

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

+ **RFA No. 301/2018**

% **4th April, 2018**

SANJEEV GUPTA Appellant

Through: Mr. Sanjay Kumar, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents

Through: Ms. Gauri Chaturvedi, Advocate
for Mr. Dhanesh Relan,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 12687/2018(Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 12689/2018 (delay in filing)

For the reasons stated in the application, delay in filing the appeal is condoned.

CM stands disposed of.

CM No. 12688/2018 (delay in re-filing)

For the reasons stated in the application, delay in re-filing is condoned.

CM stands disposed of.

RFA No. 301/2018

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 20.5.2017 by which the trial court has dismissed the suit filed by the appellant/plaintiff as being barred by time. Appellant/plaintiff filed the subject suit for declaration that the Conveyance Deed dated 13.7.1995 executed by the respondent no.1/defendant no.1/Delhi Development Authority (DDA) in favour of Sh. Hans Raj Pahwa, the predecessor-in-interest of defendant nos. 2 and 4 in the suit, be declared as null and void as having been obtained by fraud. The suit property, and which was the subject matter of the Conveyance Deed executed by DDA, is B-7/4, Safdarjung Development Area, New Delhi.

2. The facts of the case are that the suit property was owned by the father of the appellant/plaintiff one Sh. Prem Prakash Gupta. Sh. Prem Prakash Gupta admittedly executed an Agreement to Sell dated 10.7.1989 in favour of Sh. Hans Raj Pahwa the grandfather of the respondent nos. 2 and 4/defendant nos. 2 and 4. A registered Will

dated 11.7.1989 was also executed by Sh. Prem Prakash Gupta in favour of Sh. Hans Raj Pahwa the grandfather of respondent nos. 2 and 4/defendant nos. 2 and 4. The father of the appellant/plaintiff had also executed a registered General Power of Attorney (GPA) on 19.7.1989 in favour of the respondent no.3/defendant no.3/Sh. Kulbir Singh Pahwa, and which GPA is part and parcel of documentation of transfer of rights in the suit property by Sh. Prem Prakash Gupta in favour of Sh. Hans Raj Pahwa. The total sale consideration payable by Sh. Hans Raj Pahwa to Sh. Prem Prakash Gupta under the documentation dated 10.7.1989/11.7.1989/19.7.1989 was a sum of Rs.60 lacs and out of this total amount admittedly Sh. Prem Prakash Gupta has received a sum of Rs.58,50,000/-. Sh. Prem Prakash Gupta also delivered actual physical possession of the suit property in favour of Sh. Hans Raj Pahwa on execution of the aforesaid documents. Rights of Sh. Hans Raj Pahwa therefore under the aforesaid documentation were secured both by the doctrine of part performance under Section 53-A of the Transfer of Property Act, 1882 and Section 202 of the Indian Contract Act, 1872 which provides that a General Power of Attorney given for consideration becomes irrevocable.

3. Sh. Prem Prakash Gupta, the father of the appellant/plaintiff claimed that Sh. Hans Raj Pahwa did not pay the balance amount of Rs.1,50,000/- and therefore, Sh. Prem Prakash Gupta executed registered Cancellation Deeds dated 4.1.1994 and 6.1.1994 cancelling the Will and General Power of Attorney executed in favour of Sh. Hans Raj Pahwa and the respondent no.3/defendant no.3, and the *factum* of cancellation was informed by Sh. Prem Prakash Gupta to Sh. Hans Raj Pahwa as also the respondent no.3/defendant no.3.

4. DDA was also accordingly informed by Sh. Prem Prakash Gupta *vide* his letter dated 24.1.1994 and which was received by the DDA on 27.1.1994.

5. DDA executed the registered Conveyance Deed dated 13.7.1995 in favour of Sh. Hans Raj Pahwa through his attorney being Sh. Kulbir Singh Pahwa/respondent no.3/defendant no.3. It is this Conveyance Deed which the appellant/plaintiff seeks cancellation by virtue of the present suit pleading that after his father Sh. Prem Prakash Gupta died in the year 2009, and on going through the personal papers of Sh. Prem Prakash Gupta, the appellant/plaintiff

found that the Conveyance Deed was got fraudulently executed in favour of Sh. Hans Raj Pahwa. It was also pleaded in the plaint that the father of the appellant/plaintiff did not write any letter to DDA on 12.8.1994 that the Conveyance Deed be executed. In the plaint it is pleaded that in fact Sh. Prem Prakash Gupta cancelled the Agreement to Sell *vide* his letter dated 21.6.2000.

6. Therefore, by the suit which was filed in the year 2012, documents executed by Sh. Prem Prakash Gupta in favour of Sh. Hans Raj Pahwa of around 23 years earlier i.e those executed in the year 1989 are sought to be got nullified because the issue of cancellation of the Conveyance Deed dated 13.7.1995 executed by the DDA in favour of Sh. Hans Raj Pahwa can only take place if the documents executed by Sh. Prem Prakash Gupta in favour of Sh. Hans Raj Pahwa of the year 1989 got cancelled.

7. It is also further noted that though Sh. Prem Prakash Gupta, father of the appellant/plaintiff in the year 1994 had executed cancellation deeds cancelling the documentation in favour of Sh. Hans Raj Pahwa and the respondent no.3/defendant no.3, however, in the opinion of this Court bilateral actions/contracts cannot be cancelled by

unilateral actions because otherwise in fact even the sale deeds which are executed can be sought to be got cancelled by unilateral cancellation deeds and which is not the position in law. In any case the rights of Sh. Hans Raj Pahwa were crystallized under Section 53-A of the Transfer of Property Act as also Section 202 of the Indian Contract Act. Therefore, if Sh. Prem Prakash Gupta wanted to question the rights of Sh. Hans Raj Pahwa or seek nullifying of the documents executed by Sh. Prem Prakash Gupta in favour of Sh. Hans Raj Pahwa in the year 1989, the suit had to be filed by Sh. Prem Prakash Gupta in the year 1994 or within three years from the year 1994, but admittedly Sh. Prem Prakash Gupta till he was alive much later till the year 2009 never filed any suit or judicial proceedings seeking cancellation of the documents of the year 1989 in favour of Sh. Hans Raj Pahwa and respondent no.3/defendant no.3. It is also relevant to mention that appellant/plaintiff who claims to have found out about the documentation with respect to the suit property and alleged fraud in getting the conveyance deed executed by DDA does not state in the plaint that the father of the appellant/plaintiff Sh. Prem Prakash Gupta was never aware of the conveyance deed being

executed by DDA in favour of Sh. Hans Raj Pahwa. No fresh cause of action arises in favour of appellant/plaintiff on the death of his father Sh. Prem Prakash Gupta as appellant/plaintiff claims as a son and legal heir of Sh. Prem Prakash Gupta and limitation for cancellation of documents of the year 1989 commenced in the year 1994 or 1997 or 2000 (when agreement to sell was cancelled) expired during the life-time of Sh. Prem Prakash Gupta who died in the year 2009.

8. The period of limitation with respect to the suit being time barred can be taken notice by the Courts even *suo moto*, besides on such an issue which has been raised by the defendant in the suit. In the present case the relevant provisions of law which would be applicable are Articles 58 and 59 of the Limitation Act and Section 27 thereof, and these provisions read as under:-

Article	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.

Section 27 of the Limitation Act.

“27. Extinguishment of right to property—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

9. Sh. Prem Prakash Gupta if therefore he wanted to challenge the documents of the year 1989 executed in favour of Sh. Hans Raj Pahwa and respondent no.3/defendant no.3 had to at best within three years from 1994 file a suit for cancellation of the documents of the year 1989 and which admittedly was not done. As already stated above, there is no averment in the plaint that Sh. Prem Prakash Gupta was not aware of execution of the Conveyance Deed dated 13.7.1995 executed by DDA in favour of Sh. Hans Raj Pahwa through the respondent no.3/defendant no.3. In fact there is not only no averment that Sh. Prem Prakash Gupta was not aware of execution of the Conveyance Deed by the DDA on 13.7.1995, in fact paras 16 to 19 of the plaint contained implied admissions of Sh. Prem Prakash Gupta being aware since at least in the year 2001 of the DDA having executed the Conveyance Deed dated 13.7.1995. Therefore, at least within three years from 2001, in view of Articles 58 and 59 of the Limitation Act, Sh. Prem Prakash Gupta had to necessarily file a suit for challenging null and void the Conveyance Deed, but admittedly

this was not done so by Sh. Prem Prakash Gupta till he died in the year 2009 and hence the present suit has rightly been dismissed as time-barred.

10. The facts of the present case also show that the suit filed by the appellant/plaintiff was barred by Section 27 of the Limitation Act and Sh. Hans Raj Pahwa and his successors-in-interest were the owners of the suit property by law of prescription contained in Section 27 of the Limitation Act because at least from the year 1994 when the cancellation deeds were executed by Sh. Prem Prakash Gupta, possession of Sh. Hans Raj Pahwa become adverse to that of Sh. Prem Prakash Gupta as also his successors-in-interest. Period of 12 years for taking possession of the suit property from the year 1994 expires in the year 2006 and in the year 2006 by application of law of prescription contained in Section 27 of the Limitation Act Sh. Hans Raj Pahwa and his successors-in-interest became owners of the suit property and ownership rights of Sh. Prem Prakash Gupta got extinguished. Since no suit was filed by Sh. Prem Prakash Gupta till the year 2006 for claiming back possession of the suit property of which ownership rights were claimed by Sh. Hans Raj Pahwa,

consequently Section 27 of the Limitation Act extinguishes the title of the suit property of Sh. Prem Prakash Gupta and vests the same in Hans Raj Pahwa and his successors-in-interest. I am giving this additional reasoning by invoking Order XLI Rule 24 CPC read with Section 3 of the Limitation Act and which permits the appellate court to give additional reasoning to sustain the conclusion of the trial court.

11. In my opinion, the trial court has exhaustively discussed the issues in paras 24 to 31 of the impugned judgment dismissing the suit as time barred, and these paras read as under:-

“24. All the defendants have raised plea of bar of limitation. Perusal of plaint reveals the following submissions on part of plaintiff.

(a) Father of the plaintiff namely Shri Prem Prakash Gupta had executed a registered Will dated 11.07.1989 in favour of grandfather of defendant no.2 and 4.

(b) Father of the plaintiff had executed an agreement to sell dated 10.07.1989 in favour of grandfather of defendant no.2 and 4.

(c) Father of the plaintiff had executed a registered GPA dated 19.07.1989 in favour of defendant no.3.

(d) Father of the plaintiff had executed a registered cancellation deed dated 06.01.1994 for cancellation of registered Will dated 11.07.1989 executed in favour of grandfather of defendant no.2 and 4.

(e) Father of the plaintiff had executed a registered cancellation deed dated 04.01.1994 for cancellation of registered GPA dated 19.07.1989 executed in favour of defendant no.3.

(f) Father of the plaintiff informed defendant no.3 and grandfather of defendant no.2 and 4 about the cancellation deeds vide letter dated 04.01.1994.

(g) Father of plaintiff informed defendant no.1 about cancellation of these documents vide letter dated 24.01.1994 which was received by defendant no.1 on 27.01.1994.

(h) Conveyance deed was executed by defendant no.1 in favour of defendant no.2 and 4 on 13.07.1995 on the basis of forged and

fabricated letter dated 12.08.1994 allegedly written by someone else but purported to have been written by father of the plaintiff to defendant no.1 stating that defendant no.3 has been reappointed as his Attorney in respect of suit property.

(i) Father of the plaintiff terminated agreement to sell dated 10.07.1989 by its letter dated 21.06.2000.

25. If these all submissions are taken to be correct and true, the cause of action arose against the sale of the suit property in favour of father of plaintiff and against defendant no.3 on 04.01.1994 when he executed the cancellation deed dated 04.01.1994 for cancellation of registered GPA executed in favour of defendant no.3 and the cause of action against the sale of the suit property in favour of father of plaintiff and against grandfather of defendant no.2 and 4 arose on 06.01.1994 when he executed the cancellation deed dated 06.01.1994 for cancellation of registered Will executed in favour of grandfather of defendant no.2 and 4. The cause of action against the execution of the conveyance deed dated 13.07.1995 in favour of father of plaintiff and against defendant no.1 arose on 27.01.1994 when he wrote the letter to DDA i.e the defendant no.1 about having executed the cancellation deeds dated 04.01.1994 and 06.01.1994.

26. However, father of plaintiff did not file any suit for declaration and possession for his ownership rights in the suit property against grandfather of defendant no.2 and 4 in view of cancellation of registered Will dated 11.07.1989 against grandfather of defendant no.2 and 4 within 3 years of 04.01.1994 when he executed the registered cancellation deed dated 04.01.1994.

27. Further, father of plaintiff did not file any suit for declaration and possession for his ownership rights in the suit property against defendant no.3 in view of cancellation of registered GPA dated 19.07.1989 against defendant no.3 within 3 years of 06.01.1994 when he executed the registered cancellation deed dated 06.01.1994.

28. Further, father of plaintiff did not file any suit for declaration for his ownership rights in the suit property against defendant no.1 in view of execution of cancellation deeds dated 04.01.1994 and 06.01.1994 within 3 years of 27.01.1994 when defendant no.1 received the letter dated 24.01.1994 written by father of the plaintiff to defendant no.1 informing it about execution of cancellation deeds dated 04.01.1994 and 06.01.1994.

29. A fresh cause of action arose in favour of father of plaintiff and defendant no.1 on 13.07.1995 when defendant no.1 executed conveyance deed in respect of suit property in favour of defendant no.3. However, father of plaintiff did not file any suit for declaration of title of suit property in his favour and declaration that cancellation of this conveyance deed dated 13.07.1995 executed by defendant no.1 in favour of defendant no.3 be declared void.

30. Even if submission of plaintiff is taken to be correct that a fresh

cause of action arose on 21.06.2000, when father of plaintiff by letter dated 21.06.2000 terminated agreement to sell dated 10.07.1989, father of plaintiff did not file any suit against defendant no.1 or defendant no.2 or defendant no.3 to seek cancellation of conveyance deed dated 13.07.1995 and for declaration of ownership rights of suit property in his favour within 3 years of 21.06.2000.

31. It is an admitted case that father of plaintiff expired on 26.07.2009 but did not file any case against the defendant no.1 or defendant no.2 or defendant no.3. Section 3 of the Limitation Act specifically provides that no suit can be instituted after expiry of period of limitation. Plaintiff has submitted that his father did not follow up after having written letters dated 04.01.1994 to defendant no.3 and grandfather of defendant no.2 and letter dated 24.01.1994 to defendant no.1 in view of him suffering misfortunes and family disturbances as the other son of Shri Prem Prakash Gupta, i.e. brother of plaintiff suffered hypertension, sugar and enlargement of kidney since 2001 and ultimately expired in 2005 and because of this mother of plaintiff died on 16.12.2008. Section 9 of the Limitation Act specifically provides that when once time has begun to run, no subsequent disability or inability to institute a suit stops it. Thus, since father of plaintiff did not pursue his remedies by filing of suit against defendant no.1 or defendant no.2 or defendant no.3 within period of limitation as discussed above, the suit filed by the plaintiff in respect of those reliefs is badly time barred because discovery of all these documents and letters by the plaintiff in May 2010 does not give him any fresh cause of action rather no cause of action has risen in favour of plaintiff in May 2010. The present suit has been filed on 07.06.2012, much after the expiry of period of limitation and is accordingly time barred and is therefore, dismissed.” (underlining added)

12. It is obvious from the reading of the facts of the present case that the present litigation is completely malicious, *malafide* and dishonest litigation initiated by the appellant/plaintiff. Appellant/plaintiff and previous to him his father Sh. Prem Prakash Gupta had become dishonest in spite of receiving the consideration of Rs.58,50,000/- out of the total sale consideration of Rs.60,00,000/-. In fact, possibly there would not have been a dispute as to the balance

amount of Rs.1,50,000/- because admittedly no litigation or judicial proceedings were initiated by Sh. Prem Prakash Gupta in his life time to seek the cancellation of the documents executed in favour of Sh. Hans Raj Pahwa. This Court has been repeatedly observing that substantial time of courts is taken away by completely dishonest litigation. The present litigation initiated by the appellant/plaintiff is one such completely dishonest litigation, and besides the same wanting to fraudulently arm-twist Sh. Hans Raj Pahwa and his successors-in-interest, the same has also resulted in loss of valuable judicial time. I may also note that by the impugned judgment the trial court has not imposed any costs upon the appellant/plaintiff although the litigation was initiated in June 2012 and came to an end by the impugned judgment in May 2017.

13. Therefore, the present appeal is dismissed with costs of Rs. 3 lacs and which costs of Rs.3 lacs will be the costs payable to the respondent nos. 2 and 4/defendant nos. 2 and 4 by the appellant/plaintiff being costs throughout. Costs be paid within six weeks from today.

14. In addition to imposing costs on the appellant/plaintiff

payable to the respondent nos. 2 and 4/defendant nos. 2 and 4, a further sum of Rs.50,000/- as costs is also imposed upon the appellant/plaintiff for abusing of the process of law and which powers this Court exercises under Section 151 CPC because powers of imposition of costs under Section 35 CPC are only with respect to awarding costs in favour of successful litigant but there is no provision for imposing costs for frivolous, *malafide*, and dishonest litigation, and which will be covered under Section 151 CPC.

15. Let the costs of Rs.50,000/- for abuse of the process of law be deposited by the appellant/plaintiff with the website www.bharatkeveer.gov.in within six weeks from today.

16. Besides imposition of the aforesaid costs this Court finds it a fit case where this Court should exercise powers under Section 340 Cr. P.C. read with Section 209 of IPC against the appellant/plaintiff that the Registrar General of this Court make out a complaint against the appellant/plaintiff for initiating a completely false litigation and this complaint will be sent by the Registrar General to the competent court for proceeding against the appellant/plaintiff in accordance with law.

17. In addition to the complaint being pursued by the appropriate authority even the respondent nos. 2 and 4/defendant nos. 2 and 4 can pursue the complaint and copy of this judgment be sent by the Registrar General of this Court to the respondent nos. 2 and 4/defendant nos. 2 and 4 in the suit for bringing this aspect to their knowledge.

18. The appeal is accordingly dismissed with the aforesaid observations.

APRIL 04, 2018/ib

VALMIKI J. MEHTA, J

