

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

F.A. 98 of 2016
With
CAN 15 of 2014
(Old CAN 8490 of 2014)
(Assigned)

Smt. Kabita Chakraborty
VS.

Smt. Nirupam Chakraborty, Sri
Dipak Chakraborty, since deceased, his legal heirs
Smt. Devi Chakraborty @ Chakravorty & Ors.

For the Appellant : Ms. Sohini Chakraborty
Mr. Intikhab Alam
Ms. Prajaaini Das

For the Added respondents : Mr. Haradhan Banerjee
Mr. Balaram Neogi

Heard on : **November 26, 2024**

Judgment on : **November 26, 2024**

DEBANGSU BASAK, J.:-

1. The First Appeal was specially assigned to this Bench. First Appeal is directed against the judgment and decree dated May 7, 2013 passed by the

learned Civil Judge (Senior Division), 7th Court, Alipore in Title Suit No. 3389 of 2008.

2. By the impugned order, learned Judge was pleased to allow an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the ground that the claim of the plaintiff was barred by the laws of limitation.

3. Learned advocate appearing for the appellant submits that the appellant filed a title suit seeking a declaration that the suit property was initially owned by the co-sharers in the shares pleaded in the plaint. She draws the attention of the Court to the averments made in the plaint as also the prayers made in the plaint. She submits that plaint case is that the suit property was purchased by the father-in-law of the plaintiff and was in the name of the mother-in-law for and on behalf of and for the benefit of all sons and daughters of the parents-in-law.

4. Learned advocate appearing for the appellant draws the attention of the Court to the pleadings of the plaint particularly to paragraph 3 where the contention that the suit property was purchased for the benefit, use, enjoyment, future security and protection of all the children of the parents was made. She also draws the attention of the Court to the averments made in the plaint where the plaintiff stated that cloud with regard to the right, title and interest of the plaintiff in respect of the suit property was thrown some

time in January 15, 2008 on the defendants' refusal to amicably partition the suit property.

5. Learned advocate appearing for the appellant submits that the plaint is to be read as a whole and that averments made in the plaint are required to be taken as true and correct for the purpose of consideration of an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. She submits that on such parameters the learned First Court erred in allowing the application under Order VII Rule 11, CPC, 1908 on the ground that the claim of the plaintiff was barred by limitation. She submits that the issue of limitation is mixed question of fact and law. Similarly the issue as to whether or not that the suit property was purchased in the name of the deceased defendant no. 1 for the benefit, use, enjoyment, future security and protection of all the children of the deceased defendant no. 1 could not be decided within the scope and ambit of Order VII Rule 11 of the CPC, 1908.

6. Learned Advocate appearing for the added respondents in the appeal submits that the suit property was purchased in 1951. Therefore, the cause of action accrued to the predecessor-in-interest of the plaintiff in 1951. Thereafter, the father-in-law of the appellant expired. Subsequently, the husband of the appellant expired. On those dates of expiry of such relatives also cause of action of the appellant arose. Such cause of action was beyond the period of three years prescribed under Article 58 and 59 of the Limitation

Act, 1963. In support of such contention, he relies upon **(2007) 5 SCC 614 (Hardesh Ores (P) Ltd. vs. Hede And Company)**, **AIR 2020 SC 3310 (Dahiben vs. Arbindbhai Kalyani Bhanusali (Gajra)(D) The LRs and Ors.)** and **(2020) 17 SCC 260 (Shakti Bhog Food Industries Limited vs. Central Bank of India & Anr.)**.

7. All the authorities, namely, **Hardesh Ores (P) Ltd.**(supra), **Dahiben** (supra) and **Shakti Bhog** (supra) are of the view that the averments made in the plaint are to be taken as true and correct to decide an application under Order VII Rule 11 of the CPC, 1908.

8. In the respective facts and circumstances of each case, Supreme Court in **Hardesh Ores (P) Ltd.** (supra), **Dahiben** (supra) and **Shakti Bhog** (supra) found the claim to be barred by limitation.

9. In **Hardesh Ores (P) Ltd.** (supra), the plaintiff omitted to claim the foundational relief and proceeded to claim of the consequential relief. In such circumstances, Supreme Court held that the claim was barred by law.

10. In **Dahiben** (supra), a suit for cancellation of a sale deed was involved. Suit was filed after the property was further sold by the purchaser. Suit was for non-payment of sale consideration. In such circumstances, Supreme Court held the order allowing the application under Order VII Rule 11 of the CPC, 1908 to be correct.

11. In **Shakti Bhog** (supra), a suit for accounts for transaction up to December 31, 2000 was filed on February 23, 2005. In such circumstances, Supreme Court held that the claim of the plaintiff therein was barred by the laws of limitation.

12. In the facts and circumstances of the present case, the plaintiff case is that the property continued to be held in the name of the deceased defendant no. 1 for the benefit and use of the children of the deceased defendant no. 1. Cloud to the property of the plaintiff emanated on January 15, 2008 when request for amicable partition was not accepted. It is also the case of the appellant that the defendant in the suit attempted to sell the properties concerned for valuable consideration by depriving the plaintiff of her legitimate share.

13. The first prayer in the plaint requires a declaration that the suit property is a joint property. Such relief of declaration or the issue involved therein would necessarily require the parties to be granted an opportunity to lead evidence in respect of their respective stands. It is certainly not an Order VII Rule 11 scenario where on the basis of the statement of the plaintiff, decision can be arrived at that the claim of the plaintiff in the suit is barred by the limitation.

14. In such circumstances, we set aside the impugned judgment and decree dated May 7, 2013 passed in Title Suit No. 3389 of 2008.

15. Since the suit is pending for considerable period of time and it was filed in 2008, we request the learned Judge in the *seision* of the suit to dispose of the suit as expeditiously as possible without affording any unnecessary adjournments to any of the parties.

16. Added parties to the suit may file written statement within seven days from date, peremptorily, if they choose to do so.

17. **F.A. 98 of 2016 is allowed.**

18. In view of the disposal of the appeal, the connected applications are also disposed of.

19. Trial Court records be remitted to the appropriate Court forthwith.

(Debangsu Basak, J.)

20. I agree

(Md. Shabbar Rashidi, J.)

S.D.