
(2018) 06 CAL CK 0165
In the Calcutta High Court
Case No : C.O. No. 622 of 2018

Gpt Healthcare Pvt. Ltd.

APPELLANT

Vs

Soorajmull Nagarmull & Others.

RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

Specific Relief Act, 1963 — Section 34, 42
Transfer of Property Act, 1882 — Section 3
Code of Civil Procedure, 1908 — Order 7 Rule 11
Limitation Act, 1963 — Article 58, 59

Citation : (2018) 06 CAL CK 0165

Hon'ble Judges : SABYASACHI BHATTACHARYYA, J

Bench : Single Bench

Advocate : S.P. Roy Chowdhury, Aniruddha Chatterjee, Srijib Chakraborty,
Urmila Chakraborty, Souvik Das

Final Decision : Allowed

Judgement

“

Sabyasachi Bhattacharyya, J.",,

The petitioner and opposite party No. 1 are represented by respective learned counsel. In view of the proforma opposite party Nos. 2 to 5 not being,,

affected by the decision of this revisional application, service on the said proforma opposite parties was deemed redundant.",,

The first defendant in a suit for declaration and consequential relief in respect of an immovable property has filed the present revisional application. By,,

virtue of the impugned order, the petitioner's application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure was",,

rejected on contest. Although various grounds for rejection of plaint were taken by the petitioner in the court below, learned Senior Advocate",,

appearing for the petitioner primarily restricts his submissions to two grounds:,,

i) The suit was time barred,",,

ii) The suit was barred under the proviso to Section 34 of the Specific Relief Act, 1963, both on the face of the plaint. The suit in question was filed for",,,

the following reliefs:,,

A. A decree for declaration that the plaintiff has got right, title and interest and ownership in respect of the property described in Schedule A",,,

hereunder with a declaration that the defendant no. 1 has got no right, title and interest in respect of the property described in Schedule A &"",,,

B hereunder on the footing of a registered deed of transfer dated 30.1.2016 and its mother deeds;,,

B. A decree for declaration that the mother deeds of the defendant no. 1 is not binding upon the plaintiff with further declaration that the defendant no.,,,

1 has got no right, title and interest in the property and has got no right to make any construction on the B Schedule property belonged to the",,,

plaintiff on the strength of any plan, if any, sanctioned in favour of the defendant no. 1 with declaration that plaintiff's title to the A &"",,,

B Schedule property has not been affected by the purchase deed dated 20.01.2016 of defendant No. 1 and mother deeds;,,

C. A decree for a declaration that the defendant no. 1 has no right to demolish the existing building and structure raised on the property and no right to,,

make any multistoried building on the said property described in Schedule A B below;,,

D. Recovery of damages of Rs.1,51,000/- be passed against the defendant no. 1;"",,,

E. A decree be passed declaring that the decree passed in TS no. 20 of 1998 by the court of Civil Judge, Junior Division, Howrah which was",,,

registered in the registration office in between the parties thereto are not binding upon the plaintiff with declaration that the title of the plaintiff to the,,

property described in Schedule A and B has not been affected in any way by the series of transfer by deeds as referred to above,,

including the aforesaid decree thereof and plaintiff's title to the property described in Schedule A B thereof still remains valid with,,

declaration that the plaintiff is entitled to take steps for eviction against the tenant separately in accordance with law;,,

F. A decree of permanent injunction be passed restraining the defendant no. 1 including its agents and employees from making any construction and/or,,

from changing the nature and character of the property described in Schedule A & B hereunder and not to transfer, encumber, and/or alienate the",,,

property to any third party;,,

G. A decree for a permanent injunction be passed against the defendant nos. 2 and 3 from mutating the name of the defendant no. 1 in the municipal,,

record and/or not to give any effect and/or further effect to the mutation, if any, made and not to sanction any plan for raising multistoried building on",,,

the property described in Schedule A & B hereunder and/or not to give any effect and/or further effect to the plan, if any, sanctioned by the Municipal",,,

Authority in respect of B Schedule property also on the footing of the purported transferred deeds of the defendant No. 1 and its mother deeds as,,

referred to the pleading;,,

H. Costs of the suit;,,

I. Any other relief or reliefs the plaintiff is entitled to in law and equity.,,

Learned Senior Advocate appearing for the petitioner submits that, since the primary relief sought by the plaintiff/opposite party No. 1 was a",,,

declaration that a registered deed of transfer dated January 30, 2016 and its mother deeds, ranging back at least to September 10, 1986, were",,,

not binding on the plaintiff/opposite party No. 1, the suit is governed by Article 58 of the Limitation Act. The said Article fixes the starting point of",,,

limitation to the date when right to sue first accrued. In view of Section 3 of the Transfer of Property Act, registration of a deed is sufficient notice of",,,

a transaction effected by the deed. As such, for the purpose of seeking declaration that a particular deed is not binding on a person, it is the date of",,,

registration of the deed when the right to sue first accrued, in view of all persons being deemed to have notice of the transaction by virtue of such",,,

registration.,,

It is also submitted that the plaintiff/opposite party No. 1, by filing the suit, sought to upset several registered transfer deeds, executed over decades, in",,,

the garb of challenging a recent deed of January 30, 2016. Hence, the plaint is a product of clever drafting and ought to be nipped in the bud. It is also",,,

submitted that Article 59 of the Limitation Act does not apply to the present case since the suit was not for cancellation of or setting aside an,,

instrument, but for a declaration that the deeds in question are not binding.",,,

Learned Senior Advocate for the petitioner next argues that the proviso to Section 34 of the Specific Relief Act, 1963 bars a declaratory suit where",,,

the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. In the present case, it is argued, it is evident from several",,,

portions of the plaint pleadings, that the defendant No. 1/petitioner, and not the plaintiff/opposite party No.1, is in possession of the suit property.",,,

Despite such admission, the plaintiff/opposite party No. 1 omitted to seek the relief of recovery of possession within the four corners of the plaint. In",,,

fact, learned Advocate for the plaintiff in the court below boldly submitted that the plaintiff need not pray for further relief of recovery of possession",,,

as recorded in the impugned order itself. Accordingly, the suit is barred by the proviso to Section 34 of the Specific Relief Act and the connected",,,

plaint ought to be rejected, according to the petitioner.",,,

The following paragraphs of the plaint are placed on behalf of the petitioner to bolster the submission that the plaintiff/opposite party No. 1 admitted,,

the possession of the petitioner in respect of the suit property: Paragraph No. 14 of the plaint â?" Defendant No. 1/petitioner allegedly making,,

preparation for constructing multistoried building. Paragraph No. 19 of the plaint â?" M/s Bikhani Construction Pvt. Ltd. (vendor of,,

defendantâ?â?â?â? No. 1) got a decree for recovery of possession against one Ratnakar Pandey and others. Paragraph No. 21 of the plaint â?" That,,

the defendant No. 1 was an unlawful occupier in respect of the suit property. It is submitted on behalf of the petitioner, on the basis of the aforesaid",,,

pleadings, that the possession of the petitioner in respect of the suit property was squarely admitted by the opposite party No. 1 and as such the suit is",,,

Sl No.,Reference,Proposition

1.,"(1973) 2 Supreme Court Cases 60

Ram Saran and Another

Versus

Smt. Ganga Devi", "Section â?" 34 of the

Specific Relief Act

2., "1993 Supp (3) Supreme Court Cases

129

Vinay Krishna

Versus

Keshav Chandra And Another", "Section 34 of the Specific Relief Act

3., "AIR 1942 Cal 245

Anilabala Debi

Versus

Madhabendu Narain Roy", "Section 34 of the Specific Relief Act

4., "(2008) 3 CHN 639

Hamida Begum alias Alo Bibi

Versus

Umran Bibi and Others", "Deed challenged as void
still to be challenged within
the period of limitation

5., "AIR 77 Cal 189

Kanailal Das And Another

Versus

Jiban Kanai Das And Another", Limitation

6., "(2000) 7 SCC 702

Dilboo (Smt.) (Dead) And Others

Versus

Dhanraji (Smt.) (Dead) And Others", "Registered Deeds are public
document hence
date of registration is the date of
deemed knowledge

7., "(1977) 4 SCC 467

T. Arivandandam

Versus

T.V. Satyapal And Another", "Clever

Drafting/Camouflage Drafting

8.,"(2005) 5 Supreme Court Cases 548

N.V. Srinivasa Murthy And Others

Versus

Mariyamma (Dead) by Proposed LRS And

Others", "Clever

Drafting/Camouflage Drafting

3.,2006 (5) SCC 658,"Question of limitation is a mixed question of law

and fact and to be decided on contest in suit â?

on ex facie reading of plaint suit cannot be held to

4., "2010(2) CHN (SC) 156

Suhrid Singh @ Sardool Singh

vs.

Randhir Singh &Ors.", "Stranger to deed can file suit for declaration that

deed is not binding.

5., "FA 274 of 2014

[Banamali Das (since

deceased) vs. Salma Khatun

and others]

(unreported)", "Article 58, Limitation Act applicable when deed

sought to be declared voidable.

The starting point of limitation begins to run in case of Article 59 from the date of knowledge. On the contrary, in case of Article 58, starting point of",,,

limitation is when the right to sue first accrues. It is noteworthy that in case of Article 58, knowledge has not been made a yardstick. It can reasonably",,,

be deduced that when a person challenges the binding effect of a deed, the date of registration (when the deed legally comes into force) has to be the",,,

date when the right to sue first accrues.Â In the event the primary declaration sought was that of title, without reference to any deed, the date when",,,

such title was challenged openly within the knowledge of the plaintiff, could have been a relevant factor. However, when a deed is executed by an",,,

alleged stranger to the property affecting the title of the actual owner, the right to sue of the real owner accrues immediately. As such, in cases where",,

the execution of the deeds itself is under challenge the starting point of limitation has to be fixed on the date of registration of the transfer deed.,,

In the present case, declaration of title was only consequential upon the declaration as to the deeds being not binding. Hence, the date of registration",,

of the previous transfer deeds, all of which have been challenged, had to be taken as the starting point of limitation. Since the challenge of the plaintiff",,

would fail in the event even one of the transfer deeds, starting from September 10, 1986,withstood scrutiny by the Court, the suit has to be held time",,

barred on the face of the plaint. Unless the first deed dated September 10, 1986 could be set aside on a prayer of the plaintiff, the following deeds",,

would remain unscathed, rendering the entire suit infructuous.",,

Even if knowledge was the starting point of limitation, Section 3 of the Transfer of Property Act would fix notice of the transactions in question on the",,

plaintiff since the date of registration of the said deeds. As possession in favour of defendant No 1 and its predecessors pursuant to such deeds has,,

also been virtually admitted by the plaintiff, the second component of notice under Section 3 of the Transfer of Property Act, that is possession, is also",,

specified. Hence, the suit has to be held as time barred both from the point of view of knowledge as well as first accrual of the right to sue. The",,

judgment cited on the point of limitation on behalf of the petitioner also supports the aforestated proposition.,,

Clever drafting, in the present case, is evident from the way the plaintiff sought to couch the prayer for cancellation of the earlier deeds. An effort",,

was made carefully in the plaint to hit the â??mother deedsâ?, that is, the previous title deeds, by throwing a challenge to the latest of the deeds, dated",,

January 30, 2016, since such latest deed fell within the limitation period for challenge.",,

Even as regards recovery of possession, the plaintiff has made a blatant effort to obviate the trouble of seeking recovery of possession after so many",,

years by describing the possession of defendant No. 1 as â??constructive possessionâ? of the plaintiff / opposite party No. 1. Merely by such clever,,

drafting opposite party No. 1 sought to bypass the rigour of law. Such an attempt ought to be nipped in the bud, as rightly pointed out by the petitioner",,

and supported by the judgments cited on behalf of the petitioner in that regard, as indicated in the chart of decisions above. Taking into consideration",,,

the judgments cited by the opposite party No. 1, it is seen that the decision reported at AIR 1960 SC 335 is not strictly applicable to the present case",,,

since, although generally an opportunity might be given to the plaintiff to amend the plaint prior to rejecting the suit on a technical ground, in the present",,,

case the plaintiff chose not to amend the plaint but to reiterate its stand of such an amendment, incorporating the relief of recovery of possession",,,

being not necessary at all.,,,

In view of such stand, the plaintiff/opposite party No. 1 took the risk of proceeding without an amendment and, in view of exercise of such option by",,,

the opposite party No. 1, there cannot now arise any question of forcing such an amendment on opposite party No. 1 at this belated juncture. Coming",,,

to the judgment reported at AIR 1966 SC 359, the facts of the said decision are entirely different from the present one. Here, the question of",,,

attachment does not arise and, in view of the aforesaid discussions, it cannot be said that the declaratory suit would otherwise be maintainable without",,,

seeking recovery of possession. As such, the said decision is of no help to the opposite party No. 1.",,,

Lastly, the decision reported at 2006 (5) SCC 658, is also not of any help to the proposition advanced by the opposite party No. 1. There cannot be any",,,

dispute to the proposition that, in some circumstances, the question of limitation can be a mixed question of law and fact. However, in the present",,,

case, the averments in the plaint itself make it abundantly clear that the challenge to the previous deeds was barred by limitation. Since the suit would",,,

not be maintainable otherwise than by challenging those previous deeds, the plaintiff, in any event, could not avoid challenging such deeds. Since a",,,

challenge to those deeds is palpably barred by limitation, as is evident from the face of the plaint, the suit has to be held as time barred and that to, on",,,

the averment made in the plaint itself.,,,

In the light of the aforesaid discussions, there is no other option but the plaint of Title Suit No. 107 of 2017, pending in the Second Court of Civil Judge",,,

(Senior Division) at Howrah, to be rejected. Accordingly, C.O. No. 622 of 2018 is allowed on contest, thereby setting aside the order dated February",,,

9, 2018 passed by the Civil Judge (Senior Division), Second Court at Howrah in

Title Suit No. 107 of 2017, whereby the prayer for rejection of plaint",,
was refused. The application filed by the petitioner in the court below under
Order VII Rule 11 of the Code of Civil Procedure is hereby allowed and,,
the plaint filed in Title Suit No. 107 of 2017, pending in the Second Court of Civil
Judge (Senior Division) at Howrah is hereby rejected. There will be",,
no order as to costs.,,