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

Decided on: 16th May, 2019

+ **CRP 169/2016 & CM APPL.38033/2016**

BABU RAM & ORS.

..... Petitioners

Through: Mr. Pankaj Kumar, Advocate with
Mr. Shubhendu Saxena and
Mr. Sandeep Kumar, Advocates.

versus

RAN SINGH & ANR.

..... Respondents

Through: Mr. Babu Lal, Advocate for R-1.
Mr. Rajiv Ranjan Mishra, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. The revisionist challenges an order dated 09.05.2016 by which his application under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] was dismissed. The main ground urged in the application under Order VII Rule 11 was that the suit filed by the respondent no.1 herein (CS No. 42/2016) was barred by limitation.

2. The plaintiff/respondent no.1 had, in the year 2005, filed suit no. 264/05/2012 against the revisionist and others for permanent injunction, claiming to be the owner of land of approximately 1,000 sq. yards in village Karawal Nagar, Delhi. That suit was dismissed by a judgment of the Civil Judge dated 09.10.2015. The ground of dismissal was that the suit for injunction simplicitor was not an appropriate proceeding in which complicated questions of title could be decided. The learned Civil Judge relied upon a judgment of the Supreme Court in *Anathula Sudhakar vs. P.*

Buchi Reddy (2008) 4 SCC 594. In the said judgment the Supreme Court has held in paragraph 21(c) as follows:-

“(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.”

3. Relying upon the said judgment, the suit of respondent no.1 was disposed of with the following observations:-

“24. I may note that this is not a simple and straight-forward case where this court can decide upon the issue regarding title, even in this suit for injunction. This is because not only the Defendants are disputing the title of the Plaintiff no. 1, but as on this date Plaintiff no. 2 to 5 are supporting the case of Defendant no. 5. There is also the admission of Plaintiff no. 1 to have executed irrevocable GPA dated 09.01.2006 in favour of Defendant no. 5 and the allegation of he having not received payment and the said GPA being registered without his knowledge. In such circumstances, it is but incumbent for the Plaintiff to seek a declaration qua his title over the suit property before seeking simplicitor injunction in the manner done in the present case.

25. In view of the aforesaid, in my opinion, the present suit is not maintainable in view of the ratio laid down by the Hon'ble Supreme Court of India in the matter of Anathula

Sudhakar vs. P. Buchi Reddy (dead) by LR's and Ors., reported as AIR 2008 SC 2033. Thus the issue under consideration is decided in favour of the Defendants and against the Plaintiff. The Plaintiff is relegated to the remedy by way of comprehensive suit for declaration of title to the suit property."

4. Pursuant to the disposal of the said suit as aforesaid, respondent no.1 on 15.01.2016 filed CS 42/2016 [from which this revision petition arises]. In this suit, respondent no.1 challenged the validity of certain documents in favour of the defendants, sought a declaration of his co-ownership as well as possession of the property and also sought various injunctions against the defendants. So far as limitation is concerned, the following averments are contained in the plaint:-

"21. That the cause of action for filing the present suit firstly arose when the suit land was entered into the revenue record entries pertaining to Khasra Khatoni in favour of the Plaintiff, his late brother and other co-owners i.e. Defendants No. 6 to 19 and was carried forward from time to time. The cause of action also arose when a civil suit No. 32/05 was filed by the present plaintiff along with other then co-plaintiffs against the present Defendants No. 1 to 5. The cause of action also arose when the said suit was decided vide order dated 9.10.2015 passed by the Ld. Civil Judge, Karkardooma, Delhi while dismissing the suit of the plaintiff and relegating the plaintiff to file the comprehensive suit for declaration seeking all the reliefs available to him. The cause of action further arose when Defendants No. 1-4 produced the documents, mentioned at para 6, during the earlier suit claiming the possession and ownership of the suit land on the basis of those documents. The cause of action also arose when an agreement for earnest money was got executed on 8/2/2005 and again when two GPAs were got signed by Defendant No. 5 from the Plaintiff

fraudulently, without the payment of the balance consideration. The cause of action also arose when a police complaint was lodged by Defendant No. 5 against the plaintiff and his family members U/S 107/151 CrPC on 24/12/2015. The cause of action also arose when the defendant No. 5 on 24/12/2015 got arrested family members of the Plaintiff and deposited building material on the suit land with a view to grab the suit property by taking its possession and by starting to build boundary wall around the suit land. The cause of action also arose when the threats were advanced by the Defendant No. 5 to the Plaintiff not to disturb the possession of Defendant No. 5 over the suit land or face dire consequences. The cause of action still continues.

22. That the Hon'ble Court of Shri Ashish Gupta, Civil Judge, East, Karkardooma Court vide judgment and decree dated 09/10/2015 has observed that the Plaintiff was relegated to file a comprehensive suit for declaration and consequential relief to get his right, title and interest declared in his favour and these observations save the period of limitation, if any, in favour of the Plaintiff. This may also be taken as a ground for claiming exemption of limitation under Order VII Rule 6 CPC as well."

5. In the application under Order VII Rule 11 of the CPC, the revisionist contended that the suit was barred by limitation in view of the fact that the rights of the defendants had arisen in 1999 and they had commenced construction in 2005. Even in the application under Order VII Rule 11 the revisionist himself referred to the judgment dated 09.10.2015 passed by the Civil Judge in the first suit. The application was resisted by the plaintiff/respondent no.1 herein and reference was made to paragraph 22 of the plaint which has been set out hereinabove.

6. By the impugned order dated 09.05.2016, the Trial Court has dismissed the application, holding as follows:

“There is a dispute of the fact when the plaintiff came to know about the execution of the documents which are challenged in the present suit. The presumption cannot be raised at this stage that plaintiff had knowledge of these documents merely on the ground that he was living in the vicinity and had knowledge who was raising constructions on the suit land. There is also a dispute whether the alleged owners of the property in whose favour the sale documents were executed from time to time remained in possession of the suit property or not or had raised any construction at any time or not. In such situation, this alleged presumed knowledge is disputed by the plaintiff so the question of limitation cannot be decided without evidence.

Even if it is held that plaintiff came to know about all the documents from the written statement filed in March 2005 in the previous case by the defendants, then also the present suit cannot be treated as time barred for the relief of declaration because the court while deciding the previous suit on 09.10.2015 has given liberty to the plaintiff to file a comprehensive suit for declaration of title. The previous suit was found not maintainable due to technical defects and I am of the opinion that the time spent in prosecuting the previous case in good faith is liable to be excluded under Section 14 of the Limitation Act. Hence, even for the sake of arguments, the knowledge about the documents is presumed to be in March 2005 from the written statements of the defendants, then also the present suit appears to be within limitation after excluding the period spent in the previous litigation. In such circumstances, I am of the opinion that question of limitation raised in the application is a mixed question of law and facts which cannot be decided without proper evidence and thus the application under Order 7 Rule 11 CPC moved by the defendants is hereby dismissed.”

7. It is evident that the Trial Court has noticed that there is a dispute as to when the plaintiff came to know about the execution of the documents which are challenged in the suit. Although the Trial Court has noted that disposal of an application under Order VII Rule 11 of the CPC is based only upon a reading of the plaint and the documents attached therewith, even on the assumption that the impugned documents came to the knowledge of the plaintiff in March 2005, the Trial Court has taken the view that the time spent in prosecuting the first suit is liable to be excluded for the purposes of limitation by virtue of Section 14 of the Limitation Act, 1963.

8. Learned counsel for the revisionist has contended that the word “relegated” used in the order of the learned Civil Judge while dismissing the plaintiff’s first suit did not amount to liberty being granted to file a fresh suit. In any event, he contends that the period of limitation cannot be foregone or bypassed even if such liberty were granted. Learned counsel submits that in the absence of an application under Section 14 of the Limitation Act, the Trial Court has erroneously relied upon the said provision. My attention has been drawn to the judgment of the Supreme Court in *Deena vs. Bharat Singh* (2002) 6 SCC 336 in this connection.

9. With regard to the first contention of the revisionist, I am of the view that when a Court rejects a particular proceeding and expressly states that the party is “relegated” to some other properly constituted proceedings, that is in effect, a refusal to entertain the proceedings, but preserves the right of the party to institute the other proceedings contemplated by the order. The very purpose of relegating a party to some other proceedings would remain unserved if it is thereafter held that the party had no right to institute those

proceedings. The learned counsel for the revisionist was unable to support his contention with any authority to the contrary.

10. The argument that such an order cannot bypass or extend the period of limitation is also misconceived in the facts of this case. While, as a standalone proposition, it is correct to say that liberty to institute fresh proceedings does not *per se* extend the period of limitation, the impugned order in the present case does not proceed on any such reasoning. The matter in fact turns on the provision of Section 14 of the Limitation Act which provides as follows:-

“14. Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the

jurisdiction of the court or other cause of a like nature.
Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

11. It will be seen from the provision itself that Section 14 provides for an exclusion of a particular period of time from the computation of limitation. Consequently, a party entitled to the benefit of Section 14 is not seeking an extension of time or a condonation of delay, but is relying upon a calculation of limitation which itself affords to it an exclusion for time spent in prosecuting a *bona fide* litigation which has been dismissed on the grounds of jurisdiction “or other cause of a like nature.” The latter phrase is of wide import and comprehends not just jurisdictional challenges but also other formal objections which may lead to rejection of a suit. While considering this expression, the Supreme Court, in *Roshanlal Kuthalia and Ors. vs. R. B. Mohan Singh Oberoi* (1975) 4 SCC 628, observed:

"27. Certainly, Section 14 is wide enough to cover periods covered by execution proceedings (See 1959 SCR 811 at 818 [Raghunath Das v. Gokul Chand, AIR 1958 SC 827, 831 : 1959 SCR 811, 818]). After all Section 47 itself contemplates transmigration of souls as it were of execution petitions and suits. The substantial identity of the subject-matter of the lis is a pragmatic test. Moreover, the defects that will attract the provision are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any

circumstance legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits, comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right [See(1971) 2 SCR 397 at 401 [India Electric Works Ltd. v. James Mantosh, AIR 1971 SC 2313, 2316 : (1971) 2 SCR 397, 401]]. In the Associated Hotels case(i. e. the very lis in its earlier round on the execution side) this Court pointed out [(1961) 1 SCR 259 at 272 [Associated Hotels of India Ltd. v. R.B. Jodhu Mal Kuthalia, AIR 1961 SC 156, 163]] that the question was one of initial jurisdiction of the Court to entertain the proceedings. Thus in this very matter, the obstacle was jurisdictional and the exclusionary operation of Section 14 of the Limitation Act was attracted.”

(Emphasis supplied)

Following the observations laid down in *Roshanlal Kuthalia* (supra), the Supreme Court, in *Union of India and Ors. vs. West Coast Paper Mills Ltd. and Anr.* (2004) 3 SCC 458, stated:

*“14. ...However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression “other cause of like nature” came up for the consideration of this Court in *Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi* [(1975) 4 SCC 628] and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right.”*

12. To make out a case under Section 14, the requisite facts are to be pleaded, and it is sufficient if those pleadings are in the plaint itself. There is no requirement of a separate application. A Division Bench of the Chhattisgarh High Court, in *Jain & Brothers and Ors. vs. State of Chhattisgarh* (First Appeal No. 41 of 2018, decided on 04.05.2018), *inter alia*, held as follows:

"11. In the light of the provisions in Order VII Rule 6 of the CP Code requiring the Plaintiff to show in the plaint, the ground upon which exemption from limitation is claimed, there is no requirement to institute a separate application claiming the benefit of Section 14 of the Limitation Act."

I am in respectful agreement with the aforementioned views of the Chhattisgarh High Court. Further, the averments contained in paragraphs 21 and 22 of the plaint, and relied upon by the Civil Judge in the impugned order were sufficient pleadings on the basis of which an argument based upon Section 14 could be founded. The revisionist's objection regarding the absence of an application under Section 14 is therefore rejected.

13. The learned counsel for the revisionist has also relied upon Order XXIII Rule 2 of the Code of Civil Procedure which states as follows:-

"2. Limitation law not affected by first suit. - in any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted."

In my view, reliance on the said provision is also utterly misplaced. Order XXIII deals with situation where a suit is withdrawn or a part of the claim is abandoned. It is true that Order XXIII Rule 1(3) contemplates permission to withdraw the suit on the ground of a formal defect, but that does not

mean that every suit rejected on the basis of a formal defect would be treated as having been disposed of under Order XXIII. In any event, it is nobody's case that the laws of limitation do not apply to the subsequent suit instituted by the plaintiff.

14. Learned counsel has relied upon the judgment of the Supreme Court in *Deena* (supra) to submit that an application under Section 14 was indeed necessary and that the requirements of Section 14 must be adequately pleaded. The Supreme Court's judgment, in my view, is not an authority for the proposition that application under Section 14 is required in every case, although factually there was one in that case. So far as the requirement of establishing the factual foundation for a plea of Section 14 to be established, I have held hereinabove that the plaint contained a sufficient factual basis for the same.

15. In any event, the Trial Court by the impugned order has only dismissed the application for rejection of the plaint under Order VII Rule 11 and has reserved the question of limitation for a decision upon evidence. I am informed by learned counsel for the respondent that an issue has been struck on the question of limitation and that the matter is now fixed for evidence. In the circumstances, I do not consider this to be a fit case for the exercise of the Court's revisional jurisdiction.

16. The petition is therefore, dismissed with costs of Rs.25,000/- payable by the revisionist to the plaintiff/respondent no.1.

PRATEEK JALAN, J.

MAY 16, 2019/j/s