

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

+ **RFA No. 763/2010**

% **18th September, 2018**

CHETRAM & ORS

..... Appellants

Through: Mr. Bhaskar Mishra, Mr. M.K. Choudhary and Mr. Aditya Kumar, Advocates (Mobile No. 9810542579).

versus

DAVENDER & ORS

..... Respondents

Through: Mr. K.G. Mishra and Mr. A.V. Malhotra, Advocates (Mobile No. 9278774948).

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 763/2010 and C.M. Appl. No. 2658/2011 (for directions)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit

impugning the Judgment of the Trial Court dated 20.07.2010 by which the trial court has rejected the plaint under Order VII Rule 11 CPC.

2. The suit property is an area of 225 sq. yards situated in Khasra no. 48/62, Village Khayala, New Delhi-18. The case set up in the plaint is that the property was originally owned by Sh. Harbaksh and when he died intestate, the suit property was inherited by his two sons, namely Sh. Bhim Singh and Sh. Sarupa. The case in the plaint is that Sh. Bhim Singh became owner of the suit property of 225 sq. yards after division of the property with his brother Sh. Sarupa. The further case set up in the plaint is that the father of the parties Sh. Bhim Singh expired intestate and therefore his legal heirs being his six sons became co-owners and which sons are Sh. Jagan/appellant no. 3/ plaintiff no. 4, Sh. Hari Ram, Sh. Chet Ram/appellant no. 1/ plaintiff no. 1, Sh. Raghuber/appellant no. 2/ plaintiff no. 2, Sh. Ramesh/ respondent no. 5/ plaintiff no. 3 and Sh. Jeet/respondent no. 3/ defendant no. 3. The plaintiffs in the suit are Sh. Chet Ram, Sh. Raghuber, Sh. Ramesh and Sh. Jagan. The defendant no. 3 in the suit is the brother Sh. Jeet. As per the plaint, on the death of the father Sh. Bhim Singh the suit property was jointly mutated in the name of all

the sons of Sh. Bhim Singh being the plaintiffs and the defendant, but one son Sh. Hari Ram died intestate in 2008 and without leaving behind any legal heirs hence the property vested in his name was mutated in all other brothers of Sh. Hari Ram. In the plaint which is filed on 07.12.2009 it is further pleaded that in the year 2000-01 the respondent no. 1 and 2/defendant nos. 1 and 2/strangers broke open the locks and entered into possession of the property and failed to vacate the suit property but instead told the appellants no. 1-3 and respondent no. 5/plaintiffs that they must settle their account with one brother Sh. Jeet/respondent no. 3/defendant no. 3. Since the suit property was not vacated by the respondent no. 1 and 2/defendants no. 1 and 2 hence the subject suit for possession, *mesne* profits and injunction was filed.

3. In the suit the defendants filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground of limitation, and the said application has been allowed by the trial court in terms of the impugned judgment holding that the suit is barred under Article 58 of the Limitation Act, 1963, because the appellants and respondent no. 5/plaintiffs are deemed to know of the Sale Deed in favour of the

respondent no. 1 and 2/defendant nos. 1 and 2 since the year 2000-01 and therefore the Sale Deed in favour of respondent no. 1 and 2/defendant nos. 1 and 2 of the year 2000-01 could not be challenged by the subject suit filed in December, 2009.

4. In my opinion the impugned judgment is clearly and completely illegal and is bound to be set aside. The reasons are stated hereinafter.

5. The plaint does not in any manner show that the appellants and respondent no. 5/plaintiffs pleaded that in 2000-01 they were aware of any Sale Deed of the suit property executed by respondent no. 3/defendant no. 3/Sh. Jeet in favour of respondent no. 1 and 2/defendant nos. 1 and 2. All that is stated in paragraph 8 of the plaint is that respondent no. 1 and 2/defendant nos. 1 and 2 illegally came into possession of the suit property in the year 2000-01. This paragraph 8 of the plaint reads as under:-

“8. That in year 2000-2001 the ground floor of the suit property was lying vacant and defendant No.1 & 2 broken the locks and entered into the suit property started to occupying the same which was resisted by plaintiffs and wife of defendant no. 3. And asked them to vacate the suit property but they did not vacate the same and told to the plaintiffs that they have to settle their account with defendant No.3 and thereafter they will vacate the suit property.”

6. Therefore, the very basis for the trial court to reject the suit on admitted facts as being barred by limitation on account of the contents of the plaint, is completely and absolutely misdirected because in the plaint paragraph 8 the appellants and respondent no. 5/plaintiffs do not talk of their knowledge of any Sale Deed in favour of the defendant nos. 1 and 2/respondent nos. 1 and 2 of the year 2000-01.

7. Even assuming that the appellants and respondent no. 5/plaintiffs came to know of the Sale Deed in favour of the respondent no. 1 and 2/defendant nos. 1 and 2 by respondent no. 3/defendant no. 3 in the year 2000-01, the provision of Article 58 of the Limitation Act does not apply because the provision of Article 58 of the Limitation Act only applies as against a voidable document and not a void document. The same has been held by the Supreme Court in the case of ***Prem Singh and Ors. Vs. Birbal and Ors. (2006) 5 SCC 353***. The appellants and respondent no. 5/plaintiffs were not party to the Sale Deed executed by respondent no. 3/defendant no. 3 in favour of respondent no. 1 and 2/defendant nos. 1 and 2 and therefore such a

document is void so far as appellants and respondent no. 5/plaintiffs are concerned, and not a voidable document, because the appellants and respondent no. 5/plaintiffs did not challenge the same as having been executed by them under coercion or fraud or undue influence, etc. Therefore, in law the provision of Article 58 of the Limitation Act will not apply for the purpose of limitation to the present suit. The interpretation of this Article has been specifically dealt with by the Supreme Court in the case of *Prem Singh and Ors. (supra)*.

8. It is also relevant to note that the trial court while passing the impugned judgment has ignored its own earlier Order dated 10.02.2010 passed just a few months prior to the impugned judgment on 20.07.2010, and vide order dated 20.07.2010 one other application of the respondent no. 1 and 2/defendant no. 1 and 2 under Order VII Rule 11 CPC was rejected. In this earlier application under Order VII Rule 11 CPC the defendants had sought rejection of the suit plaint under Order 7 Rule 11 CPC including on the ground of limitation and which becomes clear from paragraphs 10-12 of the earlier application and these paragraphs 10-12 of the earlier application under Order VII Rule 11 CPC read as under:-

“10. That the plaintiffs are residents of the same locality and were fully aware of the sale transactions made by defendant No. 3 in the year 1999 and never raised any issue with regard to the transaction and also throughout the occupation of the suit property by applicant/defendant No.1. The plaintiffs have also maintained complete silence since the year 2003 when defendant No.1 had further sold away the property and have never raised any issue till the filing of the present suit in respect of this later sale and also the occupation of the suit property by Sh. Ravinder Kumar.

11. That the prices of land in the area have skyrocketed and the plaintiffs and defendant No.3 having fallen in greed have colluded together to illegally usurp the possession of the suit property by causing harassment or to knock out money from the occupant and have filed the present suit to achieve nefarious designs.

12. That since the applicants/defendants are either in possession nor use and occupation thereof and the present suit against them is not maintainable at all as no cause of action can be said to have arisen against them in respect of the reliefs claimed. The suit also does not carry their correct address. The relief with respect to declaration is also not sustainable in view of the law of limitation and as such the plaint is liable to be rejected under Order 7 Rule 11 r/w Sec. 151 CPC for lack of cause of action and the relief being barred by law. The applicants/defendants submit that to ascertain the factual position with respect to occupation of the suit property this Hon'ble Court may further verify the facts by appointing a local commissioner. The plaintiffs are liable for the acts of perjury and the applicants/defendants reserve their right to file the appropriate application or action as may be advised.”

9. The earlier application under Order 7 Rule 11 CPC was rejected by the trial court in terms of its Order dated 10.2.2010, and which order reads as under:-

“10.02.2010

Present: Sh. P.K. Malik, Advocate for plaintiff.
Sh. K.G. Mishra, Advocate for the defendants
No.1 & 2.
Defendant No.3 is in-person.

An application has been filed on behalf of the defendant No. 1 & 2 U/o. 7 Rule 11 CPC seeking rejection of the plaint.

Heard on the application.

It is contended in the application that the plaintiff has no right of interest in the suit property. It was owned by defendant No.3 who has sold the same for valid consideration to defendant no. 1 in the year 1999 after executing various title documents duly regd. It is further contested that the defendant no. 1 subsequently sold the suit property to one Sh. Davinder Kumar S/o Sh. Harpal Singh by executing the title does is his favour on 21.6.2003.

It is no longer res integra now that while deciding on application U/o. 7 Rule 11 CPC, only allegations contained in the plaint are to be seen and the defence of the defendant cannot be seen at this stage. The averments contained in the application of the defendant no. 1 & 2 are in the nature of their defence to the suit. No legal infirmity in the plaint has been pointed out either in the application or during the arguments by the Ld. Counsel of defendants No. 1 & 2.

I have also perused the plaint minutely. I do not see any legal infirmity in the same which may warrant its rejection outrightly.

The application is, therefore, without any merit and is hereby dismissed.

Last opportunity is now granted to the defendants to file their W.S. on or before next date of hearing with advance copy to Ld. Counsel for the plaintiff, failing which no further opportunity shall be granted to the defendants to file Written Statement.

Put up on 25.2.2010.”

10. Therefore in the opinion of this Court, the present application which has been allowed by the trial court was filed as an abuse of the process of law because a similar application earlier filed seeking rejection of the plaint on the ground of limitation was dismissed by the trial court vide its Order dated 10.2.2010 and the trial court has most surprisingly failed to refer to its previous Order dated 10.2.2010 in the impugned Judgment dated 20.7.2010.

11. The aforesaid facts therefore make it clear that the trial court was completely unjustified in rejecting the suit plaint as barred by Article 58 of the Limitation Act inasmuch as nowhere in the plaint the appellants and respondent no. 5/plaintiffs stated that it was to their knowledge the Sale Deed of 2000-01 being executed in favour of the respondent no. 1 and 2/ defendant nos. 1 and 2 by respondent no. 3/ defendant no. 3, and also that in any case Article 58 of the Limitation Act would not apply to the facts of the present case because the Sale Deed in favour of respondent no. 1 and 2/ defendant nos. 1 and 2 by respondent no. 3/ defendant no. 3 is a void document as against appellants and respondent no. 5/plaintiffs and not a voidable

document. Also, and as already discussed above, an application seeking relief on the same basis of the plaint being barred by limitation, was rejected by the trial court by its earlier Order dated 10.2.2010 and this order had thus become final.

12. Clearly therefore the appellants/plaintiffs have been put to unnecessary harassment and cost because of the frivolous applications being repeatedly filed by the respondents no. 1 and 2/defendants no. 1 and 2. This appeal is therefore allowed with costs of Rs.50,000/- being payable by the respondents no. 1 and 2/defendants no. 1 and 2 to the appellants and respondent no. 5/plaintiffs within six weeks from today. For the reasons noted above the Impugned Judgment of the Trial Court dated 20.7.2010 is therefore set aside. The order of rejection of the plaint is also set aside. Suit will now be heard and decided by the trial court in accordance with law. Payment of costs by the respondents no. 1 and 2/defendants no. 1 and 2 will be a condition precedent to their contesting the suit before the trial court.

13. Parties to appear before the District and Sessions Judge, West District, Tis Hazari Courts, Delhi, on 25th October, 2018, and the

District and Sessions Judge will now mark the suit for disposal to a competent court in accordance with law.

SEPTEMBER 18, 2018

VALMIKI J. MEHTA, J

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