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

+ CM(M) 42/2018 & CM APPL No.1138/2018

GOPAL KRISHAN Petitioner

Through : Mr.Ashok, Advocate

versus

SHYAM CHAND KHATANA & ORS Respondent

Through : Mr.Manish Gandhi and Mr.Alok
Kothari, Advocates

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **02.05.2019**

This petition challenges the order dated 26.09.2017 whereby an application under Order VI Rule 17 CPC filed by the petitioner was dismissed. Brief facts of the case are the plaintiff has initially filed a suit for possession and declaration against defendants No.1 to 5 qua premises No.A-511/5A, Govind Puri, Delhi. The defendants No.1 to 3 are co-owners, defendant No.4 is the tenant and defendant No.5 is the DDA.

It is the case of the plaintiff that the defendant no.1 received summons and appeared through counsel on 16.02.2005 and also in person on 24.03.2005 in the said suit, but without the knowledge of the plaintiff, the defendant No.1 had transferred the title of the property in favour of his wife viz. defendant no.1 on 31.05.2005 during the pendency of the suit and without seeking permission of this Court.

Defendant No.1 allegedly filed his written statement on 16.02.2005 but did not mention about the sale of the premises to his wife. However, the plaintiff came to know of this fact only on

16.08.2013 and had moved an application under Order I Rule 10 CPC to implead defendant no.6 in the suit. However much later he moved an application under Order VI Rule 17 CPC to bring on record the factum of purchase of property by defendant No.6 from defendant No.1. The said application under Order VI Rule 17 CPC was dismissed by the learned trial court on latches. The relevant part of the order is as under :

Vide this order, I will dispose off an application filed by the plaintiff under Order 6 Rule 17 CPC seeking amendment in the plaint after impleading defendant no. 6.

The brief facts necessary for disposal of this suit are that this suit was filed in 2005 against five defendants seeking a decree for possession and declaration that the documents executed by defendants no. 2 and 3 in favour of defendant no. 1 for transferring the suit property be declared null and void.

Defendant no. 1 who filed the written statement on 28.01.2006 did not mention in the written statement that he has already sold the property but on 13.05.2010 filed certain documents mentioning that he has already sold the property to his wife Smt. Jaiwati.

Plaintiff thereafter on 11.02.2014 filed an application under Order 1 Rule 10 CPC for impleading Smt. Jaiwati which was allowed on 14.01.2015 and thereafter the present application was filed on 10.03.2015 seeking certain amendments essential after impleading Jaiwati and also additional prayer that the documents executed by defendant no. 1 in favour of defendant no. 6 should also be declared null and void.

This amendment has been oppose defendants no. 1 and 6 on the ground of limitation as it is stated that the fact that defendant no. 1 sold the property to defendant no. 6 came to the knowledge of plaintiff on 13.05.2010 yet he filed the application under Order 1 Rule 10 CPC only on 11.02.2014 i.e. more than three years from the date of knowledge and

now this amendment application has been filed much later and prayer for declaration against defendant no. 6 cannot be allowed being barred by limitation for which counsel has also relied upon Article 56 and 59 of the Schedule I of the Limitation Act.

As per application under Order 1 Rule 10 CPC filed by the plaintiff he came to know about the sale deed executed by defendant no. 1 in favour of defendant no. 6 on 13.05.2010.

The limitation for seeking declaration which is three years shall start from this date. Even the application under Order 1 Rule 10 CPC was filed after three years from the date of knowledge whereas the present application has been filed almost about five years from the date of knowledge. The prayer of declaration against defendant no.6 is barred by limitation and cannot be allowed. The application is, therefore, dismissed.

There is one more application of the plaintiff under Order 39 Rule 1 & 2 CPC seeking interim injunction against defendant no. 6. Since there is no prayer against defendant no. 6 in the main suit, no interim order can be passed against defendant no.6. This application is also dismissed.

There is no illegality in the order. The order itself notes defendant No.1 filed the documents of sale of the premises in favour of his wife (defendant no.6) in the year 2010 itself. Admittedly the petitioner had the knowledge of this transaction way back in the year 2013, yet he did not file the application despite knowing all these facts, hence, there is no cogent ground to set aside the impugned order. The petition stands dismissed. Pending applications are also dismissed.

YOGESH KHANNA, J.

MAY 02, 2019/VLD