

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

+ CS(OS) 3295/2011

Reserved on: 01.04.2016

Date of decision: 08.04.2016

IN THE MATTER OF:
VIMAL CHAND JAIN

..... Plaintiff

Through Mr. Vimal Goel, Advocate

versus

SUSHILA RANI BHAVNANI & ORS

..... Defendants

Through : Mr. H.L. Tikku, Senior Advocate with
Mr. Ajit Singh and

Ms. Yashmit Kaur, Advocates for D-1.

Mr. Abhishek Kumar Singh, Advocate
for D-2/DDA

Mr. Ravi Gupta, Senior Advocate with

Mr. Sanjay Abott and

Ms. Heena Sharma, Advocates for D-4

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

IA No. 5870/2014 (by D-1 u/O-VII R-11 CPC) and
IA No. 18107/2014 (by D-4 u/O VII 7 R-11 CPC)

1. This common order shall dispose of two applications, registered as IA No.5870/2014, (filed by the defendant No.1) and IA No.18107/2014 (filed by the defendant No.4), both filed under Order VII Rule 11 CPC, seeking rejection of the plaint on the ground that the same is barred by limitation.

2. The plaintiff has filed the accompanying suit praying *inter alia* for a decree of permanent injunction against the defendant No.1, the original allottee of plot bearing No.B-14, Mayfair Gardens, Hauz Khas, New Delhi, measuring 611.11 sq. yards (hereinafter referred to as the suit plot), for restraining her from issuing any document/power of attorney in respect of the subject plot and for a decree of declaration, for declaring the cancellation letter dated 11.6.1996 issued by the defendant No.2/DDA to the defendant No.1 in respect of the suit plot, as *non-est* and further, for declaring that the defendant No.4, the subsequent allottee of the suit plot, does not have any substantive right on the suit plot.

3. Stated concisely, the facts of the case are that on 9.9.1970, the defendant No.2/DDA had executed a perpetual sub-lease deed in respect of the suit plot in favour of the defendant No.3/Cosmopolitan Housing Society and the defendant No.1. In the year 1984, one Shri Kamal Kumar had instituted a suit for specific performance against the defendant No.1 in the High Court, registered as **CS(OS) No.1030/1984** entitled Kamal Kumar vs. Sushila Rani Bhavnani claiming *inter alia* that in the year 1981, she had executed an Agreement to Sell in his favour in respect of the suit plot. Accompanying the said suit was an application for grant of an *ex parte ad interim* order, registered as IA No.4076/1984. Vide *ex parte ad interim* injunction order dated 11.7.1984, the defendant therein (defendant No.1 in the present suit) was restrained from selling, disposing of or in any way encumbering the suit plot or from interfering with the possession of the plaintiff therein. Eventually, vide order dated 12.8.1985, the said application

was disposed of, while directing the parties to maintain *status quo* in respect of the suit plot with further directions that the defendant will not sell, dispose of or otherwise encumber the suit plot during the pendency of the suit.

4. Despite the aforesaid injunction order, the defendant No.1 had executed a Bayana Receipt in favour of the plaintiff on 29.7.1992, in respect of the suit plot and on 8.4.1993 proceeded to execute a set of sale documents in his favour including an Agreement to Sell dated NIL.4.1993, GPA, SPA, will etc. all dated 8.4.1993. Vide order dated 11.6.1996, the defendant No.2/DDA informed the defendant No.1 that the Lieutenant Governor, Government of NCT of Delhi had cancelled the sub-lease deed of the suit plot on account of breach of Clause 5 of the Sub-Lease Deed executed in her favour.

5. Though the defendant No.1 had submitted representations dated 15.10.1999 and 10.8.2002 to the defendant no.2/DDA against the aforesaid cancellation order, she did not take any legal recourse for seeking revocation thereof. In the meantime, on 9.1.1998, on an application asking for stay filed by Sh. Kamal Kumar in his suit, DDA was restrained from taking any further steps for effecting any change in the allotment of the suit plot. In the same year, i.e., in the year 1998, the defendant No.4, Sh. Subhash Kumar, who happened to be the senior most member in the waiting list prepared by the defendant No.3/Society, filed a writ petition in the High Court, registered as WP(C)No.3867/1998, seeking allotment of the very same plot. It is also relevant to note that Shri Kamal Kumar had moved an application for

impleadment in the writ petition filed by the defendant No.4 (CM No.10012/1998) and the Division Bench had directed that the said application shall be heard at the time of final arguments.

6. Vide order dated 31.5.2002, the trial court dismissed the stay application filed by Sh. Kamal Kumar in the suit instituted by him, on which the interim order dated 9.1.1998 was passed, restraining the DDA from changing the allotment of suit plot, but with a rider to the effect that if the DDA or the Society allots the suit plot to any other person during the pendency of the suit, it would not confer any legal right on the transferee.

7. After hearing the counsels for the petitioner in the writ petition, the DDA (defendant No.2), Shri Kamal Kumar and Smt. Sushila Rani Bhavnani (defendant No.1 herein), by a detailed judgment dated 2.12.2009, the Division Bench allowed the writ petition filed by the defendant no. 4 and directed DDA to allot the suit plot in his favour with a caveat that the rights of Shri Kamal Kumar (plaintiff in Suit No.1030/1984) and the defendant No.1 herein will be decided in the suit instituted by him. The Division Bench also expressed an opinion that there was no impediment in the way of the DDA in allotting the suit plot in favour of the petitioner therein (defendant No.4 herein) as the stay order dated 9.1.1998, passed in the suit instituted by Shri Kamal Kumar did not exist any longer and the condition imposed by the trial court by virtue of the order dated 31.5.2002, could not act as an impediment for the DDA in allotting the plot to any person who was not a party in the said suit. Pertinently, by the said date, the suit instituted by Shri Kamal Kumar stood transferred to the District Court on account of raising of

the pecuniary jurisdiction of the Delhi High Court (Original Side) and the same was renumbered as Suit No.184/2001.

8. Aggrieved by the decision of the Division Bench in the captioned writ petition, the defendant No.1 herein had filed **SLP(C)No.3147/2010** entitled Sushila Bhavnani vs. Subhash Verma & Anr., which was dismissed vide order dated 8.2.2010. While dismissing the said SLP, the Supreme Court had clarified that the same would not come in the way of the petitioner (defendant No. 1 herein) in pursuing her remedies, if she had any, under the law.

9. It is an undisputed position that in all this duration, the defendant No.1, the sub-lessee of the suit plot, did not take any steps on her own to challenge the cancellation of the sub-lease deed ordered by the DDA, before any legal forum and nor did she initiate any legal proceedings on the basis of the liberty granted by the Supreme Court vide order dated 8.2.2010. Instead, the plaintiff herein in whose favour, the defendant No.1 had executed the Bayana Receipt dated 29.7.1992 and executed other documents of sale, in respect of the suit property in April, 1993, had instituted the present suit in September, 2011 asking for permanent injunction and declaration.

10. Mr. H.L. Tiku, learned Senior Advocate appearing for the defendant No.1 and Mr. Ravi Gupta, learned Senior Advocate appearing for the defendant No.4 have both relied on Article 58 in Part-III appended to the Schedule attached to the Limitation Act, 1963, to contend that the prescribed period of limitation for instituting a suit for declaration is three years and the

time from which the period of three years begins to run has to be reckoned from the date when the right to sue first accrues. They submitted that as per the facts noted above, the suit plot was cancelled by the defendant No.2/DDA on 11.6.1996 and the plaintiff was well aware of the said cancellation order. Consequent upon the cancellation of the defendant No.1's allotment of the suit plot, the defendant No.4, who was the senior most member in the waiting list of the defendant No.3/Society, had filed a writ petition in the High Court in the year 1998, seeking allotment of the subject plot. The plaintiff had knowledge of the said fact as he had filed an application for impleadment in the writ petition as the power of attorney holder of the defendant No.1 (CM No.9671/1999), wherein he had admitted to having knowledge of the cancellation of the sub-lease deed of the suit plot by the defendant No.2/DDA but had disputed the subsequent allotment made in favour of the defendant No.4 herein (petitioner in the writ petition).

11. Learned Senior Advocates appearing for the defendants No.1 & 4 submitted that assuming that the date of knowledge attributable to the plaintiff is August, 1999, when he had moved CM No.9671/1999 in WP(C)No.3867/1998, then the period of three years reckoned from 31.8.1999, would have expired on 30.8.2002, whereas the present suit has been instituted by him in September, 2011, which is after a period of nine years if reckoned from 30.8.2002 and twelve years if reckoned from 31.8.1999. It was thus canvassed that the present suit is liable to be rejected being hopelessly barred by limitation. To buttress the said argument reliance

has been placed on the following decisions :-

- (i) Board of Trustees of Port of Kandla vs. Hargovind Jasraj & Anr., reported as **JT 2013 (2) SC 312** and
- ii) Razia Begum vs. DDA & Ors., reported as **215 (2014) DLT 290 (DB)**

12. To substantiate his submission that the Agreement to Sell in respect of the suit plot executed by the defendant No.1 in favour of the plaintiff during the pendency of the suit instituted by Shri Kamal Kumar, wherein a *status quo* order was passed on 11.7.1984 and reiterated on 12.8.1985, is in gross violation of the said injunction order and is a nullity, counsels for the defendants No.1 and 4 had drawn the attention of the Court to the judgment dated 31.10.2013, passed in **RFA No.18/2003** entitled Om Prakash vs. Santosh Chaddha. Reliance was also placed on the decision dated 24.8.2005, passed in **CS(OS)No.2047/2001** entitled Rajpal vs. Rajender Singh & Ors. to urge that a mere suit for declaration and injunction as instituted by the plaintiff herein, would not be maintainable without asking of the relief of specific performance, as envisaged under Section 34 of the Specific Relief Act, 1963.

13. Arguments in opposition to the present applications were addressed by Mr. Vimal Goel, learned counsel for the plaintiff, who had submitted that the relief prayed for in both the applications filed by the defendants No.1 & 4 is for 'dismissal of the suit' and not for 'rejection of the plaint', which itself ought to be a ground for dismissing the said applications. He urged that

the suit cannot be rejected outright as prayed for, and it ought to be taken to trial. It was submitted that the plaintiff had purchased the suit plot from the defendant No.1 for valuable consideration, and the said defendant had executed sale documents in his favour, which included a Bayana Receipt dated 29.7.1992 and a set of documents of sale executed on 8.4.1993. It was contended that when Shri Kamal Kumar had instituted a suit for specific performance against the defendant No.1, it was the plaintiff, who was defending the said suit on her behalf as her power of attorney holder and was taking care of her interests in the suit plot. The plaintiff had also submitted representations along with the defendant No.1 to the defendant No.2/DDA asking for revocation of the cancellation order, which were pending consideration.

14. Learned counsel for the plaintiff thus argued that the plaintiff had become the owner of the suit plot on the basis of documents of sale executed by the defendant no. 1 in his favour in the years 1992-93, and even at the time of passing the judgment dated 2.12.2009 in W.P.(C)3867/1998, the Division Bench had never conferred allotment of the suit plot in favour of the defendant No.4, but had made the same subject to a stipulation that insofar as the rights of Shri Kamal Kumar and the defendant No.1 were concerned, they would be decided in the suit instituted by the former and pending in the trial court. He canvassed that it was at that juncture that the plaintiff herein had moved an application for impleadment of the defendant No.1 in the writ petition as her power of attorney holder. He went on to point out that aggrieved by the judgment dated 2.12.2009, passed by the

Division Bench, it was the plaintiff herein who had approached the Supreme Court by filing a SLP(C)No.3147/2010, and though the Supreme Court had declined to entertain the said petition, it had given liberty to the plaintiff to pursue the remedies, if any, under the law and it was in exercise of the said liberty that the plaintiff had instituted the present suit.

15. In rebuttal, learned Senior Advocates appearing for the defendants No.1 & 4 had refuted the submissions made by the other side to the effect that any liberty was granted by the Supreme Court to the plaintiff to pursue legal remedies in respect of the suit plot. They drew the attention of the Court to the cause title of the order dated 8.2.2010, passed in SLP(C)No.3147/2010, to state that it was the defendant No.1 who was the petitioner therein. They stated that at no stage did the plaintiff take any legal recourse for seeking specific performance of the purported Bayana Receipt dated 29.7.1992 executed by the defendant No.1 in his favour in respect of the suit plot, and nor did he even make a passing reference to the documents of sale executed by the defendant No.1 in his favour at the time of filing the impleadment application in WP(C)No.3867/1998. They submitted that the plaintiff had revealed the sale transaction in respect of the suit plot for the first time when he filed an application for impleadment in the suit instituted by Shri Kamal Kumar against the defendant No.1 to urge that he was a necessary and a proper party in the said proceedings.

16. Pertinently, vide order dated 17.3.2011, the aforesaid application for impleadment was dismissed by the learned ADJ with an observation that the *inter se* agreement to sell between Smt. Sushila Rani Bhavnani, the

defendant therein (defendant No.1 herein) and the plaintiff in the present suit could not be a subject matter of a decision in the suit for specific performance instituted by Shri Kamal Kumar against her. It may be noted that later on, Sh. Kamal Kumar did not pursue the said suit.

17. The Court has heard the arguments advanced by learned counsels for the parties, carefully perused the plaint and the documents and considered the averments made in the applications in the light of the decisions relied upon by them. It may be stated at the outset that while considering an application filed under Order VII Rule 11 CPC, this Court is expected to examine the averments made in the plaint as a whole, take the same to be correct and refer to the documents filed by the plaintiff in support thereof [Ref.: Inspiration Clothes & U. vs. Collby International Ltd., **88 (2000) DLT 769**; Tilak Raj Bhagat vs. Ranjit Kaur, **159 (2009) DLT 470**; Bhau Ram vs. Janak Singh, V (2012) SLT 536; Tilak Raj Bhagat vs. Ranjit Kaur, **2012(5) AD (Del) 186**; Indian City Properties Ltd. vs. Vimla Singh] **198 (2013) DLT 432**; and Razia Begum vs. DDA & Ors. **215 (2014) DLT 290 (DB)**].

18. It may also be emphasized that while deciding an application filed under Order VII Rule 11 CPC, the court must not be selective in picking upon the averments made in the plaint in isolation. Instead, a meaningful reading of the plaint must be conducted for the Court to satisfy itself as to whether the averments made in the plaint, if taken to be correct in their entirety, would result in a decree being passed. The manner of examination which a court is expected to undertake for scrutinizing the plaint and the documents to decide an application under Order VII Rule 11 CPC has been

discussed by the Supreme Court in a catena of decisions including the cases of T. Arivandandam vs. T.V. Satyapal & Anr., reported as **1977 (4) SCC 467**, Kotecha Property vs. State Bank of India Staff Association reported as **(2005) 7 SCC 510** and Hardesh Ores Pvt. Ltd. vs. M/s. Hede & Company reported as **2007 (5) SCC 614**.

19. In the case of Hardesh Ores Pvt. Ltd. (supra), the Supreme Court had held as follows:-

"25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of Clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of Clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in Liverpool and London S.P. and I Association Ltd. v. M.V. Sea Success I and Anr. (2004) 9 SCC 512 and Popat and Kotecha Property v.

State Bank of India Staff Association, (2005) 7 SCC 510.
(emphasis added)

20. The facts of the instant case have already been summarized above. Now, coming to the averments made by the plaintiff in the plaint, the plaintiff starts by describing himself as the owner in possession of the suit plot, having purchased the same from the defendant No.1 for a total sale consideration of Rs.8.00 lacs paid on 29.7.1992. The plaintiff admits to having knowledge of the fact that prior to the sale of the suit plot, the said immovable property was involved in a suit for specific performance instituted by Shri Kamal Kumar against the seller, defendant No.1, and the said suit was pending adjudication in the civil court. He has also admitted to being aware of passing of a *status quo* order dated 12.8.1985, *qua* the suit plot in the aforesaid suit.

21. The plaintiff then adverts to the cancellation letter dated 11.6.1996 issued by the defendant No.2/DDA, in respect of the suit plot allegedly in collusion with the defendants No.3 & 4 and has averred in the plaint that the defendant No.4, who was on the top of the waiting list drawn by the defendant No.3/Society, had filed a writ petition in the High Court for allotment of the suit plot, wherein the defendant No.1, through the plaintiff as her power of attorney holder, had filed an application seeking impleadment. In para 6 of the plaint, the plaintiff states that vide order dated 9.1.1998 passed in the captioned suit instituted by Shri Kamal Kumar, DDA was restrained from transferring the suit plot in favour of the defendant

No.4. However, vide order dated 2.12.2010, the High Court had ultimately allowed the writ petition filed by the defendant No.4.

22. In para 9 of the plaint, instead of mentioning the correct position that it was the defendant No.1 who had preferred a SLP against the order dated 2.12.2010, passed by the High Court in the captioned writ petition, the plaintiff has stated that he had filed the said SLP himself and goes on to state that the present suit is predicated on the liberty granted by the Supreme Court to pursue the remedies available under the law, as per the order dated 8.2.2010. Claiming that the defendant No.1 appears to have colluded with Shri Kamal Kumar and was not showing any interest in properly pursuing the suit instituted by the latter in respect of the suit plot, the plaintiff states that he had to file an impleadment application in the said suit, which was ultimately dismissed by the learned ADJ, vide order dated 17.3.2011.

23. In the cause of action para 19 of the plaint, the plaintiff has averred that the cause of action to institute the suit arose on 8.2.2010, when the defendant No.1 had issued a fresh power of attorney in contradiction to the registered power of attorney and Agreement to Sell executed by her in his favour in the year 1992; thereafter, the cause of action had allegedly arisen when the defendant No.1 had filed an affidavit in Suit No.1030/1984, instituted by Sh.Kamal Kumar, stating therein that she was not in possession of the suit plot and had admitted to issuance of the cancellation order by the defendant No.2/DDA. For purposes of clarity, the averments made by the

plaintiff in para 19 are reproduced hereinbelow:

“19. That the cause of action first arose on 8.2.2010 when the defendant no. 1 has unscrupulously issued a fresh power of attorney in contradiction with the earlier registered documents of sale of suit land in favour of plaintiff. The cause of action arose thereafter when defendant no.1 has furnished the affidavit in Suit No. 1030/84 contending that she has been no longer in possession of the plot due to cancellation of the suit land vide letter dated 19.2.1996, whereas the present plaintiff has been pursuing the matter on behalf of the defendant no.1 regularly with the authorities. The cause of action for challenging the cancellation letter has arisen when the defendant No. 1 has shown her declination to challenge the same. The cause of action further arose when Section 80 CPC Notice was duly served on the concerned defendant and no reply has been received so far. The cause of action is still continuing.”

24. The question that would arise for consideration is whether the present suit instituted by the plaintiff for declaration in respect of the suit plot is barred by limitation, as has been urged on behalf of the defendants No.1 & 4. The said plea shall have to be tested in the light of the provisions of the Limitation Act, 1963.

25. To examine the aspect of limitation, in the first instance, it is necessary to refer to Articles 58 and 59 of Schedule-1 of the Limitation Act, 1963 that prescribe the period of limitation for filing a suit for a decree

of declaration and for a decree of cancellation of an instrument, that state as below:-

The Schedule
Periods of Limitation
[See Sections 2(j) and 3]

First Division – Suits

PART III-Suits relating to Declarations			
	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
58.	To obtain any other declaration	Three years	When the right to sue first accrues
PART IV-Suits relating to Decrees and Instruments			
	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
59.	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

26. It is also relevant to note that Section 9 the Limitation Act prescribes that once time has begun to run, no subsequent disability or inability to institute a suit or make an application, stops it.

27. The expression `right to sue' has not been defined but it has fallen for interpretation on several occasions by the Supreme Court and the High Courts, including in the cases of State of Punjab & Ors. vs. Gurdev Singh, reported as **1991 (4) SCC 1**, Daya Singh & Anr. vs. Gurdev Singh (dead) by LRs & Ors., reported as **2010 (2) SCC 194**, Khatri Hotels Pvt. Ltd. & Anr. vs. Union of India & Anr., reported as **2011 (10) Scale 190** and Board of Trustees of Port of Kandla (supra).

28. The law on the issue of the date when the cause of action for instituting a suit arises, is quite well settled. In the case of Khatri Hotels (supra), when required to examine a situation where a right to sue accrues on multiple causes of action and decide as to when will the period of limitation begin to run in such circumstances for instituting a suit, the Supreme Court had made the following pertinent observations:-

“24. The Limitation Act, 1963 (for short “the 1963 Act”) prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 13 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Section 4 to 24, be dismissed even though limitation may not have been set up as defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In

other words, the residuary article is applicable to every kind of suit not otherwise provided for in the schedule.

25. Article 58 of the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

*The Schedule
Periods of Limitation
[See Sections 2(j) and 3]*

First Division - Suits

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
----------------------------	-----------------------------	---

PART III – Suits Relating to Declarations

<i>58. To obtain any other declaration.</i>	<i>Three years</i>	<i>When the right to sue first accrues.”</i>
---	--------------------	--

26. Article 120 of the Indian Limitation Act, 1908 (for short, 'the 1908 Act') which was interpreted in the judgment relied upon by Shri Rohtagi reads as under:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
----------------------------	-----------------------------	---

<i>120. Suit for which no period of limitation is provided elsewhere in this schedule.</i>	<i>Six years</i>	<i>When the right to sue accrues.”</i>
--	------------------	--

27. The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in Bolo v. Mt. Koklan and it was held: (IA p. 331)

“There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least, a clear or unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.”

The same view was reiterated in Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar and Gobinda Narayan Singh v. Sham Lal Singh.

29. In Rukhmabai v. Laxminarayan, the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (Rukhmabai case, AIR p. 349, para 33)

“33.The right to sue under Article 120 of the 1908 Act accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective or innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of

action depends upon the question whether that threat effectively invades or jeopardizes the said right.”

30. *While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.” (emphasis added)*

29. In the case of Daya Singh (supra), the Supreme Court had observed as below :

“13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.

14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the Appellant-Plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the Defendant against whom the suit is instituted. In support of this contention

the learned Senior Counsel strongly relied on a decision of the Privy Council in reported in [AIR 1930 PC 270] Bolo v. Koklan. In this decision Their Lordships of the Privy Council observed as follows:

....There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the Defendant against whom the suit is instituted.

15. *A similar view was reiterated in C. Mohammad Yunus v. Syed Unnissa [AIR 1961 SC 808] in which this Court observed:*

“7.The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.

In C. Mohammad Yunus, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

16. *...Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the Defendants when they refused to admit the claim of the appellants, i.e., only 7 days before filing of the suit. Therefore, we are of the view that within three years from the date of infringement as noted in para 16 of the plaint the suit was filed. Therefore, the suit which was filed for*

declaration on 21.8.1990, in our view cannot be held to be barred by limitation.”

30. Thus, it is clear that from the above line of decisions that when it comes to computation of the period of limitation for instituting a suit, the said period begins to run from the date when the right to sue has first arisen and there is an infringement or a clear/unequivocal threat to infringe that right, as envisaged under Article 58 of the Act.

31. In this background, the averments made in the plaint that the cause of action to institute the present suit arose for the first time on 8.2.2010, when the defendant No.1 had issued a fresh power of attorney in contradiction to the earlier registered document of sale in respect of the suit plot in favour of the plaintiff, is found to be untenable. On a meaningful reading of the averments made in the plaint, including the cause of action para reproduced hereinabove, it is apparent that an actionable cause of action to sue had arisen in favour of the plaintiff for the first time on 11.6.1996, when the defendant No.2/DDA had issued a cancellation order in respect of the suit plot, cancelling the Sub-Lease Deed dated 9.9.1970 executed in favour of the defendant No.1. The averments made in the plaint and the documents filed by the plaintiff leave no manner of doubt that the plaintiff was well aware of the issuance of the said cancellation letter dated 11.6.1996 by the DDA.

32. Assuming for a moment, that the plaintiff was ignorant of the date when the cancellation order was issued by the DDA, the said fact was admittedly to his knowledge atleast by August, 1999 when he, as the power

of attorney holder of the defendant No.1, had filed an application for impleadment in **WP(C)No.3867/1998**, a petition filed in the High Court by the defendant No.4 and he had admitted therein to having knowledge of the said cancellation order. Therefore, if the case of the plaintiff is taken at the highest and benefit of doubt is given to him about his purported ignorance of the issuance of the aforesaid cancellation order by the DDA, then at best, the cause of action for instituting a suit for declaration and injunction would have arisen in August, 1999 when the plaintiff as the power of attorney holder of the defendant No.1, had filed an application for impleadment in the captioned writ petition and the period of three years reckoned from 31.8.1999, would have expired on 30.8.2002, whereas the present suit has been instituted in September, 2011, i.e., after an inordinate delay of 12 years. Pertinently, by then a Sub-lease Deed in respect of the suit plot had already been executed by the defendant No. 2/DDA in favour of the defendant No.4, on 8.3.2011.

33. Coming next to the submission made by learned Senior Advocates appearing for the defendants No.1 & 4 that the Agreement to Sell purportedly executed by the defendant No.1 in favour of the plaintiff on 29.7.1992 was in gross violation of the injunction order date 11.7.1984 that was reiterated on 12.8.1985, in Suit No.1030/1984, filed by Sh. Kamal Kumar, it is settled law that any alienation/assignment if permitted in the teeth of an injunction order, would defeat the ends of justice and runs contrary to public policy.

34. In the case of Surjit Singh & Ors. vs. Harbans Singh & Ors., reported as **(1995) 6 SCC 50**, the Supreme Court had held as follows:-

“4.As said before, the assignment is by means of a registered deed. The, assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered, that has instantly been done. It is per se property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable-difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the relevant public policy, When the court intends a particular state of affairs to exist while it is in seizing of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders.....” (emphasis added)

35. Yet again, in the case of Vidur Impex and Traders Private Limited & Ors. vs. Tosh Apartments Private Limited & Ors., reported as **(2012) 8 SCC 384**, the Supreme Court had reiterated the observations made in the case of Surjit Singh (supra) and held that the agreement to sell when in clear

violation of the order of injunction, did not have any legal sanctity and could not confer any right upon the assignees and nor could the assignees claim that any valid title or interest was acquired by them under such a transaction.

36. To sum up, the aforesaid decisions suggest that an agreement to sell entered into in violation of an injunction order, is void and a nullity and therefore, the question of specific performance of such an agreement would not arise. Admittedly, the plaintiff herein had not even taken any steps to institute a suit for specific performance of the agreement to sell purportedly executed by the defendant No.1 in his favour, in respect of the suit plot and nor has any such relief been prayed for even in the present suit. Instead, the plaintiff has simply filed a suit for declaration and injunction, without asking for the consequential relief of specific performance which was available to him, under Section 34 of the Specific Reliefs Act, 1963 that contemplates that a person entitled to any legal character, or any right as to any property, may institute a suit against a person denying, or interested to deny his title.

37. The facts of the case in hand reveal that the plaintiff was all along aware of the Agreement to Sell executed by the defendant No.1 in favour of Shri Kamal Kumar and was even acting as her power of attorney holder in the said suit for specific performance instituted by the latter. Moreover, the documents filed by the plaintiff reveal that when the defendant No.1 had executed an Agreement to Sell dated NIL April, 1993 in favour of the plaintiff in respect of the suit plot, a specific averment was made in clause 3 thereof to the effect that the plaintiff was aware of the court cases and injunctions and sale of the suit plot and would be solely responsible for any

consequences thereof. So, the plaintiff cannot be permitted to feign ignorance of the previous litigation relating to the suit plot. Nor can the plaintiff seek refuge in the order dated 8.2.2010 passed by the Supreme Court for instituting the present suit long after expiry of the prescribed period of limitation for the simple reason that liberty, if any, was granted to the defendant No.1, who was the petitioner in SLP(C) No.3147/2010, to pursue her remedies, under the law, which by no stretch of imagination can be interpreted to include the plaintiff herein, who was no more than her power of attorney holder. It is also an undisputed position that till date, the defendant No.1 has not sought any legal recourse either against the cancellation order dated 11.6.1996 issued by the defendant No.2/DDA in respect of the suit plot or against the judgment dated 2.12.2009, passed by the Division Bench in WP(C)No.3867/1998 filed by the defendant No.4.

38. The present case is quite clearly one where the plaintiff has tried to create an illusion by resting his suit on the power of attorney dated 8.2.2010, purportedly executed by the defendant No.1 in favour of a third party and the affidavit filed by the defendant No.1 in Suit No.1030/1984, when neither of the two events have any relevance for purposes of computing the period of limitation for instituting the present suit, as has been prescribed in the Limitation Act.

39. Guided by the decision of the Supreme Court in the case of T. Arivandandam (supra), wherein it was held that if on a meaningful and not a formal reading of the plaint it is found to be manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, dexterity of

drafting cannot be permitted to camouflage the real cause of action and the court ought to exercise its powers under Order VII Rule 11 CPC, and further, being satisfied that the right to sue had first arisen in favour of the plaintiff on 11.06.1996, when the defendant No.2/DDA had issued the cancellation order in respect of the suit plot to his knowledge and again in August, 1999, when he had filed an impleadment application on behalf of the defendant No.1 in the writ petition filed by the defendant No.4, the submission made on behalf of the defendants No.1 & 4 that the present suit is patently barred by limitation, is upheld. It is held that the plaint espouses a manifestly stale claim and ought to be culled out.

40. Accordingly, I.As. No.5870/2014 & 18107/2014 are allowed. The plaint is rejected and as a result, the suit is dismissed, along with the pending applications.

APRIL 08, 2016
sk/rkb/ap

(HIMA KOHLI)
JUDGE