18.12.2023
Sl. No.9(DL)
srm

C.O. No. 3163 of 2022

Smt. Ipsita Saha Chakraborty

Versus

Bannisikha Batliwala nee Saha & Anr.

Mr. Aniruddha Chatterjee,
Mr. Rahul Karmakar,
Mr. Sounak Mukherjee

…for the Petitioner.

The revisional application has been filed challenging an order dated June 7, 2022 passed by the learned Civil Judge (Junior Division), 1st Court at Serampore, Hooghly, in Title Suit No.116 of 2018.

By the order impugned, the learned court below rejected an application filed by the defendant No.2/petitioner under Order VII Rule 11 of the Code of Civil Procedure, seeking rejection of the plaint. According to the learned court, the question of limitation would be decided on evidence. Paragraph 9 of the plaint clearly disclosed the cause of action which accrued first on September 7, 2007, thereafter on September 17, 2007 and ultimately on January 4, 2018. The plaintiff had categorically stated that she got knowledge of the execution of the instruments, namely a power of attorney and a deed of gift, on January 4, 2018. With regard to the allegation that the suit was not properly valued, the court was of the view that the valuation had been stated in the plaint and there was no omission on the part of the plaintiff to mention the valuation of the suit.

Mr. Chatterjee, learned Advocate appearing on behalf of the defendant No.2 submits that the general power of attorney was executed by the original owner, namely the father of the plaintiff sometime in 2007 in favour of the defendant No.1. The defendant No.1 then executed a deed of gift on the strength of such general power of attorney in favour of the defendant No.2. That the daughter who used to visit the property regularly, as averred in the plaint, was definitely aware of the said transactions from 2007.

It is further urged that the date of registration of a document should be taken as the date of knowledge. In this case, the deeds were registered in 2007. The suit was barred by limitation as it should have been filed within three years from such date of knowledge and not after eleven years from such date. It is also submitted that the plaint has been undervalued and the same is liable to be rejected.

Mr. Chatterjee relies on the following decisions:

(1) Dilboo (Smt) (Dead) by Lrs. & Anr. vs. Dhanraji (Smt) (Dead) & Ors. reported in (2000)7 SCC 702.

(2) Dahiben vs. Arvaindbhai Kalyanji Bhanusali (Gajra) dead through Legal representatives & Ors. reported in (2020) 7 SCC 366.

According to Mr. Chatterjee, the decision of Dilboo (supra) had clinched the question on the point of limitation in case of challenge to an instrument. The date of knowledge would be the date of registration itself. The execution of the deed was brought within the public domain on the date of registration. Mr. Chatterjee, thus, submits that the plaintiff did not show due diligence. She filed a belated suit which should be dismissed as ex-facie barred by the law of limitation.

Mr. Chatterjee further submits that it was incumbent on the court to embark upon an enquiry with regard to the valuation of the property, then arrive at the issue as to whether the suit was undervalued or not and then pass necessary orders, by rejecting the plaint.

This Court finds from paragraphs 5 and 6 of the plaint, that the plaintiff had categorically stated that the father had never informed her about such transfer/alienation of the property, in favour of the defendants. On the other hand, the father had told the plaintiff that after his demise, she would automatically inherit her share in the property. The father, informed her that he would die intestate. After the demise of the father, the plaintiff asked for her share from the defendant No.1 (brother). The defendant No.1 consoled the plaintiff and assured the plaintiff that she would be given her rightful share very soon. As days went by, the plaintiff got suspicious and approached her brother once again. She asked him to take proper steps, so that her share in the scheduled property could be handed over. Lastly, on January 4, 2018, the plaintiff went to her paternal house and demanded her share An altercation took place between the parties and when the plaintiff got aggressive, the defendant No.1 disclosed the general power of attorney allegedly executed by the father in favour of the defendant No.1 and also a deed of gift executed on the basis of the general power of attorney in favour of the defendant No.2, by the defendant No.1. Photocopies of those deeds were shown to the plaintiff. The deed of gift was executed within nine days from the execution of the power of attorney. The plaintiff further contended that during the entire span of his life, even after the execution of the general power of attorney and the deed of gift, the original owner did not act upon the same and the conduct of the original owner affirmed that the general power of attorney had not been executed at all. The owner breathed his last in the property in question. There are also allegations of torture upon the deceased, by the daughter-in-law and the son, in paragraph 6 of the plaint.

Further contention is that the father was not in sound mind and health. The cause of action has been stated in paragraph 9 and the plaintiff has paid the *ad valorem* court fees. The prayers are for declaration that the general power of attorney is null and void and further declaration that the deed of gift is also null and void.

This Court is of the view that the learned court rightly held in the backdrop of this case, that the question of limitation is a mixed question of law and fact. The plaintiff has pleaded that the cause of action lastly arose in January, 2018, when for the first time the plaintiff acquired knowledge of the execution of the instruments.

The decision in Dilboo (supra) shall not be applicable in this case. The Hon'ble Apex Court had held that in the absence of any averment or proof to show that the suit was within time, the plaint would fail. Whenever a document was registered, the date of registration becomes the date of deemed knowledge, unless it can be proved that the plaintiff, in spite of due diligence, could not acquire knowledge of the said transactions.

In my opinion, the plaintiff has categorically stated that the date on which she had acquired knowledge is January 4, 2018 and the suit was filed in 2018 itself. Such contention of the plaintiff will be subject to further prove in the suit. In this case, the limitation is a mixed question of law and fact, which will have to be decided on evidence. The defence case is that the plaintiff ought to have had knowledge of the deeds from 2007 as she often visited the suit property.

The decision of Dahiben (supra), will also not apply as the facts are distinguishable. In Dahiben, the executant of a sale deed prayed for cancellation thereof, after five years from execution. The Hon'ble Apex Court found that not only was the plaintiff an executant, but the plaintiff had received cheques, as consideration for the sale. Thus, the Hon'ble Apex Court held that the executant always had knowledge. She had accepted cheques and the plea that being an illiterate woman, she did not know on what documents she was affixing her LTI, was not accepted.

The issue of due diligence is also a triable issue. The plaintiff will have to prove that in spite of due diligence she was not in a position to know about the execution of the deeds. Next, the issue with regard to the rejection of the plaint under Order VII Rule 11(b) of the Code of Civil Procedure, this Court is of the opinion that as yet, there has not been any enquiry and adjudication as to the valuation of the suit. Only when there is a determination of the valuation and the plaintiff is asked to deposit the same, but the plaintiff does not do so, can the plaint be rejected. There are provisions in the law which the defendants can avail of, asking the court to decide as to whether the suit has been properly valued and whether the court fees paid are adequate or not. At this stage, on this issue, the plaint cannot be rejected. Limitation will be decided as an issue in the main suit.

Under such circumstances, the revisional application is dismissed.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)