

\$~A-29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 06.03.2017**

+ C.R.P. 58/2017
ANIL SACHDEVA & ANR Petitioner
Through Mr.Manoranjan, Advocate

versus
NIRMAL KANTA & ORS Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

CM No.8897/2017 (exemption)

Exemption allowed, subject to all just exceptions.

C.R.P. 58/2017 & CM No.8898/2017 (stay)

1. By the present petition filed under section 115 of CPC the petitioners seek to impugn the order dated 5.11.2016 by which an application filed by the petitioners/defendants under Order 14 Rule 2 CPC/ Order 14 Rule 5 CPC has been dismissed.
2. The brief facts are that the respondents/plaintiffs had filed a suit for declaration declaring the General Power of Attorney dated 8.1.1999 allegedly executed by Late Shri Amrit Lal (father of petitioner No.1 and respondents No. 2 and 3 and husband of respondent No.1) as null and void and two sale deed dated 14.01.1999 executed by defendant No.2/petitioner No.2 in favour of her husband -defendant No.1/petitioner No.1 based on the said GPA as null and void.

3. The petitioners filed a written statement raising a preliminary objection that a suit simplicitor for declaration was not maintainable as the respondents are not in possession of the suit property. After framing of a preliminary issue the trial court by order dated 6.1.2005 decided the preliminary issue in favour of the petitioners and the suit was dismissed being not maintainable for not seeking consequential relief of possession. Aggrieved by the order dated 6.1.2005 the respondents filed a RFA. Vide order dated 27.3.2012 the said RFA was disposed of whereby by consent of counsel for the parties an opportunity was given to the respondent to file an application for amendment to bring the plaint within the bounds of law. Liberty was granted to the petitioners to raise all objections on facts and law and with a direction to the court to decide the application for amendment in accordance with law.

4. Thereafter a fresh application filed under Order 6 Rule 17 CPC by the respondents was allowed on 2.5.2016 subject to payment of costs of Rs.25,000/-. The costs have also been accepted by the petitioners. Now the present application is filed under Order 14 Rule 2 CPC whereby the petitioners submit that the amendment which is now being sought by the respondents is barred by limitation as petitioners were required to seek the relief of possession within 12 years from the date of knowledge of dispossession or from the date of accrual of right to possession, Hence, it was pleaded that the application for amendment to incorporate the relief was moved on 11.12.2012 which is beyond the period of 12 years and hence the doctrine of relation back with respect to amendment will not apply to the present case and the suit qua the relief of possession be rejected after preliminary issue has been framed.

5. The trial court noted that in the present case while allowing the amendment the court did not specifically exclude the operation of the doctrine of relation back. After going through a catena of judgments of the Supreme Court the trial court concluded that as per settled law regarding amendment of pleadings, normally, the amendments would relate back to the date of institution of a suit in case of a plaint or to the date of filing of the written statement in the case of a written statement, However, the court can exclude the operation of doctrine of relation back in appropriate cases. It further held that an application for amendment would be disallowed if no fresh suit could be filed for the same cause of action on the ground of limitation. However, if material facts have already been pleaded and no new facts are added amendment could be allowed. Keeping in view the fact that the respondents in the amendment application did not plead any new fact nor sought to make a claim based on new facts and that the only a prayer for grant of possession has been added the trial court held that the doctrine of relation back would not be applicable and the application was dismissed.

6. I have heard learned counsel for petitioners. Learned counsel has relied upon the judgment of the Supreme Court in ***L.C. Hanumanthappa (since deceased) represented by his LRs vs. H.B.Shivakumar*** where in paragraph 29 the Supreme Court has explained the doctrine of relation back.

7. He also submitted that the suit is barred as a suit for possession is to be filed within 12 years. It was put to learned counsel for the petitioners as to under what provision of the Limitation Act petitioners are claiming that a suit for possession has to be filed within 12 years. Learned counsel for the petitioners relies upon Entry 91 A of the Schedule to the Limitation Act. Schedule 91A deals with movable property and does not deal with

immovable property. The relevant provisions for immovable property are in part V of the Schedule to the Limitation Act. Article 64 deals with possession of immovable property based on previous possession and not on title when the plaintiffs while in possession of the property have been dispossessed, period of limitation is prescribed as 12 years from the date of dispossession. Similarly, a suit for possession of immovable property based on title is stated in Article 65 of the Act, which prescribes a period of limitation of 12 years where possession of plaintiffs has become adverse to the other side. It is not even clear as to whether any such a plea of adverse possession has been taken by the petitioners in their written statement. Even if such a plea has been taken, the same would be a disputed question of fact and would have to be adjudicated upon in the course of trial. At this stage, it cannot be said that the plea of possession is barred by limitation as is sought to be urged.

8. In any case the court has powers to allow even a time barred plea to be added by way of an application. [*Pankaja vs. Yellappa, (2004) 6 SCC 415*]

9. There are no reasons to interfere in the impugned order. Present petition is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MARCH 06, 2017

n