

\$~

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

%

Decided on: 21.05 .2018

+ RFA(OS) 5/2018, CM APPL.20491/2017 (to hear and decide the appeal at admission stage) and CM APPL.33278/2017 (stay)

RENU KHHULLAR

..... Appellant

Through: Mr A.K. Singla, Adv.

versus

AARON @ ARUN BHANDARI & ORS.

..... Respondents

Through: Mr Sanjeev Sindhvani, Sr. Adv with
Mr Sanjay Dua, Adv for Respondent
Nos. 1 and 2

Mr Jeevesh Nagrath, Mr Akash Jandial,
Mr Pratham Sharma, mr Chitvan
Singhal, Advs for Respondent No.3

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA

1. Vide the present appeal, the appellant has assailed the order dated 17.05.2017 passed by the learned Single Judge, whereby her suit bearing No.CS(OS) 217/2017 seeking declaration, partition, possession and injunction *qua* House No. 206, Block-10, Golf Links, New Delhi-110003, was dismissed at the threshold without issuing notice to the respondents, on the ground that the same was barred by limitation.

2. The brief facts of the case are that the property bearing House No.206, Block No.10 (measuring 375 sq. yds.), Golf Links, Cornwall Road, New Delhi (hereinafter referred to as 'the subject property') was purchased by Dr. S.N. Bhandari in 1952 who out of his own earnings raised a 2½ storeyed bungalow on the said plot in the year 1954. Dr. S.N. Bhandari, entered into a settlement deed dated 08.03.1956 with one Dr.Raj Kumari Grover *qua* the subject property. As per the terms of this deed of settlement, they became owners of equal shares in the subject property. It was also resolved between them that the subject property shall go to her sons and in their absence to her daughters etc., on the re-marriage or death of Dr. Raj Kumari Grover. Subsequent to this deed of settlement, both Dr. S.N. Bhandari and Dr. Raj Kumari Grover became a couple by virtue of their marriage, solemnized on 17.03.1956. The said deed of settlement was confirmed by the Land & Development Officer, vide his letter No.LIV/9/10/206 dated 27.12.1965. Thereafter, on 15.02.1972, Dr. S.N. Bhandari relinquished his undivided share in the subject property in favour of his wife, namely, Dr. Ms.Raj Kumari Bhandari and the latter became full owner by virtue of the former's letter No.LIV/9/10/206 dated 06.05.1972. Dr. Ms. Raj Kumari Bhandari, mother of the parties, thereafter executed a Will dated 26.03.1979

bequeathing all her immovable and movable properties to her two sons and their families. During her lifetime, a family settlement deed dated 11.11.1980 was drawn. It was witnessed by her two daughters, which included the appellant. The mother of the parties expired on 21.09.2007. Both the sisters (appellant and respondent No.3) raised disputes with regard to the said Will dated 26.03.1979. The matter was referred to arbitration. In those proceedings, the parties entered into a settlement dated 10.10.2007 before the Arbitrator. An award dated 29.10.2007, in terms of the settlement, was passed. This award was challenged by the appellant and her sister, namely, Ms. Neena Thakur, by way of CS(OS) No.2251/2013, which is now pending adjudication before the District Courts, Delhi.

3. As per the appellant, she had discovered one hand written Will dated 25.05.2006 of her deceased mother. Thereafter, the executors of the said Will dated 25.05.2006 filed a probate Petition No.29/2016 (Old No.324/2014), their appointment as executors of the subject property.

4. While the evidence was recorded in the probate proceedings, a witness from the Land & Development Office was summoned and he produced certain documents, including the said settlement deed dated 11.11.1980.

5. The impugned order has been challenged by the appellant on the grounds that the averments made in the suit have not been properly appreciated and examined; that the averments in the plaint are required to be read as a whole, and not in isolation and out of context. It is argued that learned Single Judge has erred in reading the pleadings in isolation and not in totality. Reliance is placed on **Ponnala Lakshmaiah vs. Kommuri Pratap Reddy & Ors.** (2012) 7 SCC 788 and on para 33 of **Udhav Singh vs. Madhav Rao Scindia** (1977) 1 SCC 511 which reads as under:-

*“33. We are afraid, this ingenious method of construction after compartmentalization, dissection, segregation and inversion of the language of the paragraph, suggested by the counsel, runs counter to the cardinal cannon of interpretation, according to which, **a pleading has to be read as a whole to ascertain its true import.** It is not permissible to call 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. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole.**”*

(emphasis supplied)

It is further argued that the learned Single Judge has wrongly relied on the provisions of Article 58 of the Limitation Act which has no application in the facts of the present case. The relief sought, it is urged, is governed by Article 59 of the Limitation Act. It is further argued that from the impugned order, it is not clear whether it is a rejection of the plaint or dismissal of the suit. It is argued that both the connotations have different repercussions. A dismissal of the suit would bar the subsequent suit on the principles of *res judicata*, whereas there is no bar when the plaint is rejected under Order VII Rule 11 of Civil Procedure Code (hereinafter referred to as 'CPC'). The impugned judgment thus disregards the mandate of Section 26 and 27 of CPC and hence is not a judgment as stipulated under Section 33 of CPC, and no decree will follow. Reliance is placed upon the decision of this Court in **Bright Enterprises Private Ltd & Anr. Vs. MJ Bizcraft LLP & Anr, 2017 (236) DLT 295.** It is prayed that the impugned order be set aside and the suit be restored.

6. During the course of arguments, it is also argued on behalf of the appellant that the appellant signed the instrument dated 11.11.1980 as a witness, unaware of its contents, and reliance has been placed in this behalf on para 13 of **Banga Chandra Dhur Biswas & Ors. vs. Jagat Kishore**

Chowdhuri & Ors, (1917) ILR 44 P.C. 186 and para 18 of **Vedo Devi & Ors. vs. Sandeep & Ors** in RSA No. 1715/2017, decided by the Punjab & Haryana High Court on 25.10.2017. It is further argued that the suit is not barred by limitation *ex facie* as the question of limitation is a mixed question of law and fact. Reliance is placed upon the decision of this Court in RFA (OS) 77/2012 titled as **“M/s Décor India (P) Ltd vs. Delhi Stock Exchange Association Ltd”** decided on 01.11.2012.

7. We have heard the arguments and perused the relevant record.

8. The first and foremost argument of the learned counsel of the appellant is that the learned Single Judge ought to have followed the mandate of Section 26 of CPC and issued the summons to the respondents. By not doing so and dismissing the suit at the initial stage, he has acted in violation of the provisions of CPC and, therefore, the findings need to be set aside on this ground alone. Section 26 of CPC reads as under:-

26. Institution of suits.- (1) *Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.*

(2) *In every plaint, facts shall be proved by affidavit.*

There is no doubt that Section 26 of CPC requires that when a suit has been instituted on the presentation of a plaint, the summons be issued to the respondents in terms of Section 27 of CPC. The mandate of Section 26 of CPC is to issue summon when a plaint is presented, supported by an affidavit.

9. Order VII Rule 1 of CPC however prescribes the format of a plaint. It mandates that the plaint shall include the following particulars. The relevant provision is reproduced as under:-

***“1. Particulars to be contained in plaint.-** The plaint shall contain the following particulars:—*

(a) the name of the court in which the Suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that affect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set off or relinquished a portion of his claim the amount so allowed or relinquished; and

(i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.”

(emphasis supplied)

Every plaint therefore must contain the facts, showing cause of action and the date on which it arose. The suit is required to be filed within the period of limitation to sue on that cause of action.

10. Section 3 of the Limitation Act mandates that every suit which is not within the prescribed period of limitation shall be dismissed, even though limitation has not been set up as a defence. Section 3(1) is reproduced as under:-

“3 Bar of Limitation.

(1) Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as defence.”

11. This provision casts a duty upon the Court to ensure that every suit presented before it for adjudication, is filed within the prescribed period of limitation. While Order VII Rule 10 of CPC requires the Court to return a

plaint for presentation in a Court of competent jurisdiction when it finds that it had no jurisdiction to entertain the plaint, Order VII Rule 11 of CPC confers the jurisdiction upon the Court to reject a plaint for the reasons mentioned therein. Order VII Rule 11 of CPC reads as under:-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.”

(emphasis supplied)

Order VII Rule 11 (d) of CPC when read in conjunction with Section 3 of the Limitation Act clearly confers power upon the Court to reject a

plaint if it is barred by the provisions of Limitation Act, even though no such defence has been raised before the Court i.e. even at initial stage.

12. Learned counsel for the appellant has also relied on the provision of Order V Rule 1 of CPC which deals with the procedure of issue and service of summons. This provision requires the Courts to issue summon “*when a suit has been duly instituted*”. Learned counsel has relied on the findings in the case of **Bright Enterprises Private Ltd** (*supra*). The findings in that case do not help him at all. The findings are distinguishable in the facts of the present case. However, the principle enunciated in **Bright Enterprises Private Ltd** (*supra*) while interpreting the expression “*duly instituted*”, is relevant. The Court while interpreting the expression “*duly instituted*” held as under:-

“16. Order V Rule 1 CPC stipulates that when a suit has been ‘*duly instituted*’, a summons ‘*may*’ be issued to the defendant to appear and answer the claim and to file the written statement of his defence etc. It is clear that the provisions of Order V Rule 1(1) reflect the substantive provision contained in Section 27 CPC.

17. From the above and particularly upon examining the provisions of Section 27 and Order V Rule 1(1) CPC, it is evident that when a suit is regarded **as having been ‘duly instituted’, a summons may be issued to the defendant. The use of the expression ‘duly instituted’ has to be seen in the context of the provisions of Orders VI and VII of the CPC.....**”.

(emphasis supplied)

13. The stage for issuance of summons to the opposite party arises only when the Court is satisfied that the suit is '*duly instituted*'. A suit which is barred by limitation, or does not disclose any cause of action, i.e. if it is barred by provisions of Order VII Rule 11 of CPC or any other law cannot be said to be a suit which is duly instituted and Courts are not bound to issue summons in such cases and are within their power to dismiss the same in *limine*. The contention, therefore, that the learned Single Judge could not have dismissed the suit at the initial stage, has no merit.

14. There is no dispute that while arriving at the conclusion under Order VII Rule 11 of CPC, the Court has to rely solely on the averments in the plaint and also the documents relied upon by the petitioner in support of his/her contentions in the plaint. It is a well settled principle of law.

15. In **T. Arivandandam Vs. T.V. Satyapal and another** (1977) 4 SCC 467, the Apex Court has clearly held that when the Courts are exercising the jurisdiction under Order VII Rule 11, it is duty bound to conduct a meaningful reading of the plaint. The Supreme Court has observed as under:-

“5.... The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits....”

16. Again in a subsequent judgment titled as ***I.T.C Ltd. vs. Debts Recovery Appellate Tribunal and Ors, AIR 1998 SC 634***, the Supreme Court has held that the Courts have to enquire whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

17. Learned counsel for the appellant has argued that the learned Single Judge has not considered the plaint as a whole but has picked up sentences from here and there while reaching to this conclusion. It is argued that the appellant had clearly disclosed the date when the cause of action had arisen and it is from that date the period of limitation has to be reckoned. It is further argued that the present suit for declaration is not governed by Article 58 of the Limitation Act but it is governed under Article 59 of the Limitation Act, and, therefore, the learned Single Judge has wrongly concluded that the suit was barred under Article 58 of the Limitation Act.

18. We have also perused the plaint. In the suit CS(OS) No. 217/2017 filed by the appellant in which the impugned order was passed, she has sought following reliefs:-

“(A)decree of declaration thereby declaring that Deed of Settlement dated 11.11.1980 registered as Document No. 529, Addl. Book No. I, Vol. No. 4422 on pages 48-49 dated 19.2.1981 in the office of Registering Authority, New Delhi, annulled, cancelled and superseded all acts, deeds made or performed between parties in pursuance to Will dated 26.03.1979.

(B)decree of declaration thereby declaring that abovesaid Deed of Settlement dated 11.11.1980, upon not being acted upon and otherwise abandoned by defendants No.1 and 2 in terms thereof, left estate of mother of parties (Smt. Raj Kumari Bhandari) open to succession in accordance with Section 15 of Hindu Succession Act, 1956, pending adjudication on deceased mother's last Will dated 25.05.2006 sub-judice in Probate Case No. 324/2014 pending between parties.

(C)decree of declaration thereby declaring plaintiffs share in estate of Smt. Raj Kumari Bhandari described in Schedule to the plaint in accordance with prayer made vide clause (B) above.

(D)Decree of partition of suit property described in Schedule in accordance with share of parties so determined by passing preliminary decree followed by final decree in accordance with provisions of Order XX Rule 18 CPC.

(E)Decree for possession against defendants No. 1 and 2 thereby placing plaintiff in vacant peaceful possession of Property/House No. 206, Block -10, Golf Links, New Delhi -110003 situate on plot admeasuring 375 sq.yds. (313 sq.mtrs.) of partition falling to her share in accordance with law.

(F)Decree of mandatory injunction thereby directing and ordering defendant No. 4 to recall / annul all proceedings

/orders made by them in respect to Property / House No. 206, Block -10, Golf Links, New Delhi - 110003 situate on plot admeasuring 375 sq.yds. (313 sq.mtrs.) in pursuance to defendants No. 1 and 2 application dated 25.10.2007 obtained on basis of annulled and superseded 26-03-1979 Will, produced by defendant No. 4 on 17.10.2016 in pending probate litigation between parties.

(G)Award the cost of suit in favour of plaintiff and against defendants No.1 and 2.

(H)Pass such further order(s), considered just fit, proper and expedient in the circumstances of the case.”

It is apparent that the main prayer of the appellant is annulment and cancellation of the settlement deed dated 11.11.1980, which is a document registered on 19.02.1981 and consequential reliefs have been sought that might follow such cancellation.

19. Learned counsel for the appellant, although, has argued that the period of limitation for the cancellation/annulment of a settlement deed dated 11.11.1980 is covered under Article 59 of the Limitation Act and not under Article 58 of the Limitation Act, however, the perusal of the plaint shows that not a single averment is made in the plaint regarding the period of limitation. The appellant has not pleaded any fact claiming exemption of any period to be excluded while calculating the period of limitation for seeking cancellation of the document, executed on 11.11.1980 and registered in the year 1981 and which was duly signed by the appellant. The

plaint is completely silent as to the fact when the period of limitation had begun. In the plaint, the appellant has not disclosed the date on which she claims to have gained knowledge of the instrument i.e. the settlement deed dated 11.11.1980. Admitted facts are that this settlement deed was executed by her mother and it also bears her signatures as well as signatures of other siblings. In the absence of any pleadings to the contrary, the knowledge of execution of this deed therefore can be assigned to the date on which this deed was signed by the appellant i.e. 11.11.1980.

20. Even if we accept that the Article 59 of the Limitation Act governs the period of limitation in the case of appellant, the period of limitation is three years from the date when the facts entitling the plaintiff to have the instrument cancelled, first became known. It is the duty of the plaintiff under the law to place before the Court, the facts showing that the instrument came to be known to her on any other date than the date on which she put her signature on the instrument. Naturally by her own averments in the plaint, she was aware of this family settlement on the very date on which it was signed. Although, it is argued before us that she simply signed the instrument and was not aware about the contents of the deed but again there are no pleadings in her plaint to this effect. The plaint is totally

silent about the date of knowledge. What, she had contended in the plaint is reproduced as under:-

“10. That in probate case, an official of defendant No. 4 appeared as witness (PW-4) - Ms. Poonam Nagpal. In her deposition on 17.10.2016, records consisting of 41 pages relating to Property/House No. 206, Block -10, Golf Links, New Delhi - 110003 available with said office are produced. Amongst documents produced is Deed of Settlement dated 11.11.1980 registered as Document No. 529 Book No. I, Vol. No. 4422 on pages 48-49 dated 19.2.1981 in the office of Registering Authority.

12. That the need to file the present suit is occasioned in view of disclosure found in documents produced by abovesaid officials of defendant No. 4 having bearing on succession to property / House No. 206, Block -10, Golf Links, New Delhi - 110003 and circumstance stated hereafter.

21. That rights are conferred upon parties by Deed of Settlement dated 11.11.1980. Plaintiff has acquired legal rights in terms thereof, since defendants in view of pending litigation between parties, would deny plaintiff's rights, therein, present suit is filed.

22. That defendant No. 4 is in breach of obligations in not advising parties on the existence and availability of Deed of Settlement dated 11.11.1980 to the parties and by not disclosing status of substitution in title in respect to subject property in proceedings taken on 17.10.2016. The Deed of Settlement is registered on 19.2.1981 in the office of Registering Authority of defendant No.4.

24. That need to file the present suit is occasioned upon production of records by defendant No. 4 in pending litigation between parties on 17.10.2016.”

21. Section 9 of the Limitation Act stipulates that once the period of limitation begins, it does not stop and no subsequent disability or inability stops it. However, while computing the period of limitation, Part 3 of the Limitation Act excludes certain periods. Order VII Rule 6 of CPC clearly stipulates that where a suit is instituted after the expiry of period of limitation, it is the duty of petitioner to plead facts in the plaint showing that the suit is within limitation and not barred by limitation. The appellant apparently has not made any averment in the plaint regarding period of limitation. Even if we accept the arguments of learned counsel for the appellant that the period of limitation in this case has to be reckoned under Article 59 of the Limitation Act, it is still required to be filed within three years from the date of knowledge of execution of this settlement deed *qua the* appellant. In the absence of any averments in the plaint to the contrary, the period of limitation naturally has to begun from the date when family settlement was executed and signed by the appellant, admittedly which date is 11.11.1980.

22. In the light of this settled proposition of law, the claim of the appellant that the period of limitation is to be reckoned from the date of cause of action i.e. when there arose “a need to challenge” the instrument,

has no force in it. The period of limitation to challenge the instrument once start running does not stop. The plaint is bereft of any facts, showing as to why it should be reckoned from the date of alleged cause of action and not from the date of execution of the instrument.

23. It is not out of place to observe that at no stage the appellant in her petition has averred that the contents of a settlement deed dated 11.11.1980 were not within her knowledge on the date it was executed. The case laws relied upon by the appellant are not applicable on the facts and circumstances of this case. It is also noteworthy that the parties also entered into a settlement in subsequent arbitration proceedings, the contents of that settlement are more or less the same which form part of a settlement deed dated 11.11.1980. In the impugned order, the learned Single Judge has also observed as under:-

“At the outset, a question has been put to the plaintiff as to how the suit is within the limitation as the challenge has been made to family settlement dated 11.11.1980; under Article 58, Schedule I of the Limitation Act, a period of three years is prescribed to obtain such a declaration which period is to commence from the date of the document; admittedly this document having been signed by the plaintiff was well within the knowledge of the plaintiff on 11.11.1980, There is no answer with the plaintiff. Contention of the plaintiff is that the cause of action arose upon the death of the mother of the parties i.e., on 21.09.2007 and when the hand written Will of their mother dated 25.05.2006 was detected.

This court is of the view that this litigation is nothing but a mala-fide. The plaintiff sister does not appear to be happy with the settlement deed to which she admittedly was a party; it is not her case that settlement dated 11.11.1980 has been obtained fraudulently / under collusion or has been coerced out of her. This document was admittedly signed by her on 11.11.1980 when she was a full major and knew very well the contents and consequences of the documents. Her having woken up in the year 2017 to file this present litigation is nothing but an attempt to set up a time barred claim which over this period of time now lapsed and for which the hurdle of limitation not having been crossed will not allow the suit to proceed. Such kind of vexatious litigation has to be nipped in the bud. Under Section 3 of the Limitation Act, it is the bounden duty of the Court to examine this bar before permission can be accorded to such a litigant to proceed with the litigation. The suit is being barred by time and misconceived, this Court is of the view that the suit be dismissed with exemplary costs. Suit is dismissed with costs quantified at Rs.50,000/-."

24. In view of the above, we find no illegality or perversity in the impugned order. The impugned order needs no interference. The appeal has no merit and is hereby dismissed along with pending applications with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

MAY 21, 2018/bg/ss