

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

+ **RFA No. 774/2017**

% **8th September, 2017**

VEER BHAN & ANR. Appellants
Through: Mr. Shanul Kadian, Advocate

versus

RAMPHAL & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. 32798/2017 (Exemption)

1. Exemption allowed, subject to all just exceptions.

Application stands disposed of.

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2. This first appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the appellants/plaintiffs in the suit impugning the judgment of the trial court dated 30.05.2017 whereby trial court has rejected the plaint under Order VII Rule 11 CPC as being time barred. Appellants are legal heirs of the original plaintiff,

and referenace in this judgment to the plaintiffs will include reference to the original plaintiff.

3. The subject suit was filed by the appellants/plaintiffs seeking declaration of ownership of 1/4th share in the property bearing Khasra No. 108/91, measuring 300 sq. yards situated in extended Lal Dora abadi of village Khera Kalan, Delhi, relief of partition thereof and for cancellation and declaration as void of the registered General Power of Attorney ('GPA') and Will dated 09.06.2004 executed by the appellants/plaintiffs with respect to the suit property in favour of the defendant nos.6 to 9 in the suit.

4. The facts pleaded by the appellants/plaintiffs (legal heris of original plaintiff) were that the suit property was an ancestral property and it devolved upon four brothers Sh. Ram Kishan, Sh. Om Prakash Rana @ Ram Prakash (plaintiff), Sh. Ram Prasad and Sh. Ramphal. Sh. Ram Prasad expired on 17.03.1974 leaving behind four sons being defendant nos.2 to 5. Sh. Ram Kishan was unmarried and before his death he bequeathed his share in the suit property to defendant nos.2 to 5. Resultantly, defendant nos.2 to 5 became owner of half share in the suit property and the plaintiff and defendant no.1

became owners to the extent of 1/4th share each in the each undivided suit property. It was pleaded in the plaint that defendant nos.2 to 5 on 09.06.2004 approached the father of the appellants/plaintiffs and defendant no.1 saying that the defendant nos.2 to 5 wanted to sell their share in the three properties bearing nos. 108/187, 108/188 and 108/91 (suit property), and they were required to witness the documents and hence the father of the appellants/plaintiffs and defendant no.1 accompanied defendant nos.2 to 5 to the Office of the Sub-Registrar where defendant nos.6 to 9 met them and got thumb impressions of the plaintiff on the documentation with respect to the suit property in Khasra No.108/91. It is pleaded that plaintiff was an illiterate person and did not know that by the documentation dated 09.06.2004 he had in fact transferred his rights in the suit property to defendant nos.6 to 9. Therefore, the subject suit came to be filed seeking the reliefs of declaration/partition and for cancellation of the documents being the GPA and the Will dated 09.06.2004 executed by the plaintiff in favour of the defendant nos.6 to 9 with respect to the suit property admeasuring 300 sq. yards situated in Khasra No.108/91.

5. Trial court has for the purpose of rejecting the plaint placed reliance on Article 58 of the Limitation Act, 1963 and which provides that the limitation period with respect to a suit to seek cancellation of the documents executed is a period of three years from the date of the knowledge of the execution of the documents. Infact even Article 59 of the Limitation Act applies and these Articles 58 and 59 of the Limitation Act read as under:-

	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.
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.

6. As per Section 3 of the Limitation Act even if limitation is not set up as a defence, courts have to ensure that the suit is within limitation.

7. Trial court has in my opinion rightly held that the plaintiff is deemed to know the contents of the documents executed by him on 09.06.2004 itself and it is not open to the plaintiff to argue that he was not aware of the contents of documents executed by him on

09.06.2004. This is all the more so because documents are registered documents and hence they were not concealed from the plaintiff. It does not lie in the mouth of the plaintiff to deny knowledge of the contents of the documents dated 09.06.2004 especially since the same were never concealed from him. The limitation period therefore for challenging the documents dated 09.06.2004 and for filing the suit began as against the plaintiff on 09.06.2004, and the suit therefore had to be filed to challenge the documents dated 09.06.2004 by 09.06.2007, however, the subject suit was filed by the appellants/plaintiffs only on 26.05.2012 i.e well beyond the period of limitation. Trial court therefore in my opinion rightly rejected the plaint as time barred by applying Article 58 of the Limitation Act read with Section 3 thereof.

8. Learned counsel for the appellants/plaintiffs argued that while dealing with the application under Order VII Rule 11 CPC only contents of the plaint have to be seen and it is further argued that the subject suit raised disputed questions of facts which required trial and therefore plaint could not be rejected under Order VII Rule 11 CPC. I cannot agree with the submissions inasmuch as the trial court has

taken admitted facts that the appellants/plaintiffs are challenging the documentation dated 09.06.2004 by a suit filed on 26.05.2012 i.e. after around eight years of execution of documents and therefore such challenge is time barred in view of Article 58 of the Limitation Act which required challenge to be made within a period of three years. There are no disputed questions of facts which require trial because the trial court has referred to the admitted facts as stated in the plaint.

9. There is no merit in the appeal. Dismissed.

SEPTEMBER 8, 2017
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VALMIKI J. MEHTA, J

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