

\$~

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

Reserved on : 11th January 2018
Date of decision : 19th February, 2018

+

RFA 95/2017

GYANENDER SINGH Appellant
Through: Mr. L. B. Rai, Advocate.
versus

SUBHASH CHAND & ORS. Respondents
Through: Mr. Lakshmi Narain and Mr. Honey
Taneja, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal arises out of judgement and order dated 27th September, 2016 by which the suit for specific performance and permanent injunction filed by the Appellant/Plaintiff (*hereinafter 'Plaintiff'*) was dismissed as being barred by limitation.
2. Late Shri Banwari Lal was the co-owner of land comprising in Khasra No.33/3/1 (1-16) in the Revenue Estate of Village Palam, New Delhi. Late Shri Banwari Lal had four sons namely Subhash Chand, Satbir Singh, Rajesh Kumar and Ganga Ram. Plaintiff is the son of Ganga Ram, who is now deceased and is thus represented by his heirs. The Respondents/Defendants (*hereinafter 'Defendants'*) are the other sons of Late Shri Banwari Lal. The Plaintiff is thus the nephew of the Defendants who are his uncles. There are disputes pending with the Gaon Sabha in respect of the land which forms the estate of Shri Banwari Lal.

3. However, the dispute in the present case relates only to 50 sq. yards forming part of Khasra No.33/3/1 the above mentioned land which was agreed to be sold by the Defendants to the Plaintiff, vide agreement to sell dated 16th February, 2009. The consideration agreed was Rs.3,50,000/- and Agreement to Sell, GPA, Will, possession letter, affidavit and receipt were executed. The Plaintiff claimed to be in possession of this part of the property since 16th February, 2009 and has raised the boundary wall.

4. Plaintiff had filed an earlier civil suit no.1082/14/06 against Late Shri Banwari Lal and the Defendants which was dismissed on 15th January, 2016 under Order VII Rule 11 CPC. It is the case of Plaintiff that after the agreement to sell dated 16th February, 2009 was executed, the Defendants have failed to execute the final sale deed or get the same registered. It is the Plaintiff's case that after the dismissal of the said earlier suit, attempts were made by the Defendants to dispossess the Plaintiff. Hence, the present suit, praying for decree of specific performance, possession and permanent injunction came to be filed.

5. In the written statement, the Defendants pleaded that all the legal heirs of Late Shri Banwari Lal have not been impleaded and the suit was bad for non-joinder. It was also pleaded that the documents including agreement to sell of 16th February, 2009 were not mentioned in the earlier suit despite Plaintiff having knowledge of the said suit and hence, the present suit was not maintainable. The Defendants also challenged the genuineness of the documents dated 16th February, 2009. The Defendants further challenged that no consideration was received by them and that the documents appeared to be completely fabricated. The Defendants further submitted that there was a compromise deed dated 21st February, 2009 which was sought to be filed

by the Plaintiff herein in civil suit no.1082/14/06, which was finally withdrawn and even at that stage, the documents dated 16th February, 2009 had not been pleaded and no right was claimed in view of the said documents.

6. Preliminary issue was framed on 19th August, 2016 to the following effect:

“Whether the suit of Plaintiff is barred by law of limitation.”

7. The Trial Court relied upon Article 54 of the Limitation Act and held that the pleadings in respect of cause of action are very vague. The Court further held that since no specific date was provided for performance in the agreement for performance of the agreement and since no notice was issued calling upon the Defendants to execute the sale deed, the cause of action would to be calculated from the date of agreement i.e. 16th February, 2009. Since the date of institution of the suit is 18th March, 2016 the suit is barred by limitation.

Submission of Appellant/Plaintiff

8. The submission of counsel for the Plaintiff is that the Plaintiff has been in possession of the property i.e., 50 sq. yards for many years now. He submits that the documents were executed by the Defendants and that there is no doubt as to the genuinity of the documents. He further submits that civil suit no.1082/14/06 was rejected under Order VII Rule 11 CPC on 15th January, 2016. However, the same was set aside on 5th September, 2016 by the Appellate Court. Learned counsel for the Plaintiff further submits that under Article 54 of the Limitation Act, the three year period begins from the date when specific performance is refused. He relies upon judgments of the

Supreme Court in *Balasaria Construction (P) Ltd. v. Hanuman Seva Trust and Ors.* (2006) 5SCC 658 (*Balsaria supra*) and *Ramesh B. Desai & Ors. v. Bipin Vadilal Mehta & Ors.*, AIR 2006 SC 3672.

Submissions of Respondents/Defendants

9. On the other hand, learned counsel for the Defendants has submitted that the Plaintiff was a party to civil suit no.1082/14/06 but at no point did the Plaintiff rely upon the agreement to sell and other documents. If the Plaintiff had the title of 50 sq. yards of the property, he should have asserted the same as part of the said proceedings. Defendants further relies upon order dated 6th September, 2013 passed in suit no.598/2012 between Shri Ganga Ram and Late Shri Banwari Lal which held that Shri Banwari Lal was the owner of the suit property and hence Shri Ganga Ram was not entitled to any relief and injunction. Counsel for Defendants further submits that since during the pendency of the said suit, Shri Ganga Ram had passed away, the Plaintiff was impleaded in the said suit and hence he had knowledge of the rival claims therein. If the Plaintiff had any independent rights qua 50 sq yards of the land which was part of the said larger property, he would have pleaded the same. The Defendants rely upon the judgment of the Supreme Court in *Janardhanam Prasad v. Ramdas*, JT 2007 (3) SC 187.

Analysis and Findings

10. The Court has perused the judgment of the Trial Court and pleadings of the parties. It is clear from the factual narration that there are at least two pending disputes in respect of the same land part of which is the subject matter of the present appeal. The dispute had originally arisen between Late

Shri Ganga Ram and Late Shri Banwari Lal and after their demise, the dispute continued between their LR's. Copies of the agreement to sell, Will, possession letter, receipt etc. have all been placed on record but at this stage, without evidence it is not possible to hold that the said documents are either fabricated or that these are genuine documents. It is the Plaintiff's categorical case that he is in possession of 50 sq. yards of the property. However, the Defendants raise doubts as to the conduct of the Plaintiff for having not relied upon these documents in any of the earlier litigations amongst the parties.

11. The Plaintiff's contention is that limitation being a mixed question of fact and law especially in a matter of this nature, the Trial Court ought not to have rejected the suit, at the initial stage, by holding it to be time barred. Both the parties have heavily relied upon the orders passed by the Trial Court in different proceedings which are pending between them. While the Defendants rely upon the conduct of Plaintiff, the Plaintiff relies upon the documents which have been executed. Photographs have been placed on record to show the extent of construction in the suit property. The Plaintiff submits that while the other proceedings relate to the entire land, this suit relates only to the 50 sq. yards, which is the subject matter of the agreement to sell. The documents as placed on record appear to bear signatures of all the three defendants and the Plaintiff. While there could be some merit in the averment that the Plaintiff all along was involved in other litigations relating to the estate of his father. There is no specific mention of the 50 sq. yards property specifically in the said suit. Copy of a complaint filed by the Plaintiff to the police in Palam Gaon has been placed on record. It clearly appears that there are a large number of disputes between the parties and the

fact that the Plaintiff did not assert his title to the 50 sq. yards property specifically in the earlier two suits pending in relation to the larger part of the land among the extended family, would not by itself render the instant suit time barred. The suit for specific performance has the following prayers.

“(i) A decree of Specific Performance of the Agreement to Sell dated 16.02.2009 in regard to plot measuring 50 sq. yds. Comprising in Khasra No.33/3/1, as shown red colour in the site plan situated in the revenue estate of Village Palam, Delhi and directing the defendants to execute the Sale Deed and get the same registered in favour of the plaintiff.

(ii) A decree of possession may also be passed in favour of the plaintiff and against the defendants in regard to the above said plot in dispute if the defendants dispossess the plaintiff from the above said plot in suit during the pendency of the suit.

(iii) A decree of permanent injunction may also be passed in favour of the plaintiff and against the defendants restraining the defendants from creating, transferring, alienating etc. in favour of any person or to dispossess the plaintiff from the plot in suit as shown in red colour in the site plan Annexure-B.”

This prayer is distinct and different from the prayer in suit no.1082/14/06, which reads as under-

“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to pass a decree of permanent injunction in favour of the plaintiffs and against the defendants, thereby restraining the defendants, their agents, servants, employees etc. from dispossessing the plaintiffs from the suit property or from causing any

interference or obstruction in the peaceful use and enjoyment of the plaintiffs of the suit property bearing khasra no.33/3/1, measuring 1 bigha and 16 biswas, situated within the revenue estate of Village Palam, New Delhi, which is more clearly shown in red colour in the site plan attached herewith, in any manner. The defendants be further restrained from selling, transferring or creating any third party interests in the suit property in any manner whatsoever.”

12. It is not impossible to imagine a situation wherein, due to the litigation relating to the larger portion of land pending between the parties, the Defendants would have tried to dispossess the Plaintiff from the constructed portion in the 50 sq. yards. If such a situation has indeed arisen that would definitely constitute a valid cause of action for the Plaintiff to file the present suit. The cause of action in the present suit is pleaded as under:

“19. That the cause of action for filing of the present suit arose when the agreement to sell dated 16.02.2009 was executed between the plaintiff and the defendants and when after the rejection of the plaint of the plaintiff and other family members the defendants became more hostile to dispossess the plaintiff from the plot in dispute and further when the defendants totally denied the execution of the agreement to sell dated 16.02.2009 in favour of the plaintiff and thus the cause of action is still subsists.”

Para 19 of the plaint has to be read with Para 16, which reads as under:

“16. That after having purchased the above said plot in suit the plaintiff has requested the defendants many times to get the sale

deed executed and registered in favour of the plaintiff and the defendants have been postponing the same either on one ground and the other and did not execute the sale deed in favour of the plaintiff nor the same was registered in favour of the plaintiffs inspite of the fact that the plaintiff has performed his part of the agreement fully as the plaintiff has paid the full consideration money of Rs.3,50,000/- to the defendants and even actual physical possession was also handed over to the plaintiff by the defendants and lastly when the suit bearing no.1085/14/6 was rejected on 15.01.2016 u/o 7 Rule 11 CPC and after the rejection of the plaint the defendants started to dispossess the plaintiff from the above said plot in suit, but with ulterior motive to dispossess the plaintiff from the suit plot did not succeed and thereafter the defendants have given a threat that no agreement was executed dated 16.02.2009 by the defendants with the plaintiff and thus totally refused to perform their part of the agreement by getting the sale deed executed and registered in favour of the plaintiff.”

13. A conjoint reading of Paras 16 and 19 makes it evident that when the plaint was rejected in civil suit no.1082/14/06, the Plaintiff had received a threat of dispossession from the 50 sq yards property which it was occupying. At this stage, therefore, without recordal of evidence, it would not be possible to hold that the Plaintiff's suit was belated. The parties have been in litigation all along but the order dated 15th January, 2016 possibly triggered further animosity between the parties leading to complaints being filed with the police.

14. In any event, the order dated 15th January, 2016 has now been set aside by the Appellate Court and the suit has been restored to its original number. While the said suit is in relation to the larger piece of land in Khasra No.33/3/1(1-16) in revenue estate of Village Palam, New Delhi is pending, the present suit in respect of 50 sq. yards forming part of the said property could also be adjudicated with the earlier suits.

15. The facts being as they are, learned counsel for Plaintiff relies upon judgment **Ramesh B. Desai** (*supra*) and **Balasarai Construction Pvt. Ltd.** (*supra*) is appropriate.

16. The judgment cited by the Defendants **Janardhanam Prasad** (*supra*) holds as under:-

“11. Applicability of the provisions of Article 54 of the Limitation Act must, therefore, be determined having regard to the aforementioned factual matrix in mind. It reads as under:

<i>“For specific performance of a contract</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused”</i>
--	--------------------	---

12. The court, in applying the period of limitation, would first inquire as to whether any time was fixed for performance of agreement of sale. If it is so fixed, the suit must be filed within the period of three years, failing which the same would be barred by

limitation. Here, however, no time for performance was fixed. It was for the courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a finding in that behalf, to see whether the suit was filed within three years thereafter.”

17. In the present case, at the preliminary stage, until further evidence is led in the matter, it appears that the threat of dispossession could have very well arisen on 15th January, 2016. This finding is tentative as evidence is to be led by the parties. The suit, however, could not have been rejected as being barred, as in such cases, the question of limitation being a mixed question of fact and law as held in **Balsaria (supra)**, would require evidence to be adduced. There are conflicting versions pleaded by both sides. The stand of both the parties have their own merits and demerits. Suffice to say at this stage that *ex-facie* cannot be held that suit is barred by limitation. History of past litigations, some of which are still pending, clearly leads the Court to the conclusion that evidence deserves to be led in the matter. The fact that the Plaintiff may not have pleaded the agreement to sell in the litigations filed by his father in respect of the larger share in the land does not disentitle him from maintaining a separate suit to enforce the agreement to sell and accompanying documents.

18. Accordingly, it is directed that the suit be restored to its original number and be further proceeded with in accordance with law. The issue of limitation already framed shall be adjudicated at the final stage by the Trial Court. It is for the parties to request, clubbing of the other suits in respect of the larger share in the land and to seek consolidation, if so advised. Such a

request would be considered by the Trial Court, in accordance with law.

19. The appeal is allowed with no orders as to costs.

PRATHIBA M. SINGH, J.
Judge

FEBRUARY 19, 2018/dk

