

**(2018) 01 DEL CK 0593**

**In the Delhi High Court**

**Case No : Civil Suit (OS) No. 1096 Of 2008**

H.C. Sachdeva & Ors

APPELLANT

Vs

Ved Prakash

RESPONDENT

---

**Date of Decision : 30-01-2018**

**Acts Referred:**

Limitation Act, 1963 — Article 54, 58, 59

Limitation Act, 1908 — Article 120

Code Of Civil Procedure, 1908 — Order 9 Rule 7, Order 1 Rule 10(5), Order 7 Rule 11, Order 6 Rule 17

Limitation Act, 1963 — Section 3, 3(1), 21, 21(1)

Specific Relief Act, 1963 — Section 31

**Citation : (2018) 01 DEL CK 0593**

**Hon'ble Judges : Jayant Nath, J**

**Bench : Single Bench**

**Advocate : Sudeep Singh, Rajeshwar K.Gupta, Arun Nischal, Meenakshi**

**Final Decision : Dismissed**

---

**Judgement**

“

Jayant Nath, J",,,

IA No.11880/17 (u/O 7 R 11 CPC filed by D-15) and IA No.11879/17 (u/O 7 R 11 filed by D-2 to 7, 9 to 14 and 16 and 17)",,,

1. IA No.11880/2017 is filed on behalf of defendant No.15 under Order 7 Rule 11 CPC for rejection of the plaint in view of the fact that it is barred by,,

limitation under Article 58 of the Schedule to the Limitation Act, 1963. IA No.11879/2017 is filed by defendants No.2 to 7, 9 to 14 and 16 and 17",,,

seeking the same relief.,,

2. The plaintiff has filed a suit for possession, recovery of money and damages and has also prayed for a declaration that the various sale deeds",,,

executed in favour of defendants No.2 to 18 are illegal, unlawful, fraudulent and void ab initio. It is pleaded in the plaint that the land in question which",,

is the suit property situated at village Humayunpur, Delhi belongs to the plaintiffs No.1 and 2. The parties entered into an Agreement/MOU on",,

27.5.2005. Under the said agreement plaintiff No.1 agreed to transfer his 1/4th share in the property in favour of defendant No.1. Various terms and,,

conditions were agreed upon by the parties. It has been pleaded by the plaintiffs that there were specific covenants in the Agreement dated 27.5.2005,,

that if defendant No.1 fails to make necessary payment of balance due then the earnest money shall stand forfeited and the Agreement would stand,,

automatically cancelled. It was also pleaded that defendant No.1 had right to sell and book for sale remaining flats other than three flats which were,,

constructed pursuant to the MOU. The three flats had been undertaken to be transferred by defendant No.1 in favour of plaintiff No.3. Defendant,,

No.1 had a right to enter into a collaboration agreement with builders to book residential flats and to construct a building over the land. As the,,

defendant No.1 breached the agreement, the agreement stood terminated and came to an end. It is pleaded that the earnest money paid for the",,

agreement stood forfeited and defendant No.1 is liable to hand over peaceful and vacant possession of the land to plaintiffs No.1 and 2. It is pleaded,,

that in the meantime defendant No.1 constructed few flats and sold some of the flats to defendants No.2 to 18. Hence, the present suit has been filed",,

seeking a decree of possession of half share measuring 575 sq.yds. in the land situated at Khasra No. 485/30, situated at village Humayunpur, Delhi.",,

A decree is also sought for a sum of Rs.89,20,000/- in favour of plaintiff No.3 and against the defendants. Declaration is also sought that the various",,

sale deeds registered in favour of defendants No.2 to 18 be declared illegal, unlawful, fraudulent and void ab initio.",,

3. Plaint as originally filed did not implead defendants No.2 to 18. It is the case of the plaintiff that he received knowledge of the sale of flats by,,

defendant No.1 to the said defendants only after written statement was filed sometimes in October 2008 and when the documents were filed in,,

September 2009. Plaintiff accordingly moved an application in 2010 under Order 6 Rule 17 CPC seeking amendment of the plaint. Subsequently, as",,

there was confusion on the identity of the proposed parties on 21.9.2012 the plaintiff withdrew the said amendment application with liberty to file a,,

fresh application. The fresh application was filed in 2013. By order dated 19.2.2014 the amendment application was allowed and defendants No.2 to,,

18 have been impleaded as defendants to the suit.,,

4. Now by the present applications it is pleaded that the plaintiffs had knowledge about their title to the flat in question at least in 2009. Further the,,

impleadment of the said defendant would relate back to the date they were served with summons in 2014 in view of Order 1 Rule 10(5) CPC. It is,,

hence pleaded that the plaint and the relief sought against defendants No.2 to 18 are barred by limitation being hit by Article 58 of the Schedule to the,,

Limitation Act and the present suit should be dismissed, as it is barred by law.",,

5. Learned counsel for the plaintiff has, however, refuted the said contentions. He has pointed out that on 27.4.2017 an earlier application filed by the",,

defendants under Order 7 Rule 11 CPC on the same ground of limitation was dismissed by this court. He submits that the present applications seeking,,

the same relief are barred under the principles of res judicata. He also relies upon judgment of the Supreme Court in the case of Munshi Ram vs.,,

Narsi Ram and Another, (1983) 2 SCC 8 to contend that in terms of Section 21 of the limitation act the date of filing of suit would be the appropriate",,

date for consideration of the limitation.,,

6. I may see the order dated 27.4.2017. Relevant portion of the order reads as follows:-,,

â??IA No.5104/2017 (of D-2 to 14 & 16 to 18 u/O VII R-11 CPC),,

â??1. Though none appears for the plaintiffs, but since this application has come up for the first time today, the counsel for the applicants/defendants",,

has been heard.,,

2. The counsel for the applicants/defendants states that the plaintiffs in prayer paragraph C1 of the plaint are seeking a declaration with respect to the,,

sale deeds mentioned therein and which sale deeds are in favour of the applicants/defendants who have been impleaded as parties to the suit only on,,

19th February, 2014; rejection of the plaint is sought on the ground that the claim for declaration against the applicants/defendants is barred by time, as",,

the suit insofar as against the applicants/defendants is deemed to be instituted when they were impleaded as parties.,,

3. I have enquired from the counsel for the applicants/defendants the Article of the Schedule to the Limitation Act, 1963 which governs the relief and",,

as to how the suit claim under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) can be said to be barred by time.",,

4. The counsel for the applicants/defendants states that he has not checked the Article which would apply and starts rummaging through the,,

Limitation Act and after reaching Part III thereof states that the same is applicable.,,

5. Attention of the counsel has also been invited to Part IV.,,

6. While this order is being dictated, the counsel for the applicants/defendants states that Article 58 would apply. He then states that either Article 58",,

or Article 59 would apply. He now states that both Articles 58 & 59 will apply.,,

7. It is quite obvious that the application has been filed without reference to law and is rejected.â??,,

7. The Supreme Court in Arjun Singh vs. Mohindra Kumar and Others, AIR 1964 SC 993 held as follows:-",,

â??14. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to",,

preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before,,

the court, usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an",,

end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only",,

on proof of new facts or new situation which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle,,

of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the",,

same has once been disposed of the court would be Justified in rejecting the same as an abuse of the process of court. There are other orders which,,

Description of Suit,Period of limitation,Time from which period begins

â??58. To obtain any other

declaration",Three years,When the right to sue first accrues.

59. To cancel or set aside an

instrument or decree or for the

rescission of a contract",Three years,"When the facts entitling the plaintiff

to have the instrument or decree  
cancelled or set aside or the contract  
rescinded first become known to him.

14. It has now to be seen in the facts of this case as to when the cause of action first arose in favour of the plaintiff or when the plaintiff had,,

knowledge about the execution of documents in favour of defendant No.2.,,

15. Order 1 Rule 10(5) CPC read as follows:-,,

â??10. Suit in name of wrong plaintiff.-,,

.....,,

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant",,,

shall be deemed to have begun only on the service of the summons.â??",,,

16. The other relevant section relied upon is Section 21 of the Limitation Act which reads as follows:-,,

21. Effect of substituting or adding new plaintiff or defendant.â??",,,

(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been",,,  
instituted when he was so made a party:,,

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may,,

direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.,,

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the,,

pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."""",,,

17. The Supreme Court in Munshi Ram vs. Narsi Ram and Another, (supra) on Section 21 of the Limitation Act noted as follows:-",,,

â??7. It is clear from the foregoing that there was no provision corresponding to the proviso to sub-section (1) of Section 21 of the Act in Section 22,,

of the repealed Act. Under the former Limitation Act when after the institution of a suit a new plaintiff or defendant was substituted or added, the suit",,,

as regards him was to be deemed to have been instituted when he was so made a party. The severity of the above law is sought to be reduced by the,,

introduction of the proviso to Section 21(1) of the Act which provides that where the court is satisfied that the omission to include a new plaintiff or,,  
defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant should be deemed to have been,,  
instituted on any earlier date. This change in Section 21 of the Act appears to have been made so that an omission to implead a person owing to a,,  
bona fide mistake does not deprive a plaintiff of his rights against that person if the court is satisfied in that behalf.â??,,

18. Hence, in view of proviso to Section 21 of the Act where the Court is satisfied that the omission to include a new defendant was due to mistake",,,  
and in good faith the suit will be deemed to be instituted on an earlier date with regard to such defendant. This adjudication would have to be done at,,  
the time of adjudication of the suit and not at this stage.,,

19. In the present case, the document in question executed in favour of the applicants pertains to the years 2006-07 and 2008. However, the suit has",,,  
been filed in 2008. As per the plaint, the plaintiff learnt about the execution of the said sale deed in favour of the applicants only on 11.09.2009 when",,,  
various documents were placed on record by defendant No.1. He has thereafter immediately moved an application under Order 6 Rule 17 CPC which,,  
has been adjudicated upon and was allowed in 2014. The question would come as to when cause of action arose in favour of the plaintiff. As per the,,  
plaint, in view of section 21 of the Limitation Act, the suit would be deemed to have been instituted against the applicants from the date when the suit",,,  
was filed as the plaintiff had no knowledge about the said defendants till the details were provided by defendant No.1. These are issues which have to,,  
be gone into as noted by the Supreme Court in the case Munshi Ram vs. Narsi Ram and Another,(supra). The application of section 21 of the",,,  
Limitation Act would have to be gone into by the court at the appropriate stage.,,

20. Even otherwise, limitation is normally a mixed question of law and fact. It is settled legal position that limitation is a mixed question of law and fact.",,,

In Panchanan Dhara & Ors. v. Monmatha Nath Maity (Dead) Through LRs. & Another, (2006) 5 SCC 340, the Supreme Court held as follows:",,,

â??20. Contention of Mr.Mishra as regards the applicability of the first or the second part of Article 54 of the Limitation Act will have to be judged,,

having regard to the aforementioned findings of fact. A plea of limitation is a

mixed question of law and fact.,,

The question as to whether a suit for specific performance of contract will be barred by limitation or not would not only depend upon the nature of the,,

agreement but also on the conduct of the parties and also as to how they understood the terms and conditions of the agreementâ?!.â??,,

21. The Supreme Court in Ramesh B.Desai & Ors. v. Bipin Vadilal Mehta & Ors., AIR 2006 SC 3672, held as follows:",,

â??19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to,,

be ascertained which is entirely a question of facts. A plea of limitation is a mixed question of law and factâ?!.â?!,,

22. The grounds on which a plaint can be rejected under Order 7 Rule 11 CPC are quite limited. As long as a plaint discloses a valid cause of action,,

which requires determination by the court the plaint cannot be rejected under Order 7 Rule 11 CPC. Reference may be had to the judgment to the,,

case of Mayar (H.K.) Ltd & Ors v. Owners & Parties, Vessel M.V. Fortune Express & Ors, AIR 2006 SC 1828; wherein the Supreme Court held",,

as follows:,,

â??11. It is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an,,

application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does",,

then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a",,

cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to",,

be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are",,

required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default",,

undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that",,

in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.â??Â,,

Similar are the observations of the Honâ??ble Supreme Court in the case of

Vigneswara Coop. Housing Society Ltd. V. K. Balachandramouli &,,

Ors, (2005) 13 SCC 506. Reference may also be had to the judgement of this court in the case of Tilak Raj Bhagat vs. Ranjit Kaur, 159 (2009) DLT",,,

470 wherein it was held as follows:-,,

â??6. It may be worthwhile to mention here that while considering an application under Order 7 Rule 11 CPC, the Court has to look at the averments",,,

made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor,,

averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the,,

plaintiff.â??,,

23. Keeping into account the above legal position and on a reading of the plaint, it cannot be said that the suit filed by the plaintiff against the",,,

defendant/applicants is barred by limitation. These are issues that can only be adjudicated upon after trial on final adjudication. Hence, as noted these",,,

applications are liable to be dismissed on the grounds akin to res judicata. Even otherwise, there is no merit in the present applications. Same are",,,

dismissed.,,