

02.01.2024
Sl. No.8(DL)
Srm/CP

C.O. No. 2090 of 2022

Chandrani Manna

Versus

Sri Utpal Ghosh & Anr.

Mr. Sandip Dey,
Mr. Malay Kumar Singh,
Ms. Nabamita Kapat

...for the Petitioner.

Mr. Sayan Sinha,
Mr. Deepak Kumar Basu,
Mr. Tanmoy Kumar Dey,
Mr. Soham Kumar

...for the Opposite Parties.

The revisional application arises out of an order dated May 18, 2022 passed by the learned Judge, 9th Bench, City Civil Court at Calcutta, in Title Suit No.668 of 2019. By the order impugned, the learned Judge rejected an application filed under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure on behalf of the defendant.

The defendant contended that the suit did not disclose any cause of action and the suit was also barred by limitation. The defendant relies on the decision of *Dahiben vs. Arvindbhai Kalyanji Bhanusali through I.R.s*, reported in (2020) 7 SCC 366 and submits that the date of obtaining certified copy of the deed of conveyance dated April 30, 2012

could not constitute the cause of action. It is clear from the pleadings and paragraph 6 of the plaint, that the plaintiffs were aware of the alleged execution of the deed of conveyance through court, in Title Suit No.529 of 2002. The suit ought to have been filed within three years from execution of the deed and such challenge would have to be preceded by a challenge to the decree itself.

Learned Counsel for the plaintiffs submits that the question whether the plaintiffs had knowledge of the alleged conveyance was a matter of trial. It was for the plaintiffs to prove their case and maintainability of the suit. Such issues being mixed question of law and fact, were to be determined by leading evidence. The plaintiffs submit that the revisional application should be dismissed and the parties should be directed to participate in the trial of the suit.

From the order impugned, it appears that the learned court was of the view that the plea of limitation taken by the defendant under Order VII Rule 11 of the Code can be analysed only after full-fledged trial, since the parties must be allowed to admit or deny contents referred in the pleadings. Whether the cause of action pleaded and the date of knowledge as per the paragraph dealing with cause of action were correct or not, would have to be decided at the trial and

the prayer for rejection of the plaint was premature and illegal. It was not competent for the court to go into the correctness or otherwise of the alleged cause of action and the correctness and otherwise of the statements and allegations constituting the cause of action, would be decided in the suit. The issue of limitation would have to be tried along with other issues. By the said order, the learned court allowed the application for amendment of the plaint and the plaintiffs were allowed to incorporate two paragraphs dealing with fraud and misrepresentation.

This Court is not inclined to deal with the order by which the amendment was allowed. The amendments which were allowed do not in any way affect the issues raised by the defendant in the application under Order VII Rule 11(d) of the Code of Civil Procedure.

From the plaint case, it appears that the plaintiffs claim to be the heirs and legal representatives of Madhuri Ghosh, who was the heir and legal representative of Sudhir Chandra Dutta. Undivided one-third portion of one Sushil Chandra Dutta in Premises No.54/B, Surendra Nath Banerjee Road, had been transferred to the predecessor of Madhuri Ghosh sometime in 1962 and there was a rectification sometime in 1972 by a deed of rectification executed between Sushil and

Sudhir. The plaintiffs' mother (Madhuri) was entitled to the entire second floor and one room on the ground floor of the premises. Upon death of Madhuri Ghosh and her husband, the plaintiffs became absolute owners of the property in question. Such pleadings are available from paragraph 1 to 5.

In paragraph 6, the plaintiffs suddenly start assailing a deed dated April 30, 2012 and in the sub-paragraphs thereto, the plaintiffs have alleged how the said deed is bad in law. From a comprehensive reading of the plaint, this Court is unable to decide how the deed dated April 30, 2012 has given rise to a cause of action thereby depriving the plaintiffs of their right, title, interest and ownership in respect of the property of Madhuri Ghosh. The plaintiffs, in great detail, have alleged that the deed of April 30, 2012 suffers from various irregularities and the said deed was executed through court in a suit for specific performance, of which the plaintiffs were totally unaware. Whereas, in paragraph 6(viii), the plaintiffs have categorically stated that:- "Be it noted that the plaintiffs came to know from reliable source that one alleged Title Suit was filed against the plaintiffs by the defendant and the defendant put address of the plaintiffs of the said suit being No.529 of 2002". This paragraph itself indicates that the plaintiffs were aware of the suit from a reliable source, but the

date of such knowledge had been left out. The plaint goes on to explain how the deed was not binding and why the same should be set aside and suddenly in paragraph 11, the plaint mentions that the cause of action arose on April 2, 2019, and April 30, 2019, when the plaintiffs obtained the certified copy. Even in the said paragraph, it has not been specifically averred that the date of knowledge of the allege deed was the date on which the plaintiffs applied for certified copy or a date prior to the date when the plaintiffs applied for certified copy. Unless the plaintiffs had knowledge of the fact that there was a conveyance of like nature, the occasion would not arise for the plaintiffs to apply for the certified copy. Moreover, the decree has not been challenged. The deed was registered on the basis of the said decree.

The learned Advocate for the plaintiffs tried to explain to the Court and co-relate the paragraphs by connecting them in his own way, to make some sense thereof, but this Court is of the view that the plaintiff has tried to create an illusion of a cause of action.

First and foremost, there was an agreement for sale in 2001, the validity of which the plaintiffs deny. Secondly, the plaintiffs deny having knowledge of the suit and the litigation arising out of such agreement and finally the deed of

conveyance, which was executed through court is also disputed. The plaintiffs have now filed the suit, claiming ownership in respect of the property in question, which was conveyed by execution of a deed of sale through court in a suit for specific performance of contract without mentioning either the date on which the cause of action arose, which led the plaintiffs to challenge the deed or without mentioning how the execution of the said deed had deprived the plaintiffs of their right, title and interest. There has been no challenge to the decree for execution of the deed of sale which was passed in the suit.

The suit must be instituted when the right asserted in the suit was infringed, or when there was a clear and unequivocal threat to infringe such right by the defendant against whom the suit was instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint should be rejected.

A clear right to sue has not been made out in the plaint.

Under such circumstances, this Court is of the view that this is a fit case, where a harassive and vexatious suit should be nipped at the bud. Even if the averments of the plaintiffs are taken to be true, the plaint lacks the averment with regard to the sale consideration which was deposited by the defendant

in execution of the deed of conveyance in Title Suit No. 529 of 2002 and the fate of such consideration.

Secondly, it was the cardinal duty of the plaintiffs to specifically mention the date of knowledge of the suit without leaving out such date for anyone's guess. A conscious omission of the said date, in my opinion, was only to bypass the issue of limitation. Had the plaintiffs mentioned the date of knowledge of the deed, it could have become a triable issue. The plaintiffs have conveniently omitted such date. The plaint should be rejected for the reasons stated above.

The relevant paragraphs of ***Dahiben (Supra)*** are quoted below:-

“23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the

respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

.....

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

.....

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”

On April 2, 2019, the plaintiffs obtained the certified copy. That cannot be the date when the cause of action arose. Applying for a certified copy must precede knowledge of such transaction, which the plaintiffs have not mentioned. On April 30, 2019, the plaintiffs lodged a complaint with the police station that would not cure the defect. The suit is time barred. The plaintiffs always had the opportunity to incorporate

specific pleadings by amendment of the plaint, which the plaintiffs chose not to do.

On the other hand, the plaintiffs introduced allegations of fraud and misrepresentation by way of an amendment.

Under such circumstances, the plaint read as a whole, does not give rise to a cause of action for filing the suit against the defendant. The challenge to the deed of conveyance dated April 30, 2012 is time barred. The plaintiffs have failed to explain how a deed of conveyance which should have been challenged within three years from its execution or from the date when the right to sue accrued in respect of such conveyance, could be challenged after almost seven years from execution of such conveyance through court. The suit is barred under Articles 58 and/or 59 of the Limitation Act, 1963. The suit should have been filed either within three years from the date when the right to sue arose or within three years from the date of knowledge of the alleged deed.

Accordingly, the order impugned is set aside. The plaint is rejected.

The revisional application is accordingly disposed of.

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.)