

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

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Date of decision: 24th January, 2017

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CS(OS) No.551/2016

ASHWANI SHARMA

.... Plaintiff

Through: Mr. Sanjay Goswami, Adv.

Versus

KANTA SHARMA & ORS.

.... Defendants

Through: Mr. Sanjiv Bahl, Mr. Eklavya Bahl
and Mr. Pawan Agarwal, Advs. for
D-1 to 3.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit pleading (i) that late Shri Diwan Chand Sharma, being the paternal grandfather of the plaintiff, was one of the migrants to India from what is now Pakistan and was entitled to rehabilitation; (ii) that after the partition of the country, the Government of India, in the year 1947, under a Defence Rehabilitation Scheme, set-up certain colonies for rehabilitation of the officers of Armed Forces, Navy and Air Force who had migrated to India on partition of the country and one such colony to be set-up was what is today known as Defence Colony, New Delhi; (iii) that as Shri Diwan Chand Sharma was also a Defence personnel who had migrated from Pakistan, he applied for allotment of a plot in the said colony; (iv) that the Settlement Officer, Ministry of Defence allotted plot no.A-132, Defence Colony, New Delhi *ad measuring* 216.66 sq. yds. in the colony of Defence Colony to the said Shri Diwan Chand Sharma; (v) that the allotment in favour of Shri Diwan Chand Sharma was on the basis of the eligibility certificate issued by the Re-settlement Section, Ministry of

Defence on the basis of his qualification as a Defence personnel and was not a mere general allotment; (vi) Shri Diwan Chand Sharma raised construction on the said plot of land and was residing therein along with his wife and two sons namely Col. Ram Prakash Sharma and Sh. Keshwa Nand Sharma (being the father of the plaintiff); (vii) that though Col. Ram Prakash Sharma being the brother of the father of the plaintiff was also a Defence personnel but was not qualified under the Defence Re-settlement Scheme for allotment of any property; (viii) that Shri Diwan Chand Sharma died intestate in January, 1977 and his wife also died intestate in March, 1979; (ix) that the father of the plaintiff namely Sh. Keshwa Nand Sharma, by reason of his employment shifted along with his family including the plaintiff to Modi Nagar, Uttar Pradesh; (x) that the father of the plaintiff Shri Keshwa Nand Sharma died on 24th March, 1997 leaving the plaintiff and defendants no.4 to 9 namely Smt. Kamlesh Sharma, Smt. Promila Sharma, Smt. Kavita Malik, Smt. Achla Salwan, Smt. Anjana Sharma and Smt. Poonam Sharma as his heirs; (xi) that the plaintiff and the defendants no.4 to 9 as well as Shri Keshwa Nand Sharma were always given an impression by Col. Ram Prakash Sharma that the property no.A-132, Defence Colony, New Delhi had always been the absolute and self-acquired property of late Shri Diwan Chand Sharma against certain entitlements for rehabilitation as a migrant from Pakistan and that his entitlement was also for compensation for properties held by him in Pakistan; (xii) that the plaintiff and the defendants no.4 to 9 or Shri Keshwa Nand Sharma never had any occasion to demand share in the property; (xiii) that Col. Ram Prakash Sharma died on 25th January, 2000; (xiv) that the plaintiff suffered financial setbacks in his

business and was in need of funds and the plaintiff and the defendants no.4 to 9 in January, 2007 sought partition of the property; (xv) that the plaintiff then was for the first time informed that the property had not only been converted into freehold but had been mutated in the sole name of Col. Ram Prakash Sharma and after his demise in the name of his widow i.e. the defendant no.1 (defendant no.2 Dr. Rajesh Sharma and defendant no.3 Dr. Seema Sen are son and daughter respectively of Col. Ram Prakash Sharma); (xvi) it was then that the plaintiff for the first time learnt that the property had been mutated in the name of Col. Ram Prakash Sharma in the lifetime itself of Shri Diwan Chand Sharma on the basis of some Court orders; (xvii) however no documents were furnished to the plaintiff; (xviii) the plaintiff on enquiry from the Land & Development Office (L&DO) learnt and on 26th June, 2007 received copies of documents of allotment of the property in the name of Shri Diwan Chand Sharma being a migrant from Pakistan and of a decree dated 21st August, 1969 obtained by Col. Ram Prakash Sharma in suit No.298/1969 of the Court of Sub Judge First Class, Delhi declaring Col. Ram Prakash Sharma to be the beneficial owner of the said property; (xix) on further enquiry it was learnt that Col. Ram Prakash Sharma had filed the said suit for declaration against Shri Diwan Chand Sharma claiming that the property was purchased *benami* for Col. Ram Prakash Sharma in the name of Shri Diwan Chand Sharma and on Sh. Diwan Chand Sharma not contesting the suit it was decreed within 20 days of filing thereof; (xx) Col. Ram Prakash Sharma was not entitled to allotment from the Ministry of Defence in his own name; (xxi) L&DO was not impleaded as defendant to the said suit; (xxii) even though *benami* transactions were then permitted but

Col. Ram Prakash Sharma could not have obtained the decree and the said decree amounts to a fraud on the L&DO and is illegal; (xxiii) that the decree was obtained without knowledge, consent and permission of Shri Diwan Chand Sharma and by misrepresenting facts to him and by exercising undue influence; (xxiv) Shri Diwan Chand Sharma also continued to represent that he was the owner and had also said that Col. Ram Prakash Sharma, on number of occasions, obtained his signatures on blank sheets claiming that the same were required for the Municipal Property Tax Assessment; (xxv) that the said decree is in violation of Section 23 of the Indian Contract Act, 1872; (xxvi) though the plaintiff and defendants no.4 to 9 protested to the defendants no.1 to 3 but to no avail; (xxvii) Col. Ram Prakash Sharma was not competent to acquire the property *benami* through Sh. Diwan Chand Sharma; (xxviii) the plaintiff and the defendants no.4 to 9 in the year 2007 filed a suit in the Court of the Senior Civil Judge, Tis Hazari for declaration that the decree dated 21st August, 1969 is null and void and without any effect; (xxix) that the plaintiff and the defendants no.4 to 9, on account of technical objections raised by the defendants no.1 to 3 in their written statement to the said suit, applied for amendment of the plaint therein; (xxx) that the plaintiff and the defendants no.4 to 9 withdrew the said suit filed by them for simple declaration, with permission to file a fresh suit as per law; - the said suit being suit no.178/2007 (New No.8245/2016) was withdrawn by order dated 22nd September, 2016 of the Court of the Civil Judge 04 (West), Tis Hazari, Delhi; and, (xxxi) though the plaintiff thereafter approached defendants no.4 to 9 for joining him in this suit but the defendants no.4 to 9 expressed inability.

The plaintiff, on the aforesaid pleas sought a decree for declaration and consequential relief of partition of property no.A-132, Defence Colony, New Delhi by declaring the same to be the property of late Shri Diwan Chand Sharma who died intestate and by setting aside of the decree dated 21st August, 1969.

2. The suit came up first before this Court on 27th October, 2016 when, finding that the plaintiff had valued the suit for the of relief of declaration, for purposes of jurisdiction at Rs.5,00,00,000/- but paid court fees of Rs.20/- only thereon, it was enquired from the counsel for the plaintiff as to how the valuation of the relief for declaration can be different for the purposes of court fees and jurisdiction. Attention of the counsel was also invited to Section 8 of the Suits Valuation Act, 1887. It was further enquired from the counsel for the plaintiff as to how the suit claim for the relief of declaration was within time. Attention of the counsel was invited to Article 59 of the Schedule to the Limitation Act, 1963 providing limitation of three years for a suit to set aside a decree, commencing from the date when the facts entitling the plaintiff to have the decree set aside first became known to the plaintiff.

3. The counsel for the plaintiff stated that the plaintiff, immediately on coming to know of the facts in the year 2007, had instituted the suit aforesaid and has filed this suit after withdrawing the earlier suit with liberty to file again.

4. Even if that be so, this suit will still have to be shown to be within limitation. Benefit of the time spent in the earlier suit can be claimed only by

invoking Section 14 of the Limitation Act but ingredients whereof were not found to have been pleaded in the plaint or by way of separate application.

5. The counsel for the plaintiff then sought an adjournment to file an application under Section 14 of the Limitation Act.

6. The counsel for the defendants no.1 to 3 also appeared on caveat on 27th October, 2016.

7. The plaintiff thereafter filed IA No.1430/2016 under Section 14 of the Limitation Act, and an application for amendment of the plaint to value the suit for the relief of partition at Rs.5,00,00,000/-, paying court fees on his 1/14th share in the property and for the relief of declaration at Rs.5,00,00,000/- paying fixed court fees of Rs.19.50 thereon (as per Schedule II (17) of Court Fees Act, 1870) and to separately claim the reliefs of partition and declaration and which amendment was allowed on 21st November, 2016, when after hearing the counsel for the plaintiff and the counsel for the defendants no.1 to 3 on the maintainability of the suit, orders on admission of the suit were reserved.

8. The questions which arise for consideration are (i) whether in the light of the decree dated 21st August, 1969 declaring Col. Ram Prakash Sharma to be the real owner of the property and Shri Diwan Chand Sharma to be the *benami* owner of the property, the plaintiff can be said to have any cause of action to seek the relief of partition claiming the property to have belonged to Shri Diwan Chand Sharma till his demise; (ii) whether the plaint discloses any cause of action for the plaintiff to seek the relief of declaration of the

decree dated 21st August, 1969 as null and void; and, (iii) whether the claim for declaration is within time.

9. A perusal of the plaint in the suit of the year 1969 filed by Col. Ram Prakash Sharma shows the same to have been filed impleading Shri Diwan Chand Sharma and his wife Smt. Lajwanti as defendants and seeking a declaration that Col. Ram Prakash Sharma was the real/actual owner of house no.A-132, Defence Colony, New Delhi and Shri Diwan Chand Sharma was only the *benamidar*. Vide order and decree therein (also filed by the plaintiff) it was ordered that Col. Ram Prakash Sharma was the real owner of the house and the defendants were the *benamidar*.

10. The plaintiff in the plaint admits that in accordance with the decree aforesaid the property was mutated from the name of Shri Diwan Chand Sharma to the name of Col. Ram Prakash Sharma and on the demise of Col. Ram Prakash Sharma in the name of his widow defendant no.1. Thus, since the decree dated 21st August, 1969, the property has been owned by Col. Ram Prakash Sharma and his widow, for 38 years, till the year 2007 when the plaintiff and defendants No. 4 to 9 for the first time challenged the same. The plaintiff seeks partition of the property as an heir of Shri Diwan Chand Sharma. However Shri Diwan Chand Sharma, for 47 years prior to the institution of this suit for partition was not the owner of the property. Needless to state that till the said decree is set aside, the plaintiff cannot have a cause of action for the relief claimed of partition. Thus, the first of the aforesaid questions framed is answered by holding that the plaint does not

disclose a cause of action for the relief claimed of partition till the plaintiff gets a decree for declaration as claimed.

11. Now let us see whether the plaint discloses any cause of action for the relief claimed of declaration; in the amended plaint, declaration that the property belongs to estate of Sh. Diwan Chand Sharma by setting aside decree dated 21st August, 1969 as well as other documents fraudulently procured by Col. Ram Prakash Sharma in the form of Will dated 2nd June, 1969 of Shri Diwan Chand Sharma and alleged undated affidavit of Shri Keshwa Nand Sharma to be null and void is sought. I have perused the plaint to gauge the grounds on which the plaintiff claims the said decree dated 21st August, 1969 to be liable to be set aside and null and void.

12. The plaintiff, in para 29 of the plaint admits that *benami* transactions were recognised and permitted in the year 1969 to which the transaction and decree pertain. It was also so held by the Supreme Court recently in ***Om Prakash Sharma Vs. Rajendra Prasad Shewda*** (2015) 15 SCC 556 though in the context of a *benami* purchase in the name of wife. I may add that it is only on coming into force w.e.f. 19th May, 1988 of the *Benami* Transactions (Prohibition) Act that the law came to prohibit *benami* transactions. However the prohibition of *benami* transactions vide Section 3 of the said Act was prospective and Section 4 thereof barred enforcement, claiming to be the real owner of the property, of any right in respect of any property held *benami* against the person in whose name the property was held. The said Act did not disturb the declarations as made vide decree dated 21st August, 1969. Thus there is not and cannot be a challenge to decree on this ground.

13. The plaintiff claims (i) that the allotment of the said property in favour of Shri Diwan Chand Sharma was on the basis of eligibility certificate issued by Re-settlement Section of the Ministry of Defence as per criteria laid down for re-settlement of uprooted Defence personnel; (ii) that Shri Diwan Chand Sharma as a condition for such allotment surrendered accommodation allotted to him in Ambala; (iii) that Shri Diwan Chand Sharma had acquired the said property and raised construction thereon from his own monies and not from the monies of Col. Ram Prakash Sharma; (iv) that the said decree was obtained by misrepresenting facts to Shri Diwan Chand Sharma; and, (v) that for all the said reasons the decree was a fraud on L&DO which allotted the property to Col. Ram Prakash Sharma.

14. The plaintiff along with the plaint has filed certified copy obtained from the Office of L&DO of the declaration filed by Shri Diwan Chand Sharmas as allottee of A-132, Defence Colony, New Delhi to the effect that the portion of a labour class house in Ghoshi Mandi, Ambala Cantt on rental basis occupied by him will be vacated on completion of construction of A-132, Defence Colony, New Delhi. The plaintiff has also filed a copy of the undertaking furnished by Shri Diwan Chand Sharma to the L&DO to pay lease rent of house no.A-132, Defence Colony, New Delhi to execute Lease Deed approved by the Government of India, to pay ground rent, to take possession and to construct within one year. The plaintiff has also filed a copy of the letter of allotment containing the terms and conditions thereof but containing the usual terms only and not any term to invalidate the decree for declaration. There is nothing to show that the allotment of land underneath the property to Shri Diwan Chand Sharma was in settlement of

claims for any property left in Pakistan or the nature of any property in Pakistan or that it was a condition of allotment that Shri Diwan Chand Sharma would surrender accommodation in Ambala. Shri Diwan Chand Sharma, in the letter of allotment is described as 'Hony. Lt.' and the subject of the said letter is "Allotment of Small Plots in Kilokri Housing Colony for Displaced Defence Services Personnel". It does not follow therefrom that the allottee should have been a defence personnel at time of displacement. Col. Ram Prakash Sharma was also a displaced person and a defence personnel.

15. Moreover the decree dated 21st August, 1969 declaring Col. Ram Prakash Sharma to be the actual owner of the property and Shri Diwan Chand Sharma to be *benamidar* owner thereof, even if contrary to any terms of allotment of said land furnished a cause of action to the L&DO/President of India. The decree was not against the President of India/L&DO and did not compel the President of India and/or L&DO to in their records so mutate the property. The right if any to object to the decree on such grounds as are urged by plaintiff was of the President of India/L&DO and who admittedly did not object thereto and the plaintiff, after 38/47 years thereof cannot appropriate the said right unto himself. I may in this regard notice that though the plaintiff in this suit has not impleaded the L&DO as defendant but in the suit earlier filed in the year 2007 as aforesaid had impleaded Union of India (UOI) through the Department of Rehabilitation, Ministry of Health and Urban Affairs, Nirman Bhawan, New Delhi as defendant and the said defendant in its written statement, copy of which has been filed by the plaintiff, is not found to have agreed with the plea of the plaintiff of the

decree dated 21st August, 1969 being invalid for the reasons stated. Rather, UOI in its written statement is found to have pleaded that the plaint did not disclose any cause of action against it and the suit was misconceived. The said written statement was verified on 23rd October, 2007 and since then also no action has been taken by UOI.

16. I am therefore unable to find in the plaint read with documents filed therewith any cause of action for the relief claimed of declaration. Reference by the plaintiff in the plaint to Section 23 of the Indian Contract Act is also misconceived. Section 23 of the Indian Contract Act declares as void an agreement objection or consideration whereof is unlawful. However the plaintiff has not been able to plead any unlawfulness in the passing of the decree. Moreover, even if the decree dated 21st August, 1969 is a consent decree, the Court before disposing of a suit in terms of a compromise, which is but an agreement arrived at between the parties, and passing a decree in terms thereof is required to satisfy itself that the agreement is lawful. There is a presumption of such satisfaction in law. I have in ***Preetinder Singh Vs. Gursharan Singh*** ILR (2010) II Delhi 296 held that the court is not bound to, whenever a compromise application is filed before it, to allow the same or to decree the suit in terms thereof; the court is to satisfy itself that the compromise is lawful; such satisfaction includes a satisfaction that the compromise is not a result of undue influence, fraud, coercion etc. Supreme Court, in ***Amteshwar Anand Vs. Virender Mohan Singh*** (2006) 1 SCC 148 held that there is a presumption that the Court was so satisfied and it is not necessary for Court to in express terms say that it is satisfied that compromise is lawful. Reference may also be made this regard to ***Hiralal***

Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (1993) 2 SCC 458, *Suleman Noormohamed Vs. Umarbhai Janubhai* (1978) 2 SCC 179 and *Nagindas Ramdas Vs. Dalpatram Ichharam* (1974) 1 SCC 242. The Court before passing the decree is thus deemed to have not found the agreement between Col. Ram Prakash Sharma on the one hand and Shri Diwan Chand Sharma on the other hand of Shri Diwan Chand Sharma being the *benami* owner of the property and Col. Ram Prakash Sharma to be the true owner of the property to be unlawful. The said judgment and decree has attained finality and the plaintiff for this reason also does not have a cause of action to challenge the same.

17. There is another aspect of the matter. Titles in immoveable property should not be allowed to remain in a flux or in a fluid state of affairs. The Full Bench of the High Court of Punjab & Haryana in *Bhikhan Bobla Vs. The Punjab State* AIR 1963 P&H 255, though in the context of the phrase ‘at any time’ in Section 36 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 providing for variation of scheme of consolidation which had been confirmed, held that title of a right holder cannot be permitted to be in a perpetual state of flux and instability. It was further held that rights of ownership and possession will become extremely precarious if made liable to be disturbed at any time and will result in there being no guarantee of title by long ownership. It was held, there has to be a terminus ad quem i.e. a point after which a title in immovable property cannot be disturbed. The subject property, pursuant to the decree dated 21st August, 1969 was mutated by the President of India/L&DO from the name of Shri Diwan Chand Sharma to the name of Col. Ram Prakash Sharma, as

long back as in the year 1970 and on the demise of Col. Ram Prakash Sharma, in the name of defendant no.1 as far back as in the year 2000. Shri Diwan Chand Sharma, after the decree dated 21st August, 1969, was alive till January, 1977 and the father of the plaintiff Sh. Keshwa Nand Sharma was alive till 24th March, 1997. Neither of them claimed adversely to Col. Ram Prakash Sharma, inspite of Col. Ram Prakash Sharma openly and continuously declaring himself to be the owner of the property by having the property mutated in his name in the records of L&DO. The plaintiff has not pleaded any right which Shri Diwan Chand Sharma or the father of the plaintiff exercised as owner of the property since then. The plaintiff and his father were not even in use and enjoyment of the property. The plaintiff also since the demise of his father in the year 1997 acted for the first time only in the year 2007 i.e. after ten years. It is deemed appropriate that titles in immoveable property settled for long should not be permitted to be disturbed on such specious grounds as are urged. The plaintiff, removed by two generations from Shri Diwan Chand Sharma, cannot be permitted to challenge the decree which Shri Diwan Chand Sharma suffered. The plaintiff has no cause of action to have the decree set aside on grounds of the same having been procured by exercising misrepresentation on Shri Diwan Chand Sharma or by exercising undue influence over him.

18. The second of the aforesaid questions framed is thus answered by holding that the plaint does not disclose a cause of action for the relief of setting aside of the decree dated 21st August, 1969.

19. That brings me to the last of the aforesaid questions i.e. of whether the relief claimed of declaration is within time.

20. The right to have the decree dated 21st August, 1969 cancelled or set aside was of Shri Diwan Chand Sharma who thereby had been divested of title to property. However Shri Diwan Chand Sharma did not take any steps as aforesaid till his demise on January, 1977.

21. Thereafter the right if any to have the decree set aside was of Shri Keshwa Nand Sharma being the father of the plaintiff and an heir of Shri Diwan Chand Sharma. He also till his demise on 24th March, 1997 did not take any steps for setting aside thereof. It seems highly improbable that both of them were not aware of the decree or of the facts entitling them to have the decree cancelled or set aside. It is the plaintiff who as heir of his father Shri Keshwa Nand Sharma is now seeking cancellation/setting aside of the decree. Be that as it may, the question of limitation would be a mixed question of law and fact and the plaint cannot be rejected on the said ground.

22. However the said right according to the plaintiff accrued to the plaintiff in the year 2007. This suit has been filed on 21st October, 2016. The plaintiff seeks to invoke Section 14 of the Limitation Act for invocation thereof it is necessary for the plaintiff to show that the suit filed by the plaintiff in the year 2007 was instituted and prosecuted with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of like nature to entertain it.

23. The plaintiff in the suit earlier instituted sought a declaration of the decree dated 21st August, 1969 as null and void and cancellation thereof and injunction restraining the defendants no.1 to 3 from dealing with the property. The defendants no.1 to 3 in their written statement dated 29th August, 2007 *inter alia* pleaded (i) that the plaintiff was not in possession of the property and the declaration without seeking the relief of possession was not maintainable; (ii) that the suit had not been properly valued for the purposes of court fees and jurisdiction; and, (iii) that the Court of the Civil Judge had no pecuniary jurisdiction to grant the relief.

24. The plaintiff, from the order sheet of the said suit is found to have filed three successive applications for amendment of the plaint in that suit. While the third application for amendment was pending, the plaintiff on 22nd September, 2016 sought to withdraw the suit with liberty to file appropriate suit for appropriate relief before the Court of competent jurisdiction. The defendants no.1 to 3 objected to the liberty sought. However the learned Civil Judge, in view of the objection in the written statement of the defendants no.1 to 3 of the relief sought by the plaintiff being beyond the pecuniary jurisdiction of the Court of the Civil Judge, disposed of that suit as withdrawn with liberty to the plaintiff to file afresh seeking appropriate reliefs before the Court of competent jurisdiction. The plaintiff, in the application under Section 14 of Limitation Act has merely pleaded that he was with respect to objections aforesaid in the written statement of defendants No. 1 to 3 advised that the relief of partition is consequential to the relief of declaration claimed and plaintiff would be subsequently entitled to seek the same. The plaintiff however in the said application also pleads

having withdrawn the earlier suit with liberty to file afresh “ in the light of the observations of the learned trial court in its order dated 1st August, 2011 and also the objections raised by the defendants in their written statement and also the reply to the third amendment application”.

25. It is provided in Order 23 Rule 2 CPC and has been held by me in *Nutan Tyagi Vs. Nirmala Dabas* 232(2016) DLT 60 that a suit even if filed after withdrawing the earlier suit with liberty to sue afresh is a fresh suit for the purposes of limitation.

26. Even if it were to be believed that the Court in which the plaintiff earlier instituted the suit, from defect of jurisdiction, was unable to entertain it, the defendant in its written statement verified on 29th August, 2007 made the plaintiff aware of the said defect. The plaintiff claims to have become further aware of the same from the order dated 1st August, 2011. The only explanation as to why the plaintiff immediately thereafter not withdraw that suit as ultimately done on 22nd September, 2016 and continued to flog the said suit for nine / five years thereafter is that the plaintiff was acting on advise of his advocate. The said conduct of the plaintiff shows total lack of good faith in prosecuting the suit. A litigant cannot so defeat limitation by placing the blame on the advocate, who is not before the court. It is not the case of the plaintiff that he has protested to the said advocate or took any action. Rather, the plaintiff while filing this suit was not even aware that he was required to invoke Section 14 of the Limitation Act and seems to have been under impression that because liberty had been granted, he could invoke the jurisdiction of this court and this suit would be in continuation of

earlier suit. Application under Section 14 of Limitation Act, as aforesaid, has been filed only after attention being drawn thereto.

27. It has been held in *Rabindra Nath Samuel Dawson Vs. Sivakasi* (1973) 3 SCC 381, that continuing to prosecute the suit in a Court unable to entertain it from defect of jurisdiction inspite of objection by the defendant negates good faith. Recently, in *M.P. Steel Corporation Vs. Commissioner of Central Excise* (2015) 7 SCC 58 it has been held that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction and there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party.

28. It thus but has to be held that the suit claim is also barred by time.

29. I accordingly answer the last of the aforesaid questions framed on the aspect of maintainability by holding that the suit claim, from the averments in the plaint and application, is barred by time.

30. The suit thus but to be dismissed and is dismissed.

31. The plaintiff is also burdened with costs of Rs.25,000/- payable to the defendants no.1 to 3.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JANUARY 24, 2017

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