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

% *Date of Decision: 20th December, 2022*

+ C.R.P. 213/2022

SMT. SAROJ (SINCE DECEASED)
THROUGH LR'S

..... Petitioner

Through: Mr. Rajendra Kr., Advocate.

versus

SURAT SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 55366-67/2022 (Exemptions)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

C.R.P. 213/2022 & C.M. APPL. 55365/2022 (Stay)

3. By way of the present Revision Petition, Petitioner lays a challenge to the impugned order dated 03.09.2022, passed by the learned Trial Court in CS No. 532/2017, whereby Trial Court has dismissed the application of the Petitioner under Order VII Rule 11 CPC. Petitioner herein is Defendant No. 1 before the Trial Court while the Respondent herein is the Plaintiff. Parties are referred to by their litigating status before this Court.

4. Brief facts necessary for disposal of the present Revision Petition are that Respondent and Defendant No. 2/Shri Ramphal Saini are real brothers and Petitioner is the wife of Defendant No. 2. Father

of the Respondent and Defendant No. 2 was the absolute owner of certain properties situated in Lal Dora of Village Naharpur, Sector-7, Rohini, Delhi, which are stated to have been partitioned by him by way of a registered will dated 08.10.2010, followed by a deed of family settlement dated 16.10.2010, executed in this behalf.

5. It is the case of the Respondent before the Trial Court that in the month of February 2016, he received summons of a suit filed by Petitioner, wherein she claimed herself to be the owner of property measuring 400 Sq. Yds., out of Khasra No. 218/1, Village Naharpur, Sector-7, Rohini, Delhi. Petitioner claimed to have purchased the same from the father of the Respondent i.e. her father-in-law through a sale deed dated 09.07.2004 and Respondent is a Defendant in the said suit.

6. It is the case of the Respondent before the Trial Court that the execution of the sale deed dated 09.07.2004 pertaining to the suit property came to his knowledge only when the said suit was filed by the Petitioner, whereupon the present suit, from which this revision petition arises, was filed seeking cancellation of the sale deed dated 09.07.2004 and permanent injunction.

7. Upon the Respondent filing the suit for cancellation and permanent injunction, summons were issued to the Petitioner, who filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the suit was barred by limitation. The case set up in the application was that Respondent had knowledge of the sale deed dated 09.07.2004 on 11.01.2011, which is evident from the certified copy, which was applied for on 04.01.2011 and was received on 11.01.2011 and therefore the suit filed after a period of more than six years on 18.05.2017 was time barred.

8. Reply to the application was filed by the Respondent stating therein that the grounds taken in the application do not fall under provisions of Order VII Rule 11 CPC and that while examining an application under Order VII Rule 11, the Court has to only examine the plaint and the documents appended thereto. It was denied that the certified copy filed by the Respondent reflected that the same was received on 11.01.2011 and there is no such averment in the plaint. Respondent only came to know about the sale deed after receiving summons in the suit filed by the Petitioner as mentioned in the plaint. It was also the stand of the Respondent that the case is at the final stage and there is no reason brought forth by the Petitioner which would persuade the Court to reject the plaint at this stage.

9. After hearing the parties to the *lis*, the Trial Court has dismissed the application. Trial Court was of the view that applying the law for deciding an application under Order VII Rule 11 CPC and looking at the plaint, a case for rejection of the plaint at this stage is not made out. The Court has recorded a finding that perusal of the certified copy of the sale deed and the rectification deed does not clearly indicate that Respondent had knowledge of the same in the year 2011. The certified copy does not show who applied for it and by whom was the same received and this was thus a question of fact which could be established only after parties lead evidence. The Court also noted that question of limitation is a mixed question of law and facts and it cannot be held that plaint is barred by law so as to be rejected under Order VII Rule 11.

10. Learned counsel appearing on behalf of Petitioner submits that the Trial Court failed to appreciate that the certified copy filed by the Respondent with the plaint clearly reflects that it was applied for on

04.01.2011 and was received on 11.01.2011 and therefore the suit filed after six years was time barred. Upon perusal of the plaint and the documents, no further evidence in the present case was required by the Trial Court to conclude that the suit was time barred. While limitation is a mixed question of law and facts, however, this principle may not be applicable in all cases and where the document itself evidences the fact that Plaintiff has knowledge, the Court is in fact duty bound to reject such a plaint on its own, without waiting for an application under Order VII Rule 11 CPC.

11. I have heard the learned counsel for the Petitioner and examined the contentions raised.

12. Law on the parameters that governs the examination of an application under Order VII Rule 11 CPC is no longer *res integra*. It is settled that Court has to look into the plaint on a mere demurrer along with the accompanying documents and the defence raised in the written statement is wholly irrelevant. It is equally well-settled that limitation is a mixed question of facts and law and is to be decided after the parties lead evidence or at best as a preliminary issue and wherever there are disputed questions regarding the commencement of limitation period, plaint ought not to be rejected at the threshold. In ***Sri Biswanath Banik and Another v. Sulanga Bose and Others, (2022) 7 SCC 731***, the Supreme Court has held as follows:

“7. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order 7 Rule 11(d) CPC on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in Ram Prakash Gupta [Ram Prakash Gupta v. Rajiv Kumar Gupta, (2007) 10 SCC 59],

rejection of a plaint under Order 7 Rule 11(d) CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In the said decision, in para 21, it is observed and held as under: (SCC p. 68)

“21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed [Ram Prakash Gupta v. Rajiv Kumar Gupta, 2006 SCC OnLine Del 488] by the High Court. While deciding the application under Order 7 Rule 11, few lines or passages should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint.”

13. In ***Urvashiben and Another v. Krishnakant Manuprasad Trivedi, (2019) 13 SCC 372***, the Supreme Court has reiterated and reconfirmed the exposition of law that limitation is a mixed question of fact and law. It is true that limitation can be a ground for rejection of plaint in exercise of powers under Order VII Rule 11(d) CPC and it is equally well settled that for deciding the application only averments in the plaint alone can be looked into and merits and demerits of the matter as well as the allegations by the parties cannot be gone into. In ***Ramesh B. Desai and Others v. Bipin Vadilal Mehta and Others, (2006) 5 SCC 638***, the Supreme Court held that starting point of limitation has to be ascertained on facts in every case and a plea of limitation cannot be decided as an abstract principle of law divorced from the facts for rejection of the plaint under Order VII Rule 11 (d)

CPC. In fact, where there is a dispute relating to question of fact, the question of limitation cannot even be decided as a preliminary issue without decision on facts based on evidence that has to be adduced by the parties.

14. Seen in this backdrop, one would need to examine the averments contained in the plaint as a whole to see if on the face of it the suit is barred by limitation. The plaint has been placed on record by the Petitioner and the necessary averments in the context of the cause of action are as follows:

“4. That the father of the plaintiff during his lifetime had partitioned all the above mentioned properties through registered family Will dt. 08.10.2010 as well as thereafter through Deed of family settlement dt. 16.10.2010.

5. That the above said properties has been divided in three part i.e. Part- A, B & C, and further the said properties distributed/partitioned in further three part in equal distribution i.e. part A-1, A-2, A-3, B-1, B-2, B-3, C-1, C-2, C-3. As per the said settlement Part A-1, B-2, & C-2 goes to Sh. Hoshiyar Singh another brother of plaintiff and defendant no. 2. Part A-3, B-3, & C-3 goes to defendant no. 2.

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7. That thereafter all the parties took their possession over the said properties and enjoy peacefully since then without any objection from any corner.

8. That in the month of February 2016 the plaintiff received the summons from the court of Ms. Sonam Gupta, Civil Judge, Rohini Court, Delhi and after receiving the said summons the plaintiff was shock and surprised after seeing that defendant no. 1 has claiming herself owner of property measuring 400 sq yards of Khasra no. 218/1, through sale deed dt. 09.07.2004. Copy of the same is annexed herewith.

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12. That it is pertinent to mention here that the execution of the alleged sale Deed dt. 09.07.2004 has not been mentioned in any documents like registered Will, Family Settlement and Khatoni of Revenue Record. Therefore it is clear that the alleged Sale Deed is absolutely false, frivolous, fabricated and manipulated document, which was created by defendant no. 1 with the help of defendant no. 2 just to grab the property of the plaintiff. It is further submitted that the plaintiff had installed the electricity connection on 06.09.2011 in

the premises in question i.e. shop in the plot measuring 400 sq yards situated in Khasra no. 218/1, Village Nahar Pur, Delhi (herein after called as suit property). More specifically shown in red color in the said plan. The said electricity connection has been installed by the plaintiff in the name of Ms. Sakuntala Saini W/o Anil Saini, who is daughter-in-law of plaintiff. It is also mentioning that one Sh. Rm Naresh was the tenant of said Smt. Sakuntala Saini since Sep. 2011. Initially the tenancy was oral but later on a Rent Agreement has been executed on 16.02.2013 between Smt. Sakuntala Saini and Said Sh. Ram Naresh. The said premises in question is presently under the use and occupation of Mr. Puran Lal who is tenant of Smt. Shakunatala Saini Copy of relevant documents are annexed herewith for kind perusal of this Hon'ble Court.

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17. That the cause of action for filing the present suit arose in favour of the plaintiff and against the defendants firstly in the month of February 2016, when the plaintiff came to know that the defendant No. 1 prepared or executed a false sale deed dt. 09.07.2004 in her favour with the help of defendant no. 2, the cause of action again arose on various dates and occasions when the defendants threatened to the plaintiff with dire consequences as mentioned above. The cause of action continuing and subsisting."

15. From a perusal of the averments in the plaint, read meaningfully and in its entirety, it is evident that the Respondent has averred that all properties belonging to his father had been partitioned in the year 2010 during the lifetime of his father and a Will as well as a family settlement deed had been executed. It is further averred that all parties had taken possession of the properties in accordance with the partition/division and were residing therein, without any objection in respect of any property including the suit property. In para 12, it is averred that there was no mention of execution of sale deed dated 09.07.2004 in any of the documents such as registered Will, family settlement or the revenue record and that the premises in question was rented out since September, 2011 initially orally and later by a rent agreement executed on 16.02.2013. The tenant vacated the suit property in April, 2014, whereafter the Respondent started

renovations. It is averred that in 2016, Petitioner started harassing the Respondent to part with the possession of the suit premises. In para 17 of the plaint, it is averred that cause of action for filing the suit arose in February, 2016 when Respondent learnt that Petitioner had executed a false sale deed in her favour with the help of Defendant No. 2 and cause of action again arose on various dates thereafter when Petitioner and Defendant No. 2 threatened and harassed the Respondent to vacate the shop, more particularly, on 25.04.2017, when they threatened the Respondent with dire consequences. Quite clearly from the averments in the plaint, on the face of it, it cannot be said that the suit is barred by limitation.

16. The primordial plea raised by the Petitioner in the application under Order VII Rule 11(d) CPC is that the certified copy of the sale deed reflects that Respondent had applied for the same on 04.01.2011 and the same was made available on 11.01.2011 and therefore, counting the period of limitation from 11.01.2011, the suit is time barred. As rightly stated by the Respondent in the reply to the said application, there is no averment in the plaint which reflects that the certified copy was applied for or was received on the dates mentioned in the application by the Petitioner. Therefore, on a reading of the plaint on a mere demurrer, it cannot be rejected on the ground of limitation. In fact, the stand taken by the Respondent in the plaint, quite to the contrary is that he came to know about the allegedly false sales deed only after receiving summons in the suit filed by the Petitioner being Civil Suit No. 61077/2016. The Trial Court has also rendered a finding that from the perusal of the certified copy, at this stage, it cannot be stated as to who applied for the copy and who received it and in this view, without any further evidence in this

regard, it is not possible for this Court to interfere in the impugned finding. In any case, limitation is a mixed question of law and fact and unless on the face of it, the suit appears to be time barred, which is not the case in the present suit, the plaint cannot be rejected at the threshold. Following the binding dicta of the Supreme Court in the various judgments, as aforementioned, this Court finds no infirmity with the impugned order passed by the Trial Court dismissing the application of the Petitioner and there is no merit in the present petition.

17. At this stage, learned counsel for the Petitioner submits that the parties to the *lis* are real brothers and there are chances of the matter being amicably settled as both parties have approached him for a settlement. Needless to state that if the parties desire to settle their disputes amicably, they can always make an attempt to do so on their own accord or can approach the Trial Court for referring them to the Mediation Centre. Dismissal of this revision petition will not come in the way of the parties negotiating a settlement.

18. Revision petition is hereby dismissed along with the pending application.

JYOTI SINGH, J

DECEMBER 20, 2022/rk/shivam