

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA No. 332/2018**
% **11th October, 2018**

ANITA RANI MANGLA Appellant

Through: Mr. H.S. Gautam, Advocate
(Mobile No. 9911483237).

versus

BHAGWAT DAYAL & ORS Respondents

Through: Mr. Rupesh Kumar and Mr.
Sandeep Sharma, Advocates
(Mobile No. 9810793688).

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 332/2018 and C.M. Appl. No. 15540/2018 (for stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 03.04.2018 by which

the trial court has dismissed the suit of the appellant/plaintiff as barred by time. The suit has been held as barred by time on the ground that the suit for cancellation of the impugned documents dated 17.09.1999 has been filed in July, 2017 i.e. beyond the period of three years limitation prescribed under Articles 58 and 59 of the Limitation Act, 1963.

2. A reading of the plaint shows that the appellant/plaintiff in the suit has prayed for cancellation of the subject documents dated 17.09.1999, being the Agreement to Sell, General Power of Attorney, Affidavit, etc. whereby the respondent no. 1/defendant no. 1 is said to have been transferred the suit property by the appellant/plaintiff. The suit property being property bearing No. E-7, Hari Nagar, Part-II, Badarpur, New Delhi.

3. The appellant/plaintiff in the plaint has repeatedly pleaded that the documents dated 17.09.1999 are forged and fabricated documents. The appellant/plaintiff also pleads that the rent agreement alleged to have been executed in favour of her husband, is not valid because she never executed the documents dated 17.09.1999.

4. When a preliminary issue is decided, the contents of
plaint have to be taken as correct. In the plaint, I do not find any
statement that the appellant/plaintiff knew about the existence of the
documents dated 17.09.1999, three years before the filing of the suit in
July, 2017. The trial court has wrongly imputed knowledge to the
appellant/plaintiff from the knowledge of the husband of the
appellant/plaintiff in terms of a Legal Notice dated 04.10.2013 issued
to the husband of the appellant/plaintiff, and reply of which was sent
by the husband of the appellant/plaintiff on 14.10.2013. It is pertinent
to note that it is a disputed question of fact as to whether contents of
the Notice dated 04.10.2013 were brought to the notice of the
appellant/plaintiff by her husband, and this factual aspect can only be
decided after trial.

5. The trial court has also wrongly observed that the
appellant/plaintiff is deemed to have notice of the contents of the
documents dated 17.09.1999 because she deposed as a witness in an
eviction case filed by the respondent no. 1/defendant no. 1 for non-
payment of rent under Section 14(1)(a) of the Delhi Rent Control Act,
1958, but it is seen that the deposition which is made by the

appellant/plaintiff is only on 10.02.2016, so if 10.02.2016 is taken as the date of knowledge of the impugned documents dated 17.09.1999, then the period of three years will only commence on 10.02.2016 and will thus end on 10.02.2019, whereas the subject suit has been filed in July, 2017. It is further observed that if we take the date of affirmation of the affidavit by way of evidence of the appellant/plaintiff in the earlier eviction suit filed against the husband of the appellant/plaintiff, the attestation is of December, 2015, and consequently limitation period for filing of the suit would only expire in December, 2018, whereas the subject suit has been filed in July, 2017.

6. In law, once documents are alleged by the appellant/plaintiff to be forged and fabricated documents, such a plea would ordinarily include challenge to the documents on the ground that the contents of the documents are not known to the appellant/plaintiff. Once the contents of the documents are not known, then the period of limitation can only start against the appellant/plaintiff to question the documents when the contents of the documents are known to her. This is clarified by the Hon'ble Supreme

Court in the judgment in the case of ***Prem Singh and Others v. Birbal and Others (2006) 5 SCC 353*** that a voidable document is a document which is sought to be cancelled under Article 59 of the Limitation Act whereas a void document need not be cancelled. It has also been held by the Hon'ble Supreme Court in the case of ***Mohd. Noorul Hoda v. Bibi Raifunnisa and Others (1996) 7 SCC 767*** that the starting point of limitation under Article 59 of the Limitation Act is the knowledge of the alleged fraud. The relevant paragraph of this judgment is para 6 and this para 6 reads as under:-

“6. The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the facts in this case. Article 59 of the Schedule to the Limitation Act, 1908 had provided inter alia for suits to set aside decree obtained by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was attracted. The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground. It is true that Article 59 would be applicable if a person affected is a party to a decree or an instrument or a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot

be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass a person seeking derivative title from his seller. It would, therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first became known to him."

(Underlining Added)

7. In the present case, there is no admitted document or admitted fact on record which shows specific knowledge of the existence of the documents dated 17.09.1999 of the appellant/plaintiff prior to three years of filing of the subject suit in July, 2017. The trial court, therefore, in my opinion, could not have dismissed the suit as barred by time by framing and deciding a preliminary issue of limitation to this effect.

8. In view of the aforesaid discussion, this appeal is allowed and the impugned Judgment of the Trial Court dated 03.04.2018 is set

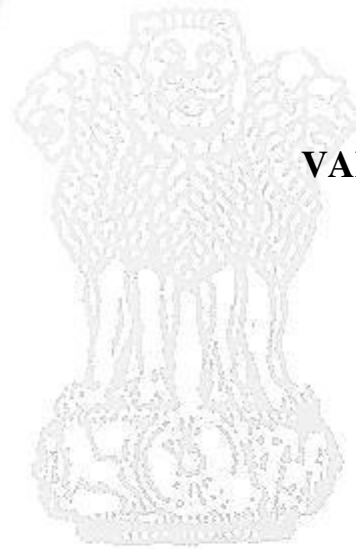
aside. The suit will now be decided on merits as per the issues raised in the case, in accordance with law.

9. Parties to appear before the District and Sessions Judge, South East District, Saket Courts, New Delhi, on 14th November, 2019 and the District and Sessions Judge will now mark the suit for disposal to a competent court in accordance with law.

OCTOBER 11, 2018

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VALMIKI J. MEHTA, J



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