

(2009) 12 DEL CK 0210

In the Delhi High Court

Case No : I.A. 7808 of 2006 in C.S. (OS) 514 of 2006

Kiran Sibal and Another

APPELLANT

Vs

Kaushalya Devi Educational Trust and Others

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 11, 7
Specific Relief Act, 1963 — Section 34, 41

Citation : (2009) 12 DEL CK 0210

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : B.B. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this order I shall dispose of an application u/s 7 Rule 11 of CPC made by defendants No. 2 and 3 for rejection of the suit.

2. It is submitted by defendants No. 2 and 3 that the suit of the plaintiff was barred u/s 11 of CPC because of principle of res judicata as an earlier suit filed by the plaintiff before the Court at Karnal being Civil Suit 581 of 1981 titled as Ms. Kiran Sibal v. Kaushal Educational Trust and Ors.

wherein Kaushalya Devi Educational Trust was a party was dismissed. The plaintiff had claimed same reliefs as claimed in the present suit and had

also by way of an interim application sought restraint order against the defendants from selling the property situated at Kausalya Park, Hauz Khas,

New Delhi and also sought appointment of a receiver for the properties. It is submitted that in the suit before the Karnal Court while trial Court

appointed receiver in respect of the property in question, the matter went to the

appellate court and the appellate court set aside the order of appointing a receiver on 19th May, 1984. This order of appellate Court was challenged by the plaintiff herein before Punjab & Haryana High Court by way of an appeal which was dismissed vide order dated 31st May, 1985. The suit before the Karnal Court ultimately was dismissed by the Court holding inter alia that plaintiff had no locus standi. Other issues were also decided against the plaintiff herein. It is submitted that the dismissal of suit by the Court at Karnal would amount to res judicata and the present suit was not maintainable. It is also submitted that the suit was highly barred by limitation.

3. The plaintiff in the present suit had sought relief of rendition of accounts against defendants No. 2, 3 and 4 and sought a decree of declaration that all acts, deeds and things done by defendants in respect of suit property of the Trust i.e. defendant No. 1 were null and void and sought a personal decree against defendants No. 2, 3 and 4 or return of gains along with interest @ 18% per annum. The contention of applicant is that as far back as 1987 when the plaintiff filed suit before the Court at Karnal, the plaintiff was aware of the disposal of the trust properties and had made prayer in that suit itself for giving complete accounts of the Trust and the realizations done by defendants from the disposal of the properties including the property at Hauz Khas. The appellate court, in its order dated 19th May, 1984, while setting aside the order of the trial court, had categorically mentioned the averments made by the plaintiff herein showing that the plaintiff had complete knowledge of the property in question being sold in 1983. The plaintiff herein had contended that on 7th November 1983 Shri R.P. Kapur went to Delhi to gather further information about the suit property and found that one Dr. R.K. Deka had put up a board on the left side of the outer gate of No. 5, Kaushalya Park and inspection also showed that possession of flats has been surrendered to respective parties who had put their locks. The observations in the Punjab and Haryana High Court's order also shows that the property had been sold as far back as in 1983 to the knowledge of plaintiff. It is submitted that the suit filed by plaintiff against defendants in 2006 was, therefore, miserable time-barred as it had been filed after 23 years of cause of action.

4. The third stand taken by applicants/defendants is that the plaintiff had no

locus standi to institute the present action by way of this suit since plaintiff was not a beneficiary of the trust and the judgment in this regard has become final. It is also submitted that the trust itself ceased to exist after the plaintiff and other siblings and beneficiaries under trust had received their shares at the time of partial dissolution and dissolution of the trust. The amounts received by different beneficiaries have been shown in the application.

5. Similar applications have been made under Order 7 Rule 11 CPC by other defendants as well, who are occupants of different flats and it is stated that the suit was highly undervalued and also that the suit was barred by limitation, barred by principle of res judicata and it was barred by provisions of Section 34 and 41 of Specific Reliefs Act. Defendants have submitted that the plaintiff had been filing litigations one after another in order to harass the defendants and this litigation is initiated at different fora by different persons, sometime by plaintiff and sometime by her father acting at the behest of plaintiff with the result that for last over 25 years, the defendants had been facing litigations let loose by plaintiff and there have been around 28 cases filed by plaintiff and the plaintiff should be asked to disclose the orders of those cases.

6. In reply to the application under Order 7 Rule 11 CPC, it is contended by plaintiff that the decision of the Court at Karnal in respect to subject property situated in Delhi is of no consequence since the Court at Karnal had no jurisdiction to adjudicate upon the rights qua immovable property situate in Delhi and thus the decision rendered by Karnal Court was non-est. Thus, the present suit was not barred by principle of res judicata. It is also submitted that this Court in a Civil Suit No. 2 of 1981 titled as Shri R.P. Kapoor versus Kaushalya Devi Educational Trust has held and adjudicated that the trust created by Mrs. Kaushalya Devi was a private trust and the trustees, after death of Mrs. Kaushalya Devi (the settler of the Trust) had forged and manipulated the trust deed so created by Mrs. Kaushalya Devi in an attempt to convert a private trust into a public charitable trust and the settlement deed dated 30th October 1979 expanding the activities of the trust and changing objects of the trust, was void.

7. Regarding limitation it is submitted that every unlawful act of the trustees gives rise to a new cause of action in favour of plaintiff and the plaintiff

was entitled to file the suit challenging the acts of the trustee at any point of time.

8. It is to be noted that plaintiff along with the present plaint did not file documents of previous litigations in respect of the trust or in respect of the

trust properties despite the fact that she was one of the parties to the litigation and she was the plaintiff in Civil Suit No. 560 of 1981 pending

before the Court of Shri Randhir Singh Sub Judge, Karnal. In the suit filed by her before the Sub Judge, Karnal she had sought following reliefs:

a. that the defendants be directed to tender full and complete account of sales or other disposal of the Trust properties in each case;

b. a complete account of use and usage of the realizations from the disposal of the Trust properties in each case;

c. permanent injunction restraining the defendants from alienating any trust property during the pendency of the suit;

d. a decree restraining defendant (Smt. Sheila Kapoor) from operating upon Trust properties in view of the breach of obligations already incurred

by her in her past administration of the trust properties.

9. It is undisputed fact that the subject matter of the present suit was the subject matter of suit filed before the Court at Karnal. That suit was also

filed by the plaintiff. plaintiff's plea that the Court at Karnal had no jurisdiction over the immovable property situated at Delhi and therefore the

present suit was not barred by res judicata, in my opinion, is untenable. plaintiff cannot take a plea that the Court at Karnal had no jurisdiction over

the subject matter. The trust properties included the properties at Karnal and Delhi. The plaintiff had a choice to choose the forum and she could

have filed the suit at Karnal or at Delhi and she had chosen to file a suit before the Court of Karnal which she pursued till the end. After she failed

in the suit at Karnal, she had no legal right to urge now that the Court at Karnal had no jurisdiction and the judgment rendered by the Court of

Karnal would not operate as res judicata. When a person files a suit at one forum chosen by him he cannot later on, when the decision goes against

him, be allowed to say that the forum chosen by him or her had no jurisdiction and he will choose another forum now and start another round of

litigation for same cause of action.

10. I, therefore, consider that the present suit filed by plaintiff is barred u/s 11 of

CPC by principle of res judicata and is not maintainable.

11. The suit is also barred by limitation. plaintiff filed the earlier suit in 1981 because the property which is the subject matter of the present suit,

was being sold by the trustees at that time. She had asked for accounts and had also sought a restraint order. That itself shows that the cause of

action in this case arose in 1981 and till 1983 all the flats had been sold to different persons who have now been made defendants by plaintiff. The

suit for injunction or declaration could have been filed within three years. The present suit has been filed after a period of 23 years. In a period of

12 years, a person can claim ownership by way of adverse possession and can lay his stake over the property as owner. This period of twelve

years has been provided in Limitation Act because the Legislature considered that if a person keeps on sleeping for twelve years, he loses his right

to sue. No suit with respect to property rights can be entertained by the Court after a period of 23 years, when to the knowledge of plaintiff

defendants had been in possession after purchasing the properties. The contention of plaintiff is that only agreements to sell were executed with flat

owners and no sale deed was executed. It is an undisputed fact that defendants were in possession in pursuance of payment of full consideration.

The plaintiff did file a suit at that time in 1981 before the Karnal Court to stop the sale but failed. Now after 23 years she has no right to allege that

her present suit was within the period of limitation vis-à-vis the purchasers or vis-à-vis the sellers. I, therefore, hold that the suit is hopelessly

barred by limitation.

12. There is no necessity to advert to other pleas taken by the applicant. I find that the present suit filed by plaintiff is hopelessly barred by

limitation as well as by principle of res judicata, even if the plaintiff had a locus standi to file the present suit.

13. In the result, the application filed by defendants under Order 7 Rule 11 CPC is allowed and the suit of the plaintiff is hereby dismissed being

barred by principle of res judicata as well as barred by limitation.