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

Date of decision: 29th July, 2019

+ **CS (OS) 2497/2015, I.As. 17328/2015 & 15479/2016**

SH RAJINDER KUMAR KAPUR & ANR.Plaintiffs

Through: Mr. Rajiv B. Samiyar, Advocate
(M:9811343911)

versus

SH MADAN MOHAN LAL KAPUR & ANR. Defendants

Through: Mr. Ravi Sikri, Senior Advocate with
Mr. Rajbir Singh and Mr. Deepank,
Advocates for D-1.(M:9717394060)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(oral)

IA.10601/2016 (u/O VII Rule 11 CPC)

1. This is an application under Order VII Rule 11 CPC filed by Defendant No. 1 seeking rejection of the plaint on two grounds - that the suit lacks cause of action and that the suit is time barred.
2. Late Shri Kundan Lal Kapur had three sons and four daughters. The Plaintiff is one of the grandsons of deceased Shri Kundal Lal Kapur. The three sons of the deceased are Late Shri Shiv Kumar Kapur, Mr. B. C. Kapur and Mr. M. M. L. Kapur – Defendant No.1. Shri Kundan Lal Kapur passed away on 14th September, 1971. Mrs. Vidhya Wati, - wife of Late Shri Kundan Lal Kapur died on 26th June, 1978. The Plaintiff is the son of Late Shri Shiv Kumar Kapur, who passed away on 6th January, 1984.
3. The Plaintiff being one of the grandsons, seeks partition and possession of the property bearing No. J-38, Rajouri Garden, New Delhi

(*hereinafter the 'suit property'*). The suit property is in occupation and possession of Defendant No.1. It was mutated in favour of Defendant No.1 after execution of three General Power of Attorneys ('GPAs'), which were given in favour of Defendant No.1's wife namely Smt. Kamla Kapur. Thereafter, Smt. Kamla Kapur executed a relinquishment deed on 19th August, 1979 in favour of her husband – M.M.L Kapur – Defendant No.1 herein. This relinquishment deed was executed on the strength of GPAs, which were executed by all the daughters and sons of late Shri Kundan Lal Kapur. The GPAs and relinquishment deed have been placed on record. Since then, Defendant No.1 has got the property mutated in his own name and has been in exclusive enjoyment and possession of the suit property. On the basis of the relinquishment deed and GPAs executed by all his siblings, Defendant No.1 claims that the suit itself is not maintainable as the Plaintiff's father during his lifetime had given up all the rights in the suit property. Accordingly, the case of Defendant No.1 is that the suit has been filed more than 36 years after the registration of the relinquishment deed in favour of Defendant No.1 and that the said relinquishment deed had been executed after proper deliberations were held with all the family members. The Plaintiff's father had executed a GPA in favour of his *Bhabhi*, which was thereafter relinquished in favour of Defendant no.1, during his lifetime itself, he had no right in the suit property. Thus the suit itself is not maintainable and no trial would be required.

4. On behalf of Defendant No.1, Mr. Ravi Sikri, Id. Senior Counsel has made his submissions and has relied upon various authorities to submit the proposition that once there is a registered Power of Attorney and the documents are all registered, the same cannot be questioned, inasmuch as

registered documents have enormous sanctity in law. Further, he submits that the suit having been filed about 36 years after the relinquishment deed, would be utterly barred by limitation and such a plea would itself be entertainable under Order VII Rule 11 CPC. The fact that Defendant No.1 has been in exclusive enjoyment and possession of the suit property is evident from the fact that the first and second floors of the property have been constructed after proper approval obtained through the building plans. The valuation report has also been obtained for income tax purposes and the property is being reflected in the income tax returns of Defendant No.1. It is further submitted that Defendant No.1 has also been paying house tax and other charges/taxes in respect of the suit property. The Plaintiff does not have any legal or valid right. Ld. counsel for the Defendants further submits that GPAs have not been challenged and that only the relinquishment deed has been challenged, thus, there is no need for trial in this matter.

5. On the other hand, ld. counsel for the Plaintiff submits that his case in the plaint is that the GPA has not been executed by his father and neither has the relinquishment deed been executed by him. The suit ought to proceed to trial as he would like to prove in the trial that the said GPA has not been executed by his father. The plea is contained in paragraph 16 of the plaint. It is further submitted by learned counsel for Plaintiff that one of the other brothers i.e. his uncle - Mr. B. C. Kapur had written an email on 5th March, 2015, which reads as under:

“ Date: Thu, Mar 5, 2015 at 3:34 PM

The persons who are asking for their share tell them to get the shops cleared we need 10 c. Let us first share that when we dispose hose we shall share every thing. Of course we will have to minus what ever extra

help was given to some of them.
Thanks.
Bckapur ”

6. According to him, the email shows that the family had agreed to give some share to the Plaintiff. Further, Ld. counsel for the Plaintiff submits that the question of limitation is a mixed question of fact and law. He relies upon ***Brigadier (Retd.) Shyam Prasad vs. Dayawati and Others, 2010 (114) DRJ 745*** and ***Balasaria Construction (P) Ltd. vs. Hanuman Seva Trust and Others, (2006) 5 SCC 658*** in support of his contention.

7. The Court has heard ld. counsels for both the parties. The Court has also perused the GPAs and the relinquishment deed, which were executed. A perusal of the GPAs shows clearly that the same were duly executed and even registered on different dates. The first GPA is dated 1st June, 1979 and has been executed by Mr. B. C. Kapur, Smt. Rani Chawla and Smt. Vinod Bala in favour of Smt. Kamla Kapur. A similar GPA has been executed by Smt. Raj Dulari and Smt. Sneha Bala on 15th June, 1979 and the same is also registered. A third GPA was executed by late Shri Shiv Kumar Kapur on 20th June, 1979. All the GPAs nominated Mrs. Kamla Kapur to be the power of attorney holder. On the strength of these GPAs, Mrs. Kamla Kapur executed a relinquishment deed on 19th August, 1979 in favour of her husband – Mr. M. M. L. Kapur, who is Defendant No.1. A perusal of the GPAs and relinquishment deed shows that the same are duly registered with the relevant authorities. The documents are registered under Section 17 of the Registration Act, 1908, the said GPAs and relinquishment deeds do not require to be proved by an attesting witness as is evident from Section 68 of the Indian Evidence Act, 1872. Section 68 reads as under: -

“68. Proof of execution of document required by law to be attested.— If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]”

8. Thus, under the provisions of the Registration Act read with the provisions of the Indian Evidence Act, registered documents ought to be read in evidence. The same carry a sanctity in law and are presumed to have been executed. Paragraph 16 in the plaint wherein the Plaintiff pleads that the signatures do not belong to his father reads as under:

“16. That the plaintiff no-1 father had never executed any power of attorney or any relinquishment deed in favour of defendant no-1. Hence the alleged document of relinquishment deed dated 19.08.1979 is false and fabricated document. The registration of the said false, document by the defendant no-1, itself nullified the validity of genuineness of the document. It is also surprising for the plaintiffs that the alleged relinquishment deed claimed by defendant no-1, executed on the basis of general power of attorney.”

9. The fact that these documents were executed way back in 1979, i.e. almost 40 years ago and 36 years by the time the suit was filed, itself shows that they have enormous sanctity especially in view of Section 90 of the Indian Evidence Act, 1872. Section 90 reads as under:-

“90. Presumption as to documents thirty years old.—

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person’s handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This Explanation applies also to section 81.”

From the above provision it is clear that under Section 90 if a document is more than thirty years old, a presumption attaches to such documents and the signatures contained therein that they belong to whoever is shown to have signed the same. In ***Mahesh Chander Ahuja vs. Tilak Raj Ahuja, 2018 (168) DRJ 492*** this Court has held as under:

“15. Once the Relinquishment Deed is registered, mere raising of a haze or cloud around it would not be sufficient to dispute the same. Thus, the Relinquishment Deed appears to be a genuine document and the doubts raised by the Defendant are not valid.”

10. Reliance is placed by Id. counsel for the Defendant on various judgments of the Supreme Court and other Courts. These judgments clearly show that the question as to whether the Power of Attorney, once registered, can be gone into or not, is to be considered at the stage of the application

under Order VII Rule 11 CPC. The judgment in ***National and Grindlays Bank Ltd. vs. M/s. World Science News & Ors., ILR (1976) 1 Del 559***, elucidates that a presumption arises as to the validity and authenticity of a document once it is attested. The relevant portion of the said judgment reads as under: -

“10. The document in the present case is a power of attorney and again on the face of it shows to have been executed before, and authenticated by, a notary public. In view of Section 85 of the Evidence Act, the Court has to presume that it was so executed and authenticated. Once the original document is produced purporting to be a power of attorney so executed and attested, as stated in S. 85 of the Evidence Act, the Court has to presume that it was so executed and authenticated. The provision is mandatory, and it is open to the Court to presume that all the necessary requirements for the proper execution of the power of attorney have been duly fulfilled. There is no doubt that the section is not exhaustive and there are different legal modes of executing a power of attorney, but, once the power of attorney on its face shows to have been executed before, and authenticated by, a notary public, the Court has to so presume that it was so executed and authenticated. The authentication by a Notary Public of a document, purporting to be a power of attorney and to have been executed before him is to be treated as the equivalent of an affidavit of identity. The object of the section is to avoid the necessity of such affidavit of identity. Under Section 57 sub-section (6) of the Evidence Act, the Courts have to taken judicial notice of the seals of Notaries Public and when the seal is there, of which judicial notice is taken, there is no reason why judicial notice should not be taken of the signatures as well.”

11. Scope of Order VII Rule 11 CPC has been clearly set out by the

Supreme Court in *Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others*, (2004) 3 SCC 137. The relevant portion reads as under:-

“11. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code.

20. Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the Defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

12. Since the GPAs and the relinquishment deed are all registered documents, the same are presumed to be valid and legal.

13. The further argument of the Plaintiff is that the question of limitation is a mixed question of fact and law. This proposition is not an absolute proposition, inasmuch as limitation, when it is evident on the facts, does not become a mixed question, in all circumstances. It is only if evidence is required to decide the question of limitation, that it becomes a mixed question of fact and law. In the present case, the ownership of the suit property by the late grandfather is not disputed. The execution of the GPAs has been clearly established on record and the same are registered. The Plaintiff and his father, during his lifetime, have never enjoyed any rights in the suit property after the execution of the registered GPAs and the registered relinquishment deed. These facts not being in dispute, the question of limitation does not remain a mixed question of fact and law. In view of the long delay in the filing of the present suit, it is held to be barred by limitation as the Plaintiff had knowledge of the fact that Defendant No.1 claims exclusive rights in the suit property for several years and in fact for the last several decades. There is no reason why a challenge could not have been raised earlier. There has to be a finality to such documents once they are executed and registered, failing which, parties would be litigating forever. The documents placed on record clearly show that the Plaintiff does not have any case and does not have even a feeble challenge to any of the documents. Under these circumstances, the application under Order VII Rule 11 CPC is allowed and the suit is rejected for lack of a cause of action and for being barred by limitation.

14. Since the Plaintiff is the nephew of Defendant No.1, the Court had

asked the parties to take instructions, if there was any amicable resolution possible. The counsels have reverted and Defendant No.1 has submitted that at this stage, he does not have any intention to sell the suit property. However, at the request of the Ld. Counsel for the Plaintiff, this Court would like to add that, if at any stage, the suit property is likely to be sold by Defendant No.1, out of goodwill, love and affection, if he wishes to part with any part of the sale consideration in favour of his nephew, the same is left to him completely. No orders can be passed in respect of the same. All pending I.As. also stand disposed of.

**PRATHIBA M. SINGH,
JUDGE**

JULY 29, 2019/dk/dj

