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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 02.04.2025+ **C.R.P. 202/2018, CM APPL. 39340/2018**

MANMOHAN SINGH & ORS

.....Petitioners

Through: Mr. Gaurav Mahajan, Adv.

versus

DEVENDER KAUR & ANR

.....Respondents

Through: Mr. Anil Hooda, Mr. Shafik Ahmed
Advts.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioners under Section 115 of Code of Civil Procedure, 1908 ('CPC') seeking to challenge an order dated 10.07.2018 passed by Ld. ADJ-03, South East, Saket, Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, the Application under Order VII Rule 11(d) of CPC filed by the Petitioners (Defendants before the learned Trial Court) has been dismissed.
2. The record reflects that the matter has been pending for the last seven years and no stay has been granted to the Petitioners by this Court. On an enquiry made by this Court, the parties confirmed that the Suit is yet to be decided by the learned Trial Court, and is being regularly adjourned in view of the pendency of the present Petition.
3. Given the passage of time, the trial should have been over, especially in view of the fact that the Application under Order VII Rule 11 of CPC was dismissed on 10.07.2018 and the matter was listed for framing of issues and admission/denial of documents on 31.10.2018. Learned Counsel for the



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parties however submit that even issues have not been framed in the present case.

4. It is unclear as to why the matter has been pending before the learned Trial Court for the last seven years. Learned Counsel for the parties do not have any response except the fact that there were attempts earlier being made by the parties to settle the matter, which have not fructified into a settlement.

5. In view thereof, the Court has proceeded to hear the matter finally.

6. Learned Counsel for the Petitioner has made two submissions. Learned Counsel submits that a Relinquishment Deed was executed on 03.10.2006 and the present suit was filed in the year 2015. Thus, it is contended that the suit is barred by limitation.

6.1 Learned Counsel further submits that the Relinquishment Deed was signed by the Respondents and also bears the thumb impression of the Respondents on each page. In addition, learned Counsel seeks to rely upon Article 58 to Schedule I of the Limitation Act, 1963 [hereinafter referred to as "Limitation Act"] to submit that in a suit for declaration, the limitation is three years from the date when the right to sue first accrues. Thus, it is contended that the right to sue accrued on the date the Relinquishment Deed was executed and thus barred by limitation.

7. Learned Counsel for the Respondents refutes these contentions. It is submitted that the Petitioner Nos. 1 & 2 are the brothers of the Respondents and that it is the case of the Respondents/Plaintiffs that they were told by their brothers that what they were signing is a Partition Deed for the suit property. It is contended that the Respondents appended their signatures as



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well as thumb impressions on the Relinquishment Deed under a mistaken belief and understanding of its being a Partition Deed for a share in the property. It is further contended that this fact came to the knowledge of the Respondents in the month of July/August 2014 when the Respondents visited the Petitioner at the suit property. Learned Counsel seeks to rely upon the detailed submissions raised in the plaint in this behalf.

8. A perusal of the Application filed by the Petitioners under Order VII Rule 11 (d) read with section 151 CPC shows that it is the contention of the Petitioners that the cause of action for filling the Suit accrued on 03.10.2006, when the Relinquishment Deed was executed, and the Suit has been filed after a period of 9 years, which, it is submitted is on the face of it barred by time.

8.1. It is further contended therein that there does not exist any cause of action, and allegation of fraud has not been specifically pleaded in the plaint.

9. In order to adjudicate an Application under Order VII Rule 11 of CPC for rejection of a plaint, the Court has to examine the plaint and the documents filed along with the plaint. The Plaint as filed by the Respondents/Plaintiffs sets out that the Respondents/Plaintiffs and Petitioner Nos. 1 & 2/Defendant Nos.1 and 2 are siblings. The Respondents are the real sisters of the Petitioner Nos. 1 & 2. That one of the brothers of the Respondents expired on 29.07.2015 and the widow and the sons of the deceased brother are Defendants Nos. 3 to 5 in the Plaint.

10. It is the case of the Respondents/Plaintiffs that the Respondents and the Petitioners owned an ancestral property at 41/2, Church Road, Bhogal, New Delhi-14 admeasuring 150 sq. yards [hereinafter referred to as the “suit



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property”] and that after the death of their father in 2004, some time in the year 2006, the Petitioners got the signatures of the Respondents on the pretext of preparing a Partition Deed on certain documents. However, the Relinquishment Deeds were not acted upon, until July, 2014 when the Respondents visited their brothers at the suit property and were asked to handover their shares since they had relinquished their shares in the suit property in the year 2006.

10.1 It is contended that the signatures of the Respondents were taken fraudulently and by misrepresentation, and thus, the Relinquishment Deed is null and void and has no sanctity in the eyes of law. It is further stated in the Plaint that the Respondents/Plaintiffs applied for certified copies of the Relinquishment Deeds on 08.08.2014 and it is only on 11.08.2014 when they got those copies that they were became aware of the fraud played on them by the Petitioners. Certain various other averments have also been made in the Plaint. It is apposite to extract paragraphs 4, 7, 8 and 11 of the Plaint in this behalf, as follows:

“4. That the defendants got the signatures of the plaintiffs on the pretext of preparing partition deed which were in fact relinquishment deed, which fact came to the knowledge of the plaintiffs in the month of July 2014 when the plaintiffs visited their brothers at the suit property. When the plaintiffs asked the defendants to handover their shares in the suit property, it was told by the defendants that the plaintiffs had already relinquishment their shares in the suit property vide relinquishment deed dated 03.10.2006.

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7. That the signatures of the plaintiffs have been take by the defendants fraudulently and by misrepresenting that the signatures are for preparation of documents for partition of suit property. So the relinquishment deed dated 03.10.2006 is null & void and have no sanctity in the eyes of law.

8. That the plaintiffs applied for certified copy of the alleged relinquishment deed dated 03.10.2006 on 08.08.2014 and the same was prepared on



11.08.2014 and the plaintiffs came to know about the fraud played by the defendants upon the plaintiffs.

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11. That the cause of action arose in favour of plaintiffs and against the defendants on 03.10.2006 when defendants fraudulently got the signatures of the plaintiffs on the alleged relinquishment deed by misrepresenting the same as documents for partition for property. The cause of action further arose on July 2014 when the plaintiffs went to the house of the defendants and asked for their 1/5th share each from the suit property. Cause of action further arose on 04.07.2014, when plaintiff No.1 issued legal notice to the defendants. It further arose on 11.07.2014, when the defendants sent replied to the legal notice. Cause of action is still continuing in favour of plaintiffs and against the defendants as the share of the plaintiffs in the suit property has not been delivered to the plaintiffs till date.

[Emphasis Supplied]

11. By way of the Impugned Order learned Trial Court has dismissed the application filed by the Petitioner under Order VII Rule 11 of CPC on the grounds that the Court while dealing with an application under Order VII Rule 11 of CPC has to assume that the facts averred in the plaint are correct particularly when such averments are supported by the documents in the case. The learned Trial Court, while relying on paragraph 11 of the plaint, has held that the contention of the Respondents with regard to the acquisition of knowledge about the execution of the relinquishment deed is a question of fact which would require evidence and trial. The relevant extract of the Impugned Order is reproduced below:

“4. An objection is also raised on the point of limitation that the relinquishment deed was executed in 2005 whereas the present suit was filed in 2015. However, on the other hand it is claimed in para 11 of the plaint that the plaintiffs came to know about the execution of the relinquishment deed in July, 2014 only. It is also a question of fact which requires evidence and trial with regard to acquisition of knowledge about the execution of the relinquishment deed. It is also a settled preposition of law that while deciding the application 7 Rule 11 CPC, only the contents of the plaint are required to be seen and not the WS/defence.



5. It is further a settled canon of civil jurisprudence that the court while considering an application under Order 7 Rule 11 of the CPC has to assume ~~at~~ the facts averred in the plaint are primarily correct particularly when such averments are supported by the documents in the case....

[Emphasis Supplied]

12. This Court has examined the Impugned Order. It is the case of the Respondents that the Petitioners got the signatures of the Respondents on the pretext that they are signing a Partition Deed. It is further stated therein that the signatures were taken fraudulently and by misrepresentation, thus, making the Relinquishment Deed void. The plaint further states that after the Respondents visited the suit property and were asked for their share in July, 2014, by their brother/family of their deceased brother. Thereafter, they applied for certified copies of the documents, and it is only on 11.08.2014 after they received the certified copies, that they came to know about the fraud played by their family members on them. It is thus the case of the Respondents that the cause of action although arose in the year 2006 in view of the fraud played, when the cause of action arose only in July/August, 2014, when the fraud came to light.

12.1 Given the averments in the Plaint that the right to sue accrued when the fraud and misrepresentation came to the knowledge of the Respondents/Plaintiffs, the Respondents filed a suit on 05.08.2015. It is thus stated that the suit filed on 05.08.2015 is within three years of the July/August, 2014 and thus within limitation.

13. Section 17 of the Limitation Act provides that in a suit which is based upon the fraud of the defendant or his agent the period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake or could,



with reasonable diligence have discovered it. The relevant extract of Section 17 of Limitation Act is reproduced below:

“17. Effect of fraud or mistake.—(1) **Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—**

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or (d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production: ...”

14. The Supreme Court in the case of ***Shakti Bhog Food Industries Ltd. v. Central Bank of India***¹, has held that the cause of action for filing a suit would consist of a bundle of facts and the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law for which invoking the provisions of Order 7 Rule 11 CPC is ruled out. It has further been held that whether the plea taken by the plaintiff is genuine or legitimate would be a mixed question of fact and law and which would require a response of the defendant. It is further held that the averments of the written statement in that behalf in an application under Order VII Rule 11 of CPC are wholly irrelevant for the prayers of rejection of the plaint. The relevant extract of the ***Shakti Bhog Food Industries*** case is reproduced below:

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11. This position was explained by this Court in Saleem Bhai v. State of

¹ (2020) 17 SCC 260



Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557], in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

*'9. A perusal of Order 7 Rule 11 CPC makes **it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint.** The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.'*

***It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial** and it is the duty of the court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100]...*

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*22. **It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out.** In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the*



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*appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. **Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.***

[Emphasis Supplied]

15. In view of the foregoing discussion, whether or not the plea of the averments in the Plaint made by the Respondents/Plaintiffs are genuine would be a question to be decided after examining the defenses as raised by the Petitioners/Defendants, and thus, is not amenable to dismissal under Order VII Rule 11 of CPC.

16. The learned Trial Court has after examining the averments held that as per the Plaint, the Respondents/Plaintiffs gained knowledge in 2014, thus the Petition filed in the year 2015 is not barred by limitation. This Court finds no infirmity with this finding.

17. The present Petition is accordingly dismissed. All pending Applications stand closed.

18. It is however clarified that the Court has not expressed any opinion on the merits of the controversy. The rights and contentions of all parties are left open.

19. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 2, 2025/jn/r

Click here to check corrigendum, if any