

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 220 OF 2013

WITH

NOTICE OF MOTION NO. 504 OF 2013

IN

SUIT NO. 220 OF 2013

WITH

NOTICE OF MOTION NO. 1542 OF 2018

IN

SUIT NO. 220 OF 2013

WITH

NOTICE OF MOTION NO. 447 OF 2019

IN

SUIT NO. 220 OF 2013

WITH

NOTICE OF MOTION NO. 672 OF 2019

IN

SUIT NO. 220 OF 2013

Manohar Daulatram Ghansharamani,
Aged 66 yers, Indian Inhabitant
res. At Flat No.459, Rishi Dayaram Giddumal
Co-op. Hsg. Soc. Ltd.,
Navghar Road, Mulund (East)
Mumbai 400 081

..Plaintiff

v/s.

1. Janardhan Prasad Chaturvedi
Aged avout 58 years, Indian Inhabitant,
res. At 703, Diwani Mahal,
Gulmohar Road No.1,
JVPD Scheme, Vile Parle (W),
Mumbai 400 059

2. Usha Dijendra Mitra

3. Maya Basak

4. Bimal Dijendra Mitra
5. Suraj Dijendra Mitra
6. Shamal Dijendra Mitra
7. Bharat Dijendra Mitra
8. Milan Dijendra Mitra
9. Vishwanath Dijendra Mitra
10. Mukesh Dijendra Mitra
11. Anand Dijendra Mitra
12. Pranab Dijendra Mitra

Defendant nos.2 to 12 resident of
302, Usha Sadan,
Next to Bhavani Nagar,
Marol Maroshi Road,
Andheri (East),
Mumbai 400 059

13. J.P.Constructions,
a partnership firm duly registered
under the provisions of
Partnership Act having its registered
office at 703, Diwani Mahal,
Gulmohar Road No.1,
JVPD Scheme, Vile Parle (W),
Mumbai 400 059.

14. Daryani Construction Co. P. Ltd.,
a company registered under the
provisions of the Companies Act, 1956
and having its registered office at
521, Commerce House,
140 Nagindas Master Road,
Fort, Mumbai 400 023.

15. Shri Anand Builders Pvt. Ltd.
A company registered under the
provisions of Companies Act, 1956

and having its registered office at
Flat No.1, Ground Floor,
Mistry Court, Dinshaw Wacha Road,
Mumbai 400 020.

16. Chandrashekhar Madhav Joglekar
Aged 48 yrs, Occ: Service
res. At 5/B/2 Indian Airlines Colony
Kalina, Santa Cruz (East),
Mumbai 400 029.

17. Uttam Mulchand Amarnani,
aged 55 yrs, Occ: Business
having address at Ground Floor,
Mount Blane, Carter Road,
Jogger Park, Bandra (W),
Mumbai 400 050.

18. Roop Ishwardas Madhrani (deleted)
18a) Manoj Roop Madhrani
aged 45 years,
18b) Lalit Roop Madhrani
aged 43 years,
both having address at A/123,
Karachi Citizens CHS,
New Link Road, Andheri (W),
Mumbai 400 053.

.. Defendants

Mr. V.R. Patil for the Plaintiff.

Mr. Vishal Talsania a/w. Ameya Mahajan for Defendant nos.1 to 12,

Mr. Amit Shroff for the Defendant No.14.

Mr. Yatin Shah a/w. Apurva Pawar for the Defendant No.15.

Ms. J.N. Pandhi I/b. M/s. Khona & Kayser for the Defendant No.17.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
JUDGMENT RESERVED ON : 09th APRIL. 2019.
JUDGMENT PRONOUNCED ON : 21st AUGUST, 2019.

JUDGMENT.

1. The Plaintiff has filed the suit for the following reliefs:

(a) That this Honourable Court be pleased to declare that alleged Agreement for Sale dt.31.07.1987 executed by the defendant no.1 and late Shri D.C.Mitra in favour of the defendant no.14 company for sale of the portion of the suit property admeasuring about 55 Acres situate at village Kasurwadawali, Ghodbunder Road, Taluka and District Thane is bogus, illegal, unlawful and not binding on the plaintiff;

(b) that the Honourable Court be pleased to declare that alleged Agreement for Sale dated 14.11.1988 executed by the defendant no.1 and late Shri D.C.Mitra in favour of the defendant no.15 Company for sale of the portion of the suit property admeasuring about 45 Acres situated at Village Kasurwadawali, Ghodbunder Road, Taluka and District Thane is illegal, unlawful and not binding on the plaintiff;

(c) that the Hon'ble Court be pleased to declared that alleged Agreement for Sale dated 9.5.1995 executed by the defendant no.1 in favour of the defendant nos.17 and 18 for sale of the portion of the suit property admeasuring about 45 Acres is illegal, unlawful and not binding on the plaintiff;

(d) that the Hon'ble Court be pleased to declare that the Plaintiff is entitled to 1/5th undivided share, right, title and interest in the suit property more particularly described in the schedule annexed hereto being the partners of the Defendant No.13 Partnership firm;

(e) that the Hon'ble court be pleased to declare that the defendant no.13 partnership firm stood dissolved on or about 12.02.2011 when the defendant nos.1 to 12 received the notice issued under section 43 of the Indian Partnership Act, 1932 issued on behalf of the plaintiff and be pleased to further order and direct the defendants to deliver up 1/5th share of the plaintiff in the suit property more particularly described in the schedule annexed to the plaint by dissolving the partnership for Defendant No.13;

2. The dispute is in respect of two portions of land, one admeasuring 55 Acres 33 Gunthas and the second admeasuring 45 Acres 9 Gunthas situated at Kasarwadavli, District Thane. The entire property, which is more particularly described in the Schedule annexed to the Plaint at Exhibit E, has been referred to as "the suit property".

3. The case of the plaintiff in brief is that one Shri Dijendra Chandra Mitra, the predecessor of the defendant nos.2 to 12 entered into an agreement dated 6.9.1965 with one Madhukar Joglekar to purchase a portion of the suit property admeasuring 55 Acres 33 Gunthas. He obtained possession of the said land admeasuring 55

Acres from Madhukar Joglekar. Upon the death of Madhukar Joglekar his successors/heirs executed a Power of Attorney in favour of Dijendra Mehta and authorized him to take possession and do all other acts in relation to the said land.

4. Said Dijendra Mitra was desirous of developing the said portion of land admeasuring 55 Acres 33 Guntas and hence he entered into a partnership with the defendant no.1. Said Dijendra Mitra and the Defendant No.1 agreed to join as partners of the partnership firm M/s. J.P. Constructions (Defendant No.13). Accordingly, a Deed of Partnership dated 10.12.1986 was executed and the land admeasuring 55 Acres 33 Gunthas was brought into the partnership. Under the said partnership deed, Dijendra Mitra was entitled to 30%, whereas defendant no.1 was entitled to 70% share in the profit and loss.

5. Dijendra Mitra and the defendant no.1 entered into another partnership deed dated 24.03.1987, under which the plaintiff was inducted as a partner of defendant no.13- partnership firm. The said

partnership was formed for the same purpose i.e. for development of property admeasuring 55 Acres 33 Gunthas. Under the said partnership deed Dijendra Mitra had assured that the agreement dated 6.9.1965 executed in his favour by the previous owner in respect of land admeasuring 55 Acres 33 Gunthas and confirmation executed by the heirs of the previous owners was valid and subsisting. In terms of the said partnership deed, Dijendra Mitra was entitled to 30%, defendant no.1 was entitled to 50% and the plaintiff herein was entitled to 20% share in the profit and loss of the said partnership firm. Partnership deeds dated 10.12.1986 and 23.4.1987 are annexed to the plaint at Exhibit C and Exhibit F.

6. The plaintiff has asserted that Said Dijendra Mitra had entered into an agreement dated 10.1.1973 with Balwant Joglekar for purchase of the other portion of land admeasuring 45 Acres 9 Gunthas. By agreement dated 23.3.1987 he agreed to sell the said land to the defendant no.13 partnership firm. Said Dijendra Mitra expired on 25.1.1988. Upon his death, the Defendant no.1 entered into an agreement dated 5.10.1988 with the original owner Balwant

Joglekar, and the defendant nos.2 to 12 -the legal representatives of Dijendra Mitra as confirming parties, for purchase of the land admeasuring 45 acres. The original owner Balwant Joglekar executed a Power of Attorney authorizing the defendant no.1 to deal with and dispose of the land admeasuring 45 Acres.

7. The plaintiff claims that by an Agreement dated 31.7.1987, executed on behalf of the defendant no.13, the defendant no.1 agreed to sell the land admeasuring 55 Acres to the defendant no.14 for total consideration of Rs.30 lakhs. The defendant no.1 claiming to be the sole proprietor of M/s. J.P. Constructions executed an agreement for sale dated 14.11.1988 agreeing to sell the land admeasuring 45 Acres in favour of the defendant no.15. The defendant no.1 entered into another agreement dated 9.5.1995 for sale of property admeasuring 45 Acres in favour of defendant Nos.17 and 18 for total consideration of Rs.40 lakhs.

8. The plaintiff claims that the suit property is a partnership property of which he is one of the partners with 20% share. The

plaintiff contends that the defendant no.1 in collusion with Dijendra Mitra has tried to dispose of the property belonging to the partnership firm for his personal gains. The plaintiff further claims that he was not aware of the said transaction and that his signature on the said agreement has been forged. The plaintiff alleges that he came to know about these agreements on 27.07.2010, after he was furnished copies of the documents pursuant to the order of this court Criminal Writ Petition No 1340 of 2010. The plaintiff has therefore sought a declaration that the said agreements dated 31.7.1987; 14.11.1988 and 9.5.1995 are illegal, unlawful, and not binding on him.

9. The plaintiff has averred that he had been demanding the accounts of the partnership firm from time to time. However, after the demise of Dijendra Mitra, the defendant no.1 refused to divulge any information. Upon receipt of the documents and after coming to know about the fraud committed by the defendant no.1 and Dijendra Mitra, he issued a notice dated 7.2.2011 under Section 43 of Indian Partnership Act, to the defendant nos.1 to 12 for dissolution of the

partnership firm. He called upon the defendant nos.1 to 12 to furnish the accounts and give his 20% share of profit in the partnership firm. The plaintiff claims that the defendants received the said notice on 7.2.2011, and vide reply dated 4.3.2011 contended that the firm was already dissolved. The defendant no.1 asserted that he being the absolute owner of the suit property, the plaintiff did not have any right to the same.

10. The plaintiff has averred that under the said notice, issued under section 43 of the partnership Act, the partnership stood dissolved on or about 12.02.2011 i.e. from the date of receipt of the notice. It is averred that the cause of action to file the suit first arose on 24.3.1987 when he was inducted as a partner, and thereafter on 31.7.1987 and 14.11.1988 when Dijendra Mitra and the defendant no.1 entered into agreement for sale in favour of defendant nos.14 and 15 without his consent and by forging his signatures. The plaintiff claims that the cause of action also arose on 27.7.2010, when he was provided the copies of the documents, and finally on 12.2.2011 when the defendant nos.1 to 12 received the

notice under Section 43 for dissolution of the defendant no.12 firm. The plaintiff therefore claims that the suit is filed within the period of limitation.

11. The defendant nos.2 to 12, 14 and 17 have by these Notices of Motions, sought rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908, mainly on the ground that the suit is barred by the law of limitation. Referring to the averments in the plaint as well as the terms of the Partnership Deed, the learned counsel for the defendants contend that the partnership was formed with a sole purpose of developing the property admeasuring 54 Acres. It is submitted that the property admeasuring 45 Acres is not a part of the assets of the firm. The learned Counsel for the defendants further contend that the averments in the plaint clearly indicate that the partnership deed contains a clause that the partnership firm would stand dissolved in the event of death of any of the partners. It is submitted that the partnership firm stood dissolved on 25.1.1988, with the death of one of the partners-Dijendra Mitra. It is submitted that the claim for accounts or share of profits of a dissolved firm,

which is raised beyond the period of three years is barred by limitation.

12. The learned counsel for the defendants contend that the averments in the plaint as well as the terms of the partnership deed state that the partnership was formed with a sole purpose of developing the property admeasuring 55 Acres. The property admeasuring 45 Acres was not brought into the partnership and as such, the plaintiff cannot seek relief in respect of the said property.

13. It is submitted that the challenge to the validity of the agreement dated 31.7.1987, 14.11.1988 and 9.5.1995 is ex facie barred by limitation. Referring to the pleadings in the plaint, the learned Counsel for the defendants submit that the plaintiff was aware of execution of these agreements. Hence, the suit ought to have been filed within three years from the date of knowledge of alleged fraud, if not from the date of execution of these agreements. The learned Counsel for the defendants have relied upon the decisions of the Apex Court in *Church of Christ Charitable Trust*

and Educational Charitable Society vs. Ponniamman Educational Trust (2012) 8 SCC 706; and Raghvendra Sharan Singh vs. Ram Prasanna Singh, to contend that illusion of fresh cause of action created by clever drafting must be nipped in the bud.

14. Relying upon the decision of the Apex Court in *Bhau Ram vs. Janak Singh 2012 (8) SCC 701*, Mr. Patil, the learned counsel for the plaintiff submits that while considering the application under Order 7 Rule 11 of CPC only the averments in the plaint are required to be considered. He submits that the averments in the plaint indicate that the signature of the plaintiff on the said agreement was forged. The plaintiff had no knowledge of execution of the said agreements. The plaintiff came to know about execution of these agreements only after he was furnished copies on 27.07.2010 pursuant to the order passed by this Court in Criminal Writ Petition No. 1340/2010. The learned Counsel for the plaintiff contends that the suit filed within three years from the date of knowledge cannot be said to be barred by limitation.

15. Before dealing with the arguments advanced by the learned counsels for the respective parties, it would be expedient to refer to the provisions of Order VII Rule 11 of the Code, which read as under;

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 to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for the reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court

and that refusal to extend such time would cause grave injustice to the plaintiff.

16. In *Church of Christ Charitable Trust* (supra), the Apex Court while considering the scope and extent of power to be exercised by the Court while considering the application under Order VII Rule 11 of CPC has observed thus:

"10... where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. ...It is clear that in order to consider Order 7 Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At the stage, the pleas taken by the defendant in written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property and Mayar

(HK.) Ltd. vs. M.V.Fortune Express."

17. In ***Madanuri Sri Rama Chandra Murthy vs. Syed Jalal*** (2017) 13 SCC 174 the Apex Court has observed that :

"7. ...Since the power conferred o the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip in the bud at the earliest so that bogus litigation will end at the earlier stage."

18. In ***Raghvendra Sharan Singh*** (supra), the Apex Court while examining the provision under Order VII rule 11 of CPC, referred to the previous decision in ***Ram Singh v. Gram Panchayat Mehal***

Kalan(1986) 4 SCC 364, and held thus:

" In the case of Ram Singh (supra), this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation "

19. In the instant case, the principal contention of the plaintiff is that the partnership was a partnership at will, which was dissolved by notice of dissolution under Section 43 of the partnership Act. Whereas the defendants have claimed that, the partnership was dissolved on the death of Dijendra Mitra, one of the partners of the partnership firm. It may be noted that Section 43 of the Partnership Act provides a mode of dissolution of partnership at will. This Section stipulates that a Partnership at will can be dissolved by any partner by giving notice in writing to all the other partners of his intentions to dissolve the firm. Section 7 of the Partnership Act defines 'partnership at will' as: "Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is

'partnership at will'. Thus a partnership can be regarded as a partnership at will only when (1) there is no provision in the contract between the partners for the duration of their partnership and (2) there is no provision in the contract for the determination of that partnership. If either of these two conditions exists, the partnership would not be a partnership at will.

20. In the present case the pleadings in paragraph 7 of the plaint vis-à-vis the terms of the partnership deed indicate that the partnership was formed to develop the portion of the suit property admeasuring 55 Acres 33 Gunthas. Clause 19 and clause 17 of the partnership Deed dated 10 December 1986 and the Partnership Deed dated 24 March 1987 state that the partnership is a particular partnership formed only for the purposes of the development of the said property. The partnership deed stipulates that the partnership shall come to an end after the construction of the buildings on the said property is over and upon obtaining the building completion certificates from the concern authorities and after the conveyance in respect of the said property is executed in favour of a Co-operative

Society or a Limited Company or association of persons that may be formed.

21. The averments in paragraph 7 and 10 of the plaint also state that both the partnership deeds contain a clause that in the event of demise of any of the partners, the partnership firm would be dissolved. These pleadings are in sync with Clause 27 of the partnership deed dated 24.3.1987, which reads thus:- _

"In the event of insolvency or death of any partners, this partnership shall be dissolved and the accounts of the partnership shall be made up and the remaining partners and the heirs and legal representatives of the deceased partner shall be entitled to such amount coming to their share in the capital and the profit, if any and such amount shall be paid by the remaining partners to the legal heir and representatives of the deceased partners. If in the event of the death of the part of the Second Part if so desired by the other coparceners or members of the said J.P.Constructions HUF such coparceners or members of the said J.P.Chaturvedi HUF shall be taken as partners of this firm upon the same terms and the said J.P.Chaturvedi HUF as partner with the said rights in favour of such members or coparceners. In the event there are no members or coparceners of the said J.P.Chaturvedi HUF, then in that event, the heir and the legal representatives of the said J.P.Chaturvedi HUF shall be entitled to the right created under this clause in their favour."

22. The pleadings and the terms of the partnership Deeds clearly stipulate that the partnership was entered into for the purpose of developing the property and constructing buildings. The Partnership Deeds do not expressly spell out a fixed term of duration. Nevertheless the terms of the contract indicate that the partnership was to end after completion of construction of the buildings, obtaining completion certificates and execution of conveyance in favour of the society. The terms of the contract thus imply that the duration of the partnership was until completion of construction and execution of conveyance. The partnership deed also provides for dissolution of partnership in the event of insolvency or death of any of the partners. The partnership Deed which contains a provision for duration of the partnership or for the determination of the partnership cannot be a partnership at will. As a corollary thereof, the partnership that is not a partnership at will cannot be legally terminated by a notice under section 43 of the Partnership Act. Consequently, sending of notice dated 7.2.2011 seeking dissolution of partnership is of no consequence.

23. From the terms of the Partnership Deeds, it is evident that the partnership was a specific partnership under Section 8 of the Partnership Act. In fact, contingencies under which such firm is dissolved are stipulated in Section 42 of the Partnership Act, which reads thus:

"42. Dissolution on the happening of certain contingencies- Subject to contract between the partners a firm is dissolved-

- (a) if constituted for a fixed term, by the expiry of that term;
- (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- (c) by the death of a partner;
- (d) by the adjudication of a partner as an insolvent."

24. A plain reading of Section 42(c) makes it clear that upon the death of one of the partners, the partnership firm would stand dissolved unless there is a contract to the contrary. In the instant case, clause 27 of the partnership deed specifically stipulates that the partnership shall be dissolved in the event of insolvency or death of any of the partners. The later part of the clause indicates that there was an agreement between the partners that in the event of death of the second party i.e. J. P. Chaturvedi, karta and manager of

J.P.Chaturvedi HUF, if so desired by the other coparceners or the members of J.P.Chaturvedi HUF, they shall be taken as partners of the firm upon the same terms. This clause, which would come in operation upon the death of J. P. Chaturvedi, karta and manager J.P.Chaturvedi HUF, gives an option to the other coparceners or members of J.P.Chaturvedi HUF to join as partners of the firm, if they so desire. The Partnership Deed does not give similar option to the heir or heirs of the other two partners i.e. Dijendra Mitra and the plaintiff herein. In fact there is absolutely no reference in the Partnership Deed, either express or implied, by which it can be inferred that the partners contemplated or agreed to either induct the heir or heirs of the other two partners as partners and or to carry on the partnership business with the other surviving partners, in the event of death of either of these two partners. The pleadings also do not indicate that the heirs/legal representatives of the deceased partner were inducted as partners or that the surviving partners had continued the partnership business even after the death of Dijendra Mitra. Therefore, in the absence of any contract to the contrary and with the natural consequence as envisaged in the statutory provision,

the partnership firm stood dissolved on 25.1.1988, with the death of Dijendra Mitra. In terms of Article 5 any claim for account or a share of the profits of a dissolved partnership is required to be made within three years from the date of dissolution of the partnership firm and not from the date of the notice under Section 43 of the Act. The plaintiff has not sought relief of rendition of accounts and share of profit within three years from the dissolution of the partnership firm, but has sought such relief after a period of 25 years. Suffice it to say that the relief is ex facie barred by limitation.

25. The plaintiff has challenged the agreements dated 31.3.1987, 14.11.1988 and 9.5.1995 alleging that the defendant no. 1 has tried to sell the partnership property without his knowledge, consent and by forging his signatures. The agreement dated 31.1.1987 relates to the property admeasuring 55 Acres, which was brought into the partnership for the purpose of development and construction. Whereas the agreements dated 14.11.1988 and 9.5.1995 are in respect of the property admeasuring 45 Acres, which was the subject matter of agreement for sale date 10.1.1973, entered between

Dijendra Mitra and Balwant Joglekar. The pleadings as well as the partnership deeds would indicate that this property was not brought into the stock of the firm when the partnership was formed and there was no agreement between the partners either express or implied to develop this property and or to treat this property as a partnership property.

26. The plaintiff has averred that by an agreement dated 23.3.1987 Dijendra Mitra had agreed to sell the said property to the partnership firm. Upon the death of Dijendra Mitra, the defendant no.1 had entered into an agreement dated 5.10.1988 with Balwant Joglekar, the original owner, for purchase of the property. Defendants no.2 to 12 who were parties to the said agreement relinquished their rights in the said property in favour of the defendant no.1. The plaintiff has not challenged validity of the said agreement, which was executed after the death of Dijendra Mitra and consequent dissolution of the firm. The pleadings also do not suggest that the defendant no. 1 had agreed to purchase the said property on behalf of or for the firm, for the purpose and in the course of the business of the firm, or with the

money of the firm. On the contrary a perusal of the agreement dated 5.10.1988 indicates that the defendant no.1 had entered into the said agreement for sale in his individual capacity. In view of the above the property admeasuring 45 Acres cannot be considered as a partnership property. Consequently, the plaintiff who is seeking relief only in respect of the partnership property would have no cause of action to seek relief in respect of the said property.

27. It is also pertinent to note that the plaintiff has challenged the validity of agreements dated 31.3.1987, 14.11.1988 and 9.5.1995 in a suit filed in the year 2013. The plaintiff has tried to justify the delay in challenging the validity of these agreements by contending that he was not aware of the execution of these agreements. He further contends that he came to know about these agreements on 27.7.2010 i.e. on receipt of the documents furnished to him pursuant to the Order of this Court on 18.10.2010 in Cri.W.P. 1340 of 2010.

28. It is pertinent to note that the plaintiff has alleged that the defendant no.1 in collusion with late D.C.Mitra tried to dispose of the

partnership property for their personal gain. Hence, he filed a criminal complaint 22.5.1996 against the Defendant no.1 and others for forgery and cheating. The averments in para 21 of the plaint also indicate that the plaintiff had issued letter/notice dated 1.5.1996 to Prem Daryani- the Director of Defendant No.14 and to the defendant no.15 Anand Builders informing them that he is one of the partners of the Defendant No.13-partnership firm, and has right to the suit property. The said letters addressed to the defendant nos.14 and 15 are annexed to the plaint at Exhibit S. In the letter addressed to the defendant no.14, the plaintiff had not claimed that the agreement was without his consent and /or forged. The grievance raised in the said letter was that the defendant no.14 had not paid the full consideration in respect of the said property admeasuring 55 acres, which was purchased from J.P.Constructions (Defendant No.13) in the year 1987. The plaintiff had contended that the defendant no.14 had sold the said property to the defendant nos.17 and 18 through the Defendant No.1. who is one of the partners of the defendant no.13 firm. By the said letter, the plaintiff had called upon the defendant no.14 to pay his share and or face legal consequences.

Whereas in the letter addressed to the defendant no.15, the plaintiff had stated that the land admeasuring 45 Acres was the property of the firm of which he, Dijendra Mitra and the Defendant No.1 were the partners. He had cautioned the defendant no.15 that he was entering into the agreement with the defendant no.1 at his own risk and cost.

29. The pleadings vis-à-vis letters at Exhibit S indicate that the plaintiff was well aware about the agreements at least in the year 1996 if not earlier. The plaintiff was therefore required to seek declaration as regards these agreements within a period of three years from the date of knowledge of the agreements if not from the date of execution. The suit filed after a period of 17 years from the date of knowledge of execution of the agreements is ex facie barred by the law of limitation.

30. Having considered the averments in the plaint and the contents of the documents annexed to the plaint, in my considered view, the suit is ex facie barred by limitation. Consequently, Notice of Motion

No. 1452 of 2018, Notice of Motion No. 447 of 2019 and Notice of Motion No. 672 of 2019 are allowed. The plaint in Civil Suit No. 220 of 2013 is rejected under Order VII Rule 11 CPC.

. Notice of Motion No. 504 of 2013 is disposed of in view of rejection of the plaint.

(ANUJA PRABHUDESSAI, J.)

Prasanna
P.
Salgaonkar

Digitally signed
by Prasanna P.
Salgaonkar
Date:
2019.08.23
17:09:48
+0530