

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

RESERVED ON : 15th DECEMBER, 2017
DECIDED ON : 13th APRIL, 2018

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RSA 336/2016

ANIL ANEJA Appellant
Through : Mr.Madan Lal Sharma, Advocate with
Mr.Varun Nischal, Advocate.

versus

RAJIV KUMAR & ORS Respondents
Through : Mr.Ajay K.Gupta, Advocate for R2.
Mr.Kush Sharma, Advocate for R3/DDA.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present Regular Second Appeal has been preferred by the appellant Anil Aneja to challenge the legality and correctness of a judgment dated 04.07.2016 of learned Addl. District Judge in RCA No.10/2015 whereby findings of the learned Trial Court vide judgment dated 21.01.2015 in Suit No.87/2014 dismissing it under Order 7 Rule 11 CPC were endorsed. The appeal is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. The appellant had filed a suit for declaration, permanent, mandatory injunction as well as for specific performance.

3. Briefly stated, the case of the appellant in the plaint was that his father Bal Kishan Dass had started a business of wholesale and trading of textile in the cloth market at Fateh Puri as HUF business in which the appellant and respondents No.1 & 2 were coparceners. The said HUF owned two immovable properties in plot No.1351 and 1355 in East Rohtas Nagar, Shahdara, Delhi and another plot measuring 200 sq.yd. located in Khasra No.370 of Mauza Siqdarpur Delhi (presently East Rohtas Nagar). It is stated that various properties detailed in the plaint were acquired from the funds and the income of the joint family business being carried out in the name and style of “M/s.Bal Kishan Sohan Lal”. Two other joint family business by the name and style of “M/s.Aneja Sarees” and “M/s.Rangoli Creations” were also started in 1993 and 2002 respectively. It is stated that on the mutually understanding and assurance given by respondents No.1 and 2 to render complete accounts of the firm, the businesses of the firm “M/s. Aneja Sarees” and “M/s.Rangoli Creation” were agreed to be managed by respondents No.1 and 2 respectively. It is further stated in the plaint that due to restrictions contained in the terms of DDA, properties as mentioned in the plaint were purchased in the name of different family members.

4. Appellant’s case in the plaint is that during the life time of his mother Asha Rani Aneja, with the consent of all family members, in order to avoid any dispute, an oral family settlement was arrived at and it was agreed to allocate the Flat No.119A, Block-C, Pocket-C, Shalimar Bagh, Delhi (hereinafter ‘the suit property’) to the appellant absolutely and forever. In compliance of the said oral family

settlement, possession of the suit property was given to the appellant in May, 1990. Since then, he is in exclusive and continuous possession of the suit property.

5. It is further averred that originally the suit property was allotted to one Santosh Devi by DDA. Santosh Devi sold the suit property to Arun Kumar Sanan on payment of ₹49,000/-; she executed various documents in favour of Arun Kumar Sanan's wife Pooja Sanan. The documents i.e. agreement to sell, Will and registered receipt all dated 19.01.1988 were executed and notarized. Santosh Devi also executed GPA dated 19.01.1988 in favour of Arun Kumar Sanan. On the strength of those documents, Pooja Sanan became the owner of the suit property and with the consent and authority of his wife Pooja Sanan, Arun Kumar Sanan further sold and handed over the suit property to respondent No.1 Rajiv Kumar for a consideration of ₹49,500/-. Various documents were executed in similar manner on 09.02.1989 in favour of the respondent No.1. Original documents issued by DDA like allotment letter, demand letter, possession letter etc. in favour of Santosh Devi and documents executed by Arun Kumar Sanan in favour of respondent No.1 were kept in the custody of their grandmother Vidyawanti Aneja. Allegations of the appellant are that the respondent No.2 managed to remove those documents and started misrepresenting that the suit property was acquired in the joint names of respondents No.1 and 2. Due to the said misrepresentation, a legal notice dated 18.09.2013 was served upon the respondent No.2.

6. Further averments in the plaint are that when respondent No.1 was requested to execute the necessary documents for transfer of

ownership in the suit property in favour of the appellant, he demanded ₹2 lacs as consideration; it was paid by the appellant by way of cheque bearing No.860685 drawn on Union Bank of India. On receipt of ₹2 lacs with the knowledge and consent of respondents No.2 and 3 and other family members, respondent No.1 executed and transferred sale documents i.e. registered agreement to sell, registered GPA, notarized receipts all dated 20.07.2002 in favour of the appellant.

7. Case of the plaintiff / appellant is that subsequently he came to know that the respondent No.2 had manipulated fake and bogus documents all dated 09.02.1989 purported to have been executed by Smt.Pooja Sanan. Those documents were got executed admitted from some imposter being respondent No.2's associate. On the basis of those documents, the respondent No.2 filed an application before DDA for conversion of the suit property from lease-hold to free hold. When the appellant came to know about it, he filed objections before DDA vide letter dated 31.05.2007.

8. The suit filed by the appellant was contested by the respondents. Respondent No.2 filed an application under Order 7 Rule 11 CPC for rejection of the plaint as the suit was barred by limitation. The Trial Court by a detailed judgment dated 21.01.2015 allowed the application and rejected the plaint in view of Order 7 Rule 7(d) CPC. Being aggrieved by the said orders, the appellant filed RCA No.10/2015, which came to be dismissed again by a detailed order dated 04.07.2016. Being dissatisfied, the present appeal has been preferred.

9. Learned counsel for the appellant urged that the findings of the Courts below cannot be sustained as it was specifically pleaded that the respondent No.2 had got executed various forged and fabricated documents by fraud and these facts came to the plaintiff's knowledge for the first time on 20.01.2014 when Pooja Sanan executed a registered deed of ratification informing that all these documents dated 09.02.1989 were never executed by her in favour of respondents and that the property in question was sold by her only to respondent No.1 and its possession was handed over to him. Counsel urged that provisions of Section 17 of the Limitation Act are applicable to the facts and circumstances of the case. It was further urged that the limitation being a mixed question of law and fact cannot be decided without getting the evidence of the parties during trial. The Courts below fell into grave error by applying Article 58 of the Limitation Act, 1963 instead of Section 17. Interpretation and application of Article 54 of the Limitation Act with regard to the relief of specific performance is also erroneous and contrary to the law. Reliance was placed upon the authorities '*Prem Singh & Ors. vs. Birbal & Ors.*', AIR 2006 SC 3608; '*Kishore Chandra Samal vs. Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal*', AIR 2006 SC 3613; '*Khaja Quthubullah vs. Government of Andhra Pradesh & Ors.*', AIR 1995 Andhra Pradesh 43; '*Ramesh B.Desai & Ors. vs. Bipin Vadilal Mehta & Ors.*', 2006 (5) SCC 638; '*Balasaria Construction (P) Ltd. vs. Hanuman Seva Trust & Ors.*', 2006 (5) SCC 658; '*Satyendra Dwivedi vs. Smt.*

Hemlata Dwivedi & Ors., AIR 2009 Chhattisgarh 3 and '*Rathnavathi & Anr. Vs. Kavita Ganashamdas*', 2015 (5) SCC 223.

10. It is not in dispute that it is a family dispute among brothers. The appellant had initially filed a suit for declaration, permanent, mandatory injunction and specific performance. Subsequently, additional prayer seeking declaration that the documents i.e. agreement to sell, registered receipt, registered Will and affidavit all dated 09.02.1989 be declared as null and void was also sought and allowed.

11. It is also not at issue that the suit property was initially allotted by DDA to Santosh Devi. It is also not in dispute that Santosh Devi executed various documents in favour of Arun Kumar Sanan to sell the said suit property on receipt of ₹49,000/-. At the instance of Arun Kumar Sanan, the documents were executed by Santosh Devi in favour of his wife Pooja Sanan. On the strength of GPA dated 19.01.1988 in his favour, Arun Kumar Sanan further sold the suit property to Rajiv Kumar – respondent No.1 for sale consideration of ₹49,500/- again by executing various documents dated 09.02.1989.

12. It is also not at controversy that respondent No.2 moved DDA on the basis of the said documents for execution of conveyance deed in his favour. The appellant after coming to know about it in 2007 filed objections before DDA against conversion in favour of the respondent No.2 from lease hold to free hold. It is also not denied that the DDA issued letter dated 17.05.2007 to the appellant and respondents No.1 and 2 calling upon them to attend the office. The appellant duly replied the said letter on 31.05.2007 intimating that he

alone was in possession of the suit property. The appellant also personally visited DDA office on various dates and filed letters dated 07.03.2007, 22.03.2007 and 21.05.2007 along with various documents in support of the ownership and possession and these were received at the office of DDA.

13. It is also a matter of record that the family disputes between the parties were referred to Mediation and despite various attempts made by the mediator the dispute could not be resolved. The present suit was filed by the appellant seeking various reliefs in 2014 without waiting for the outcome of the objections filed by the appellant before DDA regarding conversion sought by respondent No.2 on the strength of the documents executed by Pooja Sanan all dated 09.02.1989. Nothing is on record to infer if Pooja Sanan ever informed DDA as to the individual to whom the suit property was sold by her.

14. The appellant's stand regarding ownership and possession of the suit property is unclear. It was claimed by the appellant that the suit property was a joint family property and was purchased out of joint funds in the name of certain individuals / family members to avoid certain objections. Appellant's further case is that pursuant to oral family settlement, the suit property came to his share; he continues to be in possession of the suit property since 1990 and all the payments qua the suit property have been paid by him to DDA. On the other hand, the appellant claims that the suit property was purchased in the name of respondent No.1 and when on the strength of the family settlement, he asked the respondent No.1 to execute various

documents of ownership in his name, he declined to do so and finally demanded ₹2 lacs to convey the title to him. He was made to pay ₹2 lacs to the respondent No.1 and on that payment necessary documents were executed on 20.07.2002 in his favour by the respondent No.1. It is unclear as to why ₹2 lacs were paid by the appellant to respondent No.1 when the property in question had fallen in his share by virtue of alleged oral family settlement. It has not been reasoned as to why the appellant did not initiate any proceedings to enforce the alleged 'family settlement'.

15. It was only the respondent No.2 who in 2006 approached DDA for conversion of the suit property from lease-hold to free-hold. No plausible explanation has been offered by the appellant as to why he did not make any attempt to get the suit property mutated in his name or to move the DDA for conversion to free hold. Despite his claim that the suit property was in his possession since 1990, the electricity and water connections stand in the name of original allottee Santosh Devi in the DDA record. Nothing is on record to show if any intimation regarding the acquisition of the ownership of the suit property in his favour was ever conveyed by the appellant to DDA.

16. Admittedly, the original documents regarding the suit property are in possession of respondent No.2. Appellant's allegations are that these documents were earlier in the custody of their grandmother Vidyawanti, however, the respondent No.2 clandestinely removed those documents. This plea is devoid of merits as at no stage either Vidyawanti or the appellant lodged any complaint before any authority for the alleged removal of original documents by respondent

No.2. The appellant alleged that the documents all dated 09.02.1989 were got executed by respondent No.2 by 'fraud'. The plaint does not contain full and detailed particulars of the alleged fraud as required in view of Order 6 Rule 4 CPC. No FIR whatever was lodged any time by the victim. The appellant did not initiate any proceedings; civil or criminal; against the respondent No.2 for committing the alleged fraud. There is no denial that these documents under challenge did not bear the signatures of the previous owner. Only on the basis of the ratification deed dated 20.01.2014 which came into existence after a long gap of 25 years allegedly executed by Pooja Sanan, allegations of 'fraud' have been levelled against the respondent No.2. Pooja Sanan never filed any FIR or complaint against the respondent No.2 for the alleged fraud.

17. This Court is primarily concerned with the rejection of the plaint under Order 7 Rule 11 CPC. The Trial Court in the impugned order dated 21.01.2015 gave detailed reasons for rejection of the plaint as the cause of action had accrued to the appellant for the first time in 2007, more specifically on 31.05.2007 as averred in the plaint. The appellant did not file any proceedings for long and only in 2014 the instant suit was filed. In para 11 of the plaint, it was specifically claimed that in 2006 the appellant had come to know that the documents dated 09.02.1989 were forged and fabricated and on the basis of those documents the respondent No.2 attempted to get the suit property converted into free-hold in his name from DDA. Despite coming to know about the alleged forged and fabricated documents in 2006 and the fact that the proceedings before DDA were contested by

the appellant claiming himself to be owner in possession of the suit property, he did not bother to initiate any civil or criminal proceedings before 2014. The Trial Court has rightly noted that appellant's title on the basis of the documents executed in his favour by respondent No.1 on 20.07.2002 and by virtue of the alleged family settlement was under cloud in 2006 – 2007; the appellant did not file the suit for declaration of ownership within the period of limitation i.e. three years from the date when the cause of action arose for the first time. In para 27 of the plaint it was admitted by the appellant that firstly cause of action arose in May, 1990 when under the oral family settlement, the suit property was allocated to him and also in the year 2006 when the respondent No.2 on the basis of forged documents applied for conversion of the suit property and he (the plaintiff) came to know about it in March, 2007. The Trial Court further noted that for the relief for specific performance, in alternative, again the suit filed was not within three years as prescribed under Article 54 of the Limitation Act. The appellant allegedly got possession of the suit property under oral family settlement in May, 1990 and subsequently, he paid ₹2 lacs to respondent No.1 to get the documents i.e. agreement to sell etc. registered in his favour on 20.07.2002. Again, the cause of action arose to the plaintiff to file suit for specific performance when his claim of being owner on the basis of the said documents was challenged / disputed in 2006. The filing of the present suit seeking various reliefs in 2014 is apparently beyond the period of limitation. The Appellate Court has also given valid reasons to decline to accept the appellant's contention. It rather went ahead to conclude that the

appellant had no cause of action to institute a suit for seeking specific performance when, in the plaint, it was specifically claimed by him that he had become absolute owner of the suit property on execution of documents and payment of ₹2 lacs regarding sale of the property by respondent No.1 in his favour on 20.07.2002. It further noted that since the appellant had claimed ownership and possession on the basis of the said documents and nothing more was to be done subsequent to the execution of these documents, there was no reason to file suit for specific performance.

18. The concurrent findings of the Courts below are based upon fair appreciation of the facts and law. While considering the application under Order 7 Rule 11 CPC, the Courts below relied upon the averments in the plaint alone to conclude that the suit filed by the appellant was not within limitation. Pleas raised in the written statement were not looked into. Settled position is that assertions in a plaint must be assumed to be true for the purpose of determining whether the suit filed by the plaintiff was within limitation. Clause (d) of Rule 11 Order 7 applies in those cases only where the statement made by the plaintiff in the plaint without any doubt or dispute shows that the suit is barred by any law in force.

19. The appellant cannot be permitted to extend or enlarge the period of limitation by alleging 'fraud' only on the basis of alleged ratification deed executed by the previous owner Pooja Sanan on 20.01.2014. When the 'fraud' first came to appellant's knowledge in 2006 / 2007, remedy before him was to initiate proceedings that time. Rules of limitation are meant to see that parties do not resort to

dilatory tactics but seek their remedy promptly and those who sleep upon their claims should not be assisted by the Courts. There was no occasion for the appellant to search the previous owner to get ratification deed in 2014. If this approach is accepted, it would be an unending affair and it would be within the reach of the concerned individual to get the limitation extended to an indefinite period. Filing of the suit by the plaintiff alleging 'fraud' was not dependent upon the ratification deed executed by the Pooja Sanan on 20.01.2014.

20. Since all the facts pleaded in the plaint were in the appellant's knowledge in 2006 / 2007, the present suit seeking various reliefs filed in 2014, needless to say, is barred by limitation.

21. The Regular Second Appeal is unmerited and is dismissed.

22. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

APRIL 13, 2018 / tr