaintiffs / their predecessor, were since then claiming possession adversely to the appellants / plaintiff and the suit ought to have been filed within 12 years of 17th June, 1993 but was filed only on 20th May, 2012.

12. Thus, whichever way one looks at, the suit is barred by time. A Division Bench of this Court in ***Razia Begum Vs. Delhi Development Authority*** MANU/DE/2201/2014 upheld rejection of plaint on the ground of

limitation when despite knowledge of registered conveyance deed in favour of defendants, the plaintiff did not sue for 15-16 years. The position here is similar.

13. The counsel for the appellants / plaintiffs has argued that the limitation of 12 years would commence from the date when the DDA cancelled the conveyance deed of freehold rights in favour of the wife of respondent / defendant no.1.

14. I fail to see as to how that would constitute a cause of action for the suit for possession. The starting point of the period of limitation prescribed is not the date of extinguishment of the title professed by the defendant but the date from which the title of the defendant becomes adverse to that of the plaintiff. In the facts of the present case, the title of the respondent / defendant no.1 or his wife was adverse to that of the appellants / plaintiffs / their predecessor when they on 17th June, 1993 got the conveyance deed of freehold rights executed in their favour. Upon the appellants / plaintiffs / their predecessor not filing the suit within 12 years therefrom i.e. by 17th June, 2005, their claim even if any for possession, whether on the basis of title or on the basis of previous possession was extinguished and merely because on a subsequent date the conveyance deed in favour of the respondent / defendant no.1 and / or his wife has been cancelled by the respondent no.4 DDA would not vest a cause of action in favour of the appellants / plaintiffs. Per Section 27 of the Limitation Act, at the determination of the period limited by the said Act for instituting a suit for possession of any property, the right to such property stands extinguished.

15. Rather, I am of the opinion that the remedy of the appellant /plaintiff was to file a suit for specific performance of the agreement of sale and to implead the aforesaid Narender Singh / Jaswant Singh and the respondents / defendants no.1 to 3 as parties thereto and the limitation for which suit for specific performance, of three years, has also extinguished.

16. Though the counsel for the appellants / plaintiffs states that the appellants / plaintiffs cannot now sue for specific performance because Sh. Ranjit Singh Rekhi as well as his heir Sh. Devender Singh died without leaving any heirs but in my view the said factum is irrelevant.

17. Option has been given to the counsel for the appellants / plaintiffs to claim rights under the Will if any of Sh. Ranjit Singh Rekhi in favour of the predecessor of the appellants / plaintiffs and on which basis the suit may be within time inasmuch as Sh. Ranjit Singh Rekhi is stated to have died only in the year 2010.

18. However the counsel for the appellants / plaintiffs has not accepted the same.

19. No error can thus be found in the order of rejection of the plaint as barred by time. For this reason, need is not felt to consider the applications for condonation of delay of 588 days in filing and 24 days in re-filing the appeal.

20. No purpose will thus be served in issuing notice of this appeal or keeping the same pending and / or in requisitioning the trial court record.

21. The appeal is thus dismissed.

22. At this stage, the counsel for the appellants / plaintiffs states that liberty be given to sue for the same reliefs as the heir of Sh. Ranjit Singh Rekhi.

23. Liberty granted.

No costs.

Decree sheet be drawn.

RAJIV SAHAI ENDLAW, J

MAY 13, 2016

‘gsr’..

(corrected and released on 25th May, 2016).