IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 21 OF 2006

Shri Jahangir @ Jawahar, Kaikashrau Karanjia, Madhuban Apartments 7/45, Worli Hill Road, Worli, Mumbai 18.
(since deceased)

a) Smt. Mehbi Karanjia, wife of late Jahangir J. Karanjia, age 67 years, resident of 45/A, Madhuban Apartments, Worli Hill Road, Mumbai 400 018.

b) Afsar Karanjia, son of late Jahangir J. Karanjia, age 43 years, teacher, resident of 103/B, Madhuban Apartments, Worli Hill Road, Mumbai 400 018.

c) Parveen Shirazi nee Parveen Karanjia, daughter of late Jahangir J. Karanjia, age 41 years, married, resident of 167, Love Lane, Byculla, Mumbai.

d) Burhan Karanjia, son of late Jahangir J. Karanjia, age 35 years, resident of 103/B, Madhuban Apartments, Worli Hill Road, Mumbai 400 018.

e) Mrs. Yasmeen Didee nee Yasmeen Karanjia, daughter of late J. Karanjia, age 33 years, residing at 6/Ganesh Bhuvan, 20th Road, Khar Danda, Khar (West), Mumbai 400 052.

f) Shri Aslam Jahangir Karanjia, son of late Jahangir J. Karanjia, age 37 years, residing at Flat No. 18/3/B, Sky Scraper Apartments, B-Wing, Bhulabai Desai Road, Mumbai 400 026.

2) Nasreen Shaikh nee Nasreen Karanjia, daughter of late Jahangir Karanjia, age 31 years, residing at Flat 5, Ganesh

Bhuvan, 20th Road, Khar, Danda, Khar (West), Mumbai 400 052. .... Appellants

Versus

Smt. Maureen de Sequeira, wife of late Erasmo de Sequeira, House No. 164, Campal, Panaji, Goa. .... Respondent

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Shri S.D. Lotlikar, Senior Advocate with Ms. Aditi Naik, Advocate for the Appellants.

Mrs. Anarkali Agni, Senior Advocate with Ms. Hetal Mody, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 4th JULY, 2017

PRONOUNCED ON: 5th JULY, 2017

JUDGMENT:

The challenge in this appeal is to the order dated 18.10.2005, passed by the learned Senior Civil Judge at Panaji in Special Civil Suit No.27/04/B. By the impugned order, the learned Trial Court has rejected the plaint under Order VII, Rule 11(d) of the Civil Procedure Code, 1908 (CPC, for short), as being barred by limitation.

2. The brief facts necessary for the disposal of the appeal may be stated thus:

That, now deceased-Jahangir Karanjia (the original plaintiff), filed the aforesaid suit against the respondent for declaration that the original plaintiff is the absolute owner in possession of the suit property, more specifically described in paragraph 1 of the plaint. The original plaintiff also sought declaration that the Certificate of Sale dated 30.06.1973 granted in Execution Case No. 24/1970, in favour of the respondent/defendant, is null and void and is therefore liable to be delivered and cancelled. The appellants are the legal representatives of the original plaintiff.

3. The case made out in the plaint was that the suit property happens to be a plot situated at Marvel, Donapaula, which is said to be the part of the larger property, which belonged to one Rui Braganza and his wife Schrumpf De Braganza, which was purchased by the original plaintiff and his daughter Ms. Chandralekha by Deed of Sale dated 22.08.1968. Subsequently, by a Deed of Release dated 30.03.1984, Ms. Chandralekha, released all her rights in the suit property in favour of the original plaintiff. According to the plaintiff, he has been in lawful, exclusive and physical possession of the suit property from the

time of its purchase. By an order dated 08.01.1985, the City Survey Officer allotted Chalta No. 3 of P.T. Sheet No. 191 to the suit property and accordingly, the title and possession of the original plaintiff over the suit property was confirmed.

4. Somewhere in February, 2001, the original plaintiff received a notice from the Directorate of Settlement and Land Records, informing him that an appeal filed by the defendant relating to the suit property is fixed for hearing on 22.02.2001 before the said Authority. The original plaintiff accordingly obtained a copy of the memo of appeal, on which he learnt that the defendant had challenged the order dated 08.01.1985, passed by the Inquiry Officer, City Survey, by which the title and possession of the original plaintiff was confirmed. The original plaintiff also learnt that the defendant is claiming to be the owner of the suit property, on the basis of the Certificate of Sale dated 30.06.1973, under which the defendant claimed that she has purchased the suit property in an auction in execution of Decree in Execution Case No. 24/1970. The said execution proceedings arose from the suit filed by Mrs. Tereza Mawani against Rui Braganza and his wife Shrumpf De Braganza, the predecessor in

title of the original plaintiff. The defendant contended in the appeal that the confirmation of the possession and the title of the suit property in favour of the original plaintiff was done without any notice to her.

5. It is in these circumstances that the original plaintiff filed the suit, seeking declaration about his ownership and the Certificate of Sale dated 30.06.1973, being null and void and for cancellation of the same.

6. In the plaint paragraph 12, the original plaintiff claimed that the cause of action for filing the suit arose on 22.02.2001, when the plaintiff for the first time learnt about the purported purchase of the suit property by the defendant under the Certificate of Sale dated 30.06.1973. It was thus contended that the suit, which was filed on 19.02.2004 was within limitation.

7. The respondent appeared in the suit and filed an application (Exhibit-7) under Order 7, Rule 11 (d) of CPC. It was contended that the original plaintiff has referred to and relied upon the order dated 08.01.1985 in the plaint and a copy of the

said order was also produced. With reference to the contents of the said order, it was contended that the original plaintiff was aware of the Certificate of Purchase much prior to 1985 or at least, on and from 08.01.1985. Thus, the suit having been filed on 19.02.2004, was barred by limitation. The respondent thus sought rejection of the plaint.

8. The original plaintiff filed a reply opposing the application. It was contended that the question of limitation is a mixed question of law and fact, which will have to be decided at the trial of the suit. It was contended that the plaintiff had no knowledge of the purported transaction between the original plaintiff and their predecessor in title. It was contended that the entry in the P.T. Sheet is merely for the purposes of revenue records and the same has no bearing on the title of the suit property. In short, it was contended that there was no cloud on the title of the original plaintiff created by the entries in the said survey record and the suit was within limitation.

9. The learned Trial Court framed a solitary point as to whether, the suit appears from the statement in the plaint to be

barred by any law ? The learned Trial Court answered the said point in the affirmative, holding that the plaint was barred by limitation as provided under Article 58 of the Indian Limitation Act and in that view of the matter, the plaint came to be rejected. Feeling aggrieved, this appeal is filed.

10. I have heard Shri Lotlikar, the learned Senior Counsel for the appellants and Mrs. Agni, the learned Senior Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned order passed.

11. It is submitted by Shri Lotlikar, the learned Senior Counsel for the appellants that at the stage of consideration of an application under Order VII, Rule 11 of CPC, the Court has to confine itself to the allegations in the plaint. It is submitted that in paragraph 12 of the plaint, the original plaintiff has clearly averred that the plaintiff for the first time learnt about the purported purchase of the suit property on 22.02.2001 and thus, the suit was within limitation. It is submitted that the mere mention of the Certificate of Purchase in the order of the Inquiry

Officer, would not be sufficient to cast a cloud on the title of the original plaintiff over the suit property. It is submitted that notwithstanding the Purchase Certificate, the Inquiry Officer has confirmed the possession and the title of the suit property in the name of the original plaintiff. It is submitted that on receipt of a notice of an appeal filed by the respondent, challenging the order of the Inquiry Officer, the original plaintiff came to know of the purported purchase of the suit property by the defendant. It is thus submitted that the plaint could not have been rejected as being barred by limitation. The learned Counsel was at pains to point out that the Deed of Sale, under which the original plaintiff had purchased the suit property, is of the year 1968, which is prior to the auction purchase of the suit property by the respondent in the year 1973. It is submitted that in any event, the issue of limitation is a mixed question of law and fact and thus, the plaint could not have been rejected at the threshold. It is submitted that the plaint has to be read as a whole and not in a lopsided manner. On behalf of the appellants, reliance is placed on the decision of the Supreme Court in the case of **Popat and Kotecha Property Vs. State Bank of India Staff Association, (2005) 7 SCC 510** and in the case of **Mst. Rukhmabai Vs. Lala Laxminarayan &**

Others, AIR 1960 SCC 335, in order to submit that there is nothing in law which requires a person to bring a suit for declaration, the moment his right is denied. It is submitted that the Hon'ble Apex Court has held that a bare repudiation of a title of a person, without any overt act, would not make it incumbent to bring a suit for declaration. It is submitted that in the present case, there is no overt act as such and no clear and unequivocal denial of the title of the plaintiff over the suit property. Reliance is also placed on the decision of the Supreme Court in the case of **Board of Trustee of Port of Kandla Vs. Hargovind Jasraj & Another, (2013) 3 SCC 182**. It is thus submitted that the Trial Court was in error in holding that the suit was barred by limitation.

12. On the contrary, it is submitted by Mrs. Agni, the learned Senior Counsel for the respondent that for the purpose of the application under Order VII, Rule 11(d) of CPC, the allegations in the plaint alongwith the contents of documents produced and relied by the original plaintiff can be taken into consideration. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Hardesh Ores (P) Ltd. Vs. Hede and**

Company, (2007) 5 SCC 614. It is submitted that the Court is required to read the plaint not mechanically, but in a meaningful manner, to ascertain whether it discloses cause of action and/or whether the plaint is barred by any law, which includes the law of limitation. It is submitted that a bare reading of paragraph 12 of the plaint would show that even according to the original plaintiff, the date of knowledge of the purchase of the suit property by the respondent, would be the starting point. It is submitted that although, the original plaintiff claimed that he first got the knowledge on 22.02.2001, a perusal of the order of the Inquiry Officer dated 08.01.1985, would show that the original plaintiff had knowledge about the said Sale Certificate at least from the year 1985 and thus, the suit having been filed in the year 2004 was clearly barred by limitation. It is submitted that once, the Court finds that the suit is barred by any law, the Court is duty bound to reject the plaint, so as to weed out such untenable suit at the threshold. It is submitted that the Certificate of Sale would clearly amount to a cloud on the title of the plaintiff, which should have prompted him to approach the Civil Court, within three years of the knowledge i.e. from the year 1985.

13. I have carefully considered the rival circumstances and the submissions made. It was not disputed during the course of the arguments at the Bar that the law within the meaning of Order VII, Rule 11(d) of CPC, would include the law of limitation. That apart, paragraph 25 of the judgment in the case of **Hardesh Ores** (supra), would make it clear that in a given case, the plaint can be rejected on the ground of limitation, where the suit appears from the statement in the plaint, to be barred by any law, which would include the law of limitation as well.

14. It is now well settled that for the purposes of the determination of the question as to whether, the plaint is liable to be rejected under Order VII, Rule 11(d) of CPC, the Court has to confine to the allegations in the plaint and in the documents produced and relied upon by the plaintiff. This Court in the case of **SNP Shipping Services Private Limited & Others Vs. World Tanker Carrier Corporation, 2000 (2) Mh.L.J. 570** has held that when the plaint is based on a document, the said document can also be looked into, while dealing with the application under Order VII, Rule 11(d) of CPC. There cannot be any manner of dispute that limitation is a mixed question of law

and fact. However, that does not mean that in every case, it is a question involving disputed facts. In other words, there may be cases where, the facts on the basis of which, the issue of limitation has to be decided are either admitted, or are undisputed or are clearly borne out of record. The fact that the plaint in the given case can be rejected as being barred by limitation, would itself indicate that there may be a case where, issue of limitation may not necessarily depend on facts, which are disputed, requiring trial, else otherwise, the plaint could never be rejected as being barred by limitation. Thus, the submission that limitation being a mixed question of law and fact, the plaint cannot be rejected, to my mind cannot be accepted.

15. The suit filed by the original plaintiff is for declaration of ownership and about the Certificate of Sale dated 30.06.1973 in execution proceedings No. 24/1970, being null and void and for cancellation of the same. Thus, the suit would be governed by Article 58 of the Indian Limitation Act, which reads thus:-

	Decription of suit	*Period of Limitation*	*Time from which period begins to run*
58.	*To obtain any other declaration*	*Three year*	*When the right to sue first accrues.*

16. It can thus be seen that the starting point of limitation for filing a suit for declaration under Article-58 of the Limitation Act is when the right to sue "first accrues". The expression right to sue has not been defined in the Act, but, the said expression has been considered in several cases by the Supreme Court.

17. In the case of **State of Punjab Vs. Gurdev Singh, (1991) 4 SCC 1**, the expression was explained thus:

> *"The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."*

18. In the case of **Daya Singh Vs. Gurdev Singh, (2010) 2 SCC 194**, it was held thus, in paragraphs 13 and 14 of the judgment:

> *"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 Vs. 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.'*

It can thus be seen that the cause of action for the purposes of Article 58 of the Limitation Act, accrues only when the right asserted in the suit is infringed, or at least when there is a clear and unequivocal threat to that right (see the case of **C. Mohammad Yunus Vs. Syed Unnissa, AIR 1961 SC 808**).

19. In the case of **Khatri Hotels (P) Ltd. Vs. Union of India, (2011) 9 SCC 126**, it has been held that where a suit is based on multiple causes of action, the period of limitation under Article 58 of the Limitation Act will begin to run when the right to sue first accrues.

20. Coming back to the present case, this is what is stated in para 12 of the plaint:

> *"12. The cause of action arose on the 22nd February 2001 when the plaintiff for the 1st time learnt of the purported purchase of the suit property, the defendant by order dated 30/06/1973. The suit is therefore within limitation."*

21. It can thus be seen that even according to the original plaintiff, the cause of action for filing the suit would arose on the knowledge about the purported purchase of the suit property by the defendant. The only thing is that according to the original

plaintiff, he first learnt of the said purchase on 22.02.2001. Now let us see the copy of the judgment of the Inquiry Officer dated 08.01.1985. A perusal of the said judgment shows that the purported purchase by the plaintiff is of a part of Chalta No. 2, P.T. Sheet No. 191 in the name of the respondent (original defendant). However, it was claimed before the Inquiry Officer that the purchase made by the original plaintiff was much prior to the sale to the defendant. It can thus be seen that the plaintiff was aware of the Certificate of Purchase at least from the year 1985.

22. The next question would be whether, existance and knowledge of such a Certificate of Purchase, can amount to a cloud on the title of the plaintiff, so as to require him to file a suit for declaration. According to Shri Lotlikar, the learned Senior Counsel for the appellants, the said Certificate or its knowledge, cannot amount to either a cloud on the title or a clear and unequivocal infringement of the title of the plaintiff. More so, when inspite of existence of the said certificate, the title and possession of the suit property was confirmed in the name of the plaintiff. In my considered view, the submission cannot be accepted. The original plaintiff is seeking a declaration about his

ownership as also a declaration about the Certificate of Sale dated 30.06.1973 in the execution proceedings No. 24/1970, as being null and void. Thus, the date of knowledge of such a certificate would be relevant to decide as to when, the cause of action for filing the suit first accrued. As noticed earlier, on his own saying, according to the plaintiff, the cause of action would arise on the knowledge of the purported purchase, which according to the plaintiff was on 22.02.2001. However, the judgment of the Inquiry Officer as noticed above, makes a reference to the Certificate of Purchase and thus, it is clearly borne out of record that the plaintiff was aware of the existence of the certificate at least from the year 1985. In my considered view, the denial/infringement of the title may not necessarily require interference with the actual possession of the property by a particular party. In a given case, it may be by way of setting up of a rival title based on a document, which in the present case was a Sale Certificate, issued in an auction proceedings conducted by the Civil Court. Thus, in my considered view, this would amount to a clear and unequivocal denial and/or a cloud on the title of the plaintiff, of which the plaintiff was aware in the year 1985. Thus, in my considered view, the suit filed in the year 2004 was clearly barred by limitation.

23. In the case of **Mst. Rukhmabai** (supra), it has been inter alia held that every threat by a party, however ineffective and innocuous it may be, cannot be said to be a clear and unequivocal threat, so as to compel such a party to file a suit. It has been held that 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.

24. It is evident that the question whether, in a particular case, a clear or unequivocal threat or infringement of right gives rise to a "compulsory cause of action" would depend upon facts and circumstances of each case. At the cost of repetition, it needs to be stated that in the present case, there was a Certificate of Purchase in favour of the respondent obtained in an auction in execution proceedings, which was set up by the respondent, prior to the year 1985 before the Inquiry Officer. In that view of the matter, I find that the original plaintiff having the knowledge of the Certificate of Purchase, the cause of action could be said to have been first accrued at least in the year 1985 and thus, the suit which was filed in the year 2004 was clearly barred by limitation.

25. I have gone through the impugned order and I find that it does not suffer from any infirmity. In the result, the Appeal is dismissed, with no order as to costs.

C. V. BHADANG, J.

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