

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

% Decided on: 27th January, 2020

+ **CS(OS) 454/2018**

SH. VIJAY KUMAR GUPTA Plaintiff

Represented by: Mr. K. Sunil, Advocate with plaintiff in person.

versus

SH. PAWAN GUPTA Defendant

Represented by: Mr. Gulshan Chawla, Mr. Bhupesh Narula, Ms. Pragya Verma & Ms. Smriti Kumari, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

I.A. No.1303/2019 (u/O VII Rule 11 CPC)

1. By the present suit, the plaintiff *inter alia* prays for a decree of declaration declaring the plaintiff to be absolute, exclusive and sole owner of the property measuring 370 sq. yards out of 740 sq. yards in khasra No.29/24/1 now known as Mange Ram Park situated in the area of village Pooth Kalan, Delhi upon which two godowns are existing on the basis of documents (in short 'suit property'). The plaintiff also seeks a decree of possession thereby directing the defendant, his legal heirs or any persons claiming any right there on to hand over peaceful and vacant possession of the property measuring 370 sq. yards out of the suit property besides a decree of permanent injunction.

2. The present application has been filed by the defendant, who is the brother of the plaintiff on the grounds that the suit filed by the plaintiff is

based on a concocted false story on the strength of forged and fabricated documents, does not disclose any cause of action and that the same has been filed in collusion with the tenants/occupants of the suit property, the pecuniary value of the suit is incorrect and the relief claimed are not maintainable on the facts of the case as also beyond the period of limitation.

3. In the suit, the plaintiff has claimed that the defendant by way of general power of attorney dated 2nd February, 1988 duly executed by Sh.Ajit Singh had purchased the entire suit property where after he raised the boundary walls so that other persons may not encroach upon the said land. The area slowly started developing and other people used the same for the purposes of residence as well as commercial activities. Since the defendant had paucity of funds, he could not develop the suit property and thus raised temporary constructions for the purpose of using the same as godowns. The defendant being not in a position to raise permanent construction intended to sell a part of the suit property towards Prehladpur Road and had received some advances from a third party, however, the said land could not be purchased nor was sold by the defendant and thus the defendant was required to return the said amount to the third party. Being in financial distress, the defendant approached the plaintiff for advancing a sum of ₹7 lacs in the month of September, 1994 so that the defendant could pay off the said money to the purchaser to whom the property could not be sold. The plaintiff agreed to make the payment of ₹7 lacs on the condition that the defendant would write documents so that the said payment is recorded and it is agreed between the parties that the defendant would execute documents so as to transfer and sell all right, title and interest in respect of the land measuring 370 sq. yards out of the suit property and at least the property

would remain within the family. Thus, the parties executed an agreement to sell, general power of attorney, settlement deed and receipt in this regard for the defendant having received ₹7 lacs from the plaintiff on 19th September, 1994. While executing the agreement to sell, general power of attorney, settlement deed and receipt, the defendant also executed the receipt as well as the settlement deed for the transfer of the 370 sq. yards of the suit property. No sale deed could be executed as there was a ban on registration of the sale deeds.

4. It is the case of the plaintiff that after getting possession of the 370 sq. yards of the suit property, the plaintiff developed and raised construction thereby constructing two godowns. The two godowns have been from time to time rented out to various persons who are in the trade of cement. The plaintiff claims that he has been continuously writing letters to the defendant asserting his having purchased 370 sq. yards of the suit property and in this regard, has posted registered letters dated 19th May, 1997, 24th March, 2000, 2nd April, 2003, 17th May, 2006, 13th April, 2009, 11th May, 2012 and 27th April, 2015. Since the plaintiff was in possession and had suitable documents and was writing letters to the defendant, he did not take any legal action. On 30th August, 2018, the plaintiff came to know that the defendant was planning to sell the two godowns which were owned and possessed by the plaintiff for the purpose of which he was showing the same to various other parties. Despite the plaintiff having sent a message directing defendant not to take any illegal step, the defendant did not refrain in the activity and it was further revealed to the plaintiff that the defendant had to pay huge amount of money to several Government departments and thus he was to dispose of the property. Despite the public notice dated 5th

September, 2018 informing general public not to deal with the property, the defendant is not restraining from selling the suit property and hence the present suit.

5. In cause of action paragraph, the plaintiff has pleaded as under:-

“That the cause of action has arisen on 19.09.1994 when the plaintiff had made payment of ₹7,00,000/- to the defendant and the defendant had executed agreement to sell, general power of attorney, receipt and settlement deed, the cause of action has arisen on all dates when the plaintiff had let out and collected the rent from the godowns situated on the property in question, the cause of action has arisen on all dates when the plaintiff has reiterated and repeated the claim and information sent to the defendant on 19.05.1997, 24.03.2000, 02.04.2003, 17.05.2006, 13.04.2009, 11.05.2012 and 27.04.2015, the cause of action has also arisen on 27.07.2018 when the defendant has threatened for taking illegal possession, the cause of action has arisen on 30.08.2018 when the plaintiff received a message that the defendant is trying to send some persons for selling the property in question, the cause of action has arisen on 31.08.2018 when the advocate for the plaintiff has sent the material for public notice to the newspaper, the cause of action has also arisen on 05.09.2018 when the public notice has been published in the newspaper ‘Jansatta’ and the ‘Indian Express’, the cause of action has further arisen when the defendant has threatened to collect the rent and to claim the possession of the same, the cause of action has further arisen when the defendant did not desist from adopting illegal action and hence the cause of action is continuing and subsisting one as the defendant has casted a shadow upon the ownership of the plaintiff as well as has threatened to claim the possession of the property in question and hence the defendant cannot interfere in the right, title and interest as the plaintiff continued and remain to be the absolute, sole and exclusive owner of the property in question and hence the present suit.”

6. Admittedly the documents between the parties in the form of agreement to sell, receipt etc. were executed on 19th September, 1994. Though the plaintiff claims to be in possession of the suit property having constructed two permanent structures and giving on rent, however, there is nothing on record to suggest that the plaintiff was receiving rent from the two properties. Moreover in the entire plaint, it is not noted as to when possession of the suit property was taken away from the plaintiff because in the prayer clause, the second prayer of the plaintiff is a decree of possession thereby directing the defendant, his legal heirs etc. to hand over peaceful and vacant possession of the 370 sq. yards out of the suit property.

7. Article 58 of the Limitation Act provides that a suit seeking declaration has to be filed within three years from the date when the right to sue first accrues. The plaintiff thus has right to seek declaration within three years of 19th September, 1994 when the documents agreement to sell, receipt, settlement deed, on which the plaintiff relies, were executed. Merely by writing the letters to the defendant in the absence of any acknowledgment from the defendant, the period of limitation for filing the suit seeking a declaration would not extend.

8. Learned counsel for the plaintiff relies upon the decision of the Supreme Court in Civil Appeal No.3500/2018 titled *Chhotanben & Anr. Vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.* decided on 10th April, 2018 wherein the Supreme Court held that the trial court committed an error holding the suit being barred by limitation as the same was a triable issue for the reason the plaintiff therein had asserted that in 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. In a case where the plaintiff gets the

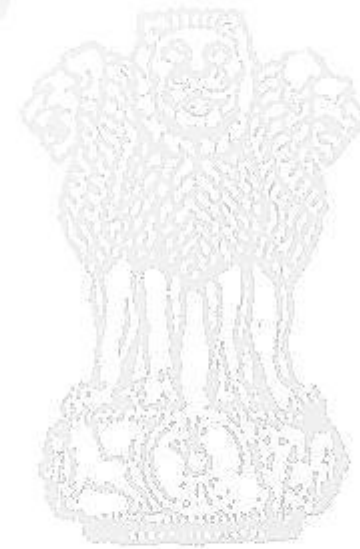
knowledge subsequently, the cause of action would arise on the said date, however, in the present suit there is no such knowledge attributed. Consequently, the application of the defendant is allowed and the suit is rejected being barred by limitation.

CS (OS) No.454/2018 & I.A. No.12496/2018 (u/O 39 Rule 1 & 2 CPC)

In view of the order passed today in I.A. No.1303/2019, suit and I.A. No.12496/2018 are dismissed. Interim order dated 17th September, 2018 is vacated.

**JANUARY 27, 2020
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**(MUKTA GUPTA)
JUDGE**



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