

3rd August,
2021
(AK)
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C.O. 3424 of 2019

**Sursrut Eye Foundation & Research Centre
Vs.
Sri Barid Baran Roy and others**

With

C. O. No. 852 of 2020

**Baisakhi Infra Projects Private Limited
Vs.
Sri Barid Baran Roy and others**

With

C. O. No. 2047 of 2019

**Barid Baran Roy
Vs.
Gopal Banerjee and others**

(Via video conference)

Mr. Saptanshu Basu,
Mr. Aniruddha Chatterjee,
Mr. Anindya Bose,
Mr. Chandrachur Chatterjee,
Mr. Diptendu Mandal

... for the petitioner
in C. O. No. 3424 of 2019
&
for the opposite party no. 14
in C. O. No. 852 of 2020 &
C. O. No. 2047 of 2019.

Mr. Gopal Chandra Ghosh,
Mr. Omnarayan Rai

...for the petitioner
in C. O. No. 2047 of 2019
&
opposite party no. 1
in C. O. No. 3424 of 2019
&
C. O. No. 852 of 2020.

Mr. Raja Basu Chowdhury,
Mr. Rahul Podder

...for the petitioner
in C. O. No. 852 of 2020
&
opposite party no. 14
in C. O. No. 3424 of 2019
&
opposite party no. 13
in C. O. No. 2047 of 2019.

Mr. Arijit Bardhan,
Mr. Rishabh Dutta Gupta

...for the opposite party nos. 15 and 16
in all the revisional applications.

Learned counsel appearing for the petitioners in CO No. 3424 of 2019 and CO No. 852 of 2020 submit that the trial court acted palpably without jurisdiction in rejecting the defendant/petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, despite the suit being patently barred by limitation on a plain and meaningful reading of the plaint.

It is contended by learned counsel for the petitioner that it will be evident from paragraph nos. 20 and 21, read in conjunction, that, even if the plaintiffs' case that there were several conveyances in favour of nominees of the plaintiffs, continuing from the year 2005 to 2010, is taken to be true for the present purpose, it is clear from the averments made in the paragraph no.21 and in the reliefs claimed in the suit that there were sale transactions, contrary to the agreement, even as per the plaintiffs, in the year 2006 and 2008.

Learned counsel for the petitioners thus argue that the cause of action for filing the present suit for specific performance of the agreement between the parties started at least from April 2006, when the first deed, even as per the plaint pleadings, was executed in violation of the agreement.

Since the suit was filed only in the year 2012, that is, six years after the cause of action arose by virtue of execution of the first such deed in April 2006 as per paragraph no.21 of the plaint, it is contended that the suit for specific performance was *ex facie* barred by limitation.

Learned counsel further submit that in view of the plaintiffs having not pleaded that they did not have knowledge of the execution of the deed at the relevant point of time, that is, in 2006, anywhere in the plaint, it ought to be deemed that the plaintiffs had notice of the transfer within the contemplation of the Transfer of Property Act, 1882 from the date of registration.

Learned counsel appearing for the opposite parties in both the matters argues that, since it has not been admitted anywhere in the plaint that the plaintiffs had knowledge of the transactions of 2006 or 2008, which are in contravention of the agreement sought to be performed, at the time of execution/registration of those, such knowledge cannot be attributed to the plaintiffs from the date of execution of the said documents and/or

registration of the same upon a plain reading of the plaint.

It is further contended that, rather, by execution of the subsequent deeds in terms of the agreement in the year 2010 in favour of the plaintiffs' nominees, as mentioned in paragraph no.20, it ought to be deemed *ex facie* from the plaint that the plaintiffs did not have any specific knowledge of refusal due to such part compliance of the agreement even in the year 2010.

Hence, it is contended that the issue could not have been decided at the inception while hearing the application under Order VII Rule 11 of the Code and was rightly relegated to the hearing of the suit.

Upon hearing learned counsel for the parties and on a plain reading of the plaint, it is evident that, although paragraph no.21 alleges that certain deeds were executed starting from the year 2006, in contravention of the agreement sought to be performed, it is clearly alleged that such transactions took place surreptitiously behind the back and beyond the knowledge of the plaintiff.

As such, the plaintiffs have specifically denied knowledge from the date of execution/registration of the 2006 deeds.

Hence, even in the absence of any further specific reference to the absence of knowledge of the plaintiffs prior to the year 2010, the plaint could not be rejected on such premise, in view of the averments made in

paragraph no.21 categorically denying the knowledge of the plaintiffs of the 2006 deeds at the point of time when they were registered.

As such, even without taking into consideration the execution of the deeds of 2010, the pleadings made in paragraphs 20 and 21 of the plaint have to be taken on face value for the limited purpose of deciding the application under Order VII Rule 11 of the Code of Civil Procedure.

That apart, in paragraph no.24 and 28 of the plaint, the plaintiffs have categorically stated that the cause of action for the suit arose in the year 2010.

Hence, the trial court was justified in rejecting the application under Order VII Rule 11 of the Code of Civil Procedure and relegating the issue of limitation to the trial of the suit, since, in the present context, such question is a mixed question of fact and law and cannot be established on a plain and meaningful reading of the plaint. Hence, there is no scope of interference with the impugned orders.

Accordingly, C.O. 3424 of 2019 and C.O. 852 of 2020 are dismissed on contest without any order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

Re: C.O. 2047 of 2019

Due to paucity of time, C.O. 2047 of 2019 cannot be taken up for hearing today.

Let the matter appear tomorrow, that is, August 4, 2021 fairly at the top of the list for hearing.

(Sabyasachi Bhattacharyya, J.)